UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

FIONA HAVLISH, et al.,

Plaintiffs,

v. 13 Civ. 7074 (GBD)

ROYAL DUTCH SHELL P.C.,

Argument

Defendant.

----------x

New York, N.Y.
July 1, 2014
10:30 a.m.

Before:

HON. GEORGE B. DANIELS

District Judge

APPEARANCES

WIGGINS CHILDS QUINN & PANTAZIS LLC
Attorneys for Plaintiffs
BY: DENNIS G. PANTAZIS
TIMOTHY B. FLEMING

BOIES, SCHILLER & FLEXNER LLP
Attorneys for Plaintiffs
BY: STUART H. SINGER
MICHAEL J. GOTTLIEB
DAVID A. BARRETT

FOOTE, MEYERS, MIELKE, FLOWERS & SOLANO
Attorneys for Plaintiffs
BY: ROBERT M. FOOTE
KATHLEEN CHAVEZ

DEBEVOISE & PLIMPTON LLP
Attorneys for Defendant
BY: DAVID W. RIVKIN
WILLIAM HOWARD TAFT

(Case called)

THE COURT: Let me hear the defendant on their motion. Do you want to be heard?

MR. RIVKIN: Yes, your Honor. We seek dismissal. Respondent Royal Dutch Shell seeks dismissal of the petition on three completely separate and independent grounds: First, the lack of subject matter jurisdiction over the payable, which is sovereign property held in a foreign country; second, lack of personal jurisdiction over Royal Dutch Shell; and third, the doctrine of comity, recognizing the United Kingdom's superior interest in a payable held up by sanctions imposed by the United Kingdom and the European Union.

The Court need only find for us on any one of these three grounds in order to dismiss the petition.

Petitioner's arguments are entirely unpersuasive and founded in large part on facially unauthentic evidence. There is no case law supporting their position that 28 U.S.C. section 1610(g) applies to assets outside the United States, and they have made no effort to address the massive precedents holding that sovereign assets are absolutely immune from execution unless a specific statutory exception applies.

Petitioners seek to attribute all of the operations and activities of Royal Dutch Shell's U.S. subsidiaries to Royal Dutch Shell for purposes of jurisdiction without making any showing that these subsidiaries, which are controlled by

separate boards of directors and operated entirely independently, are Royal Dutch Shell's alter ego or agent for jurisdictional purposes.

Instead, petitioners rely on documents found on the Internet that are obviously not attributable to RDS or its subsidiaries and mischaracterizations of RDS press releases to support their position that Royal Dutch Shell operates as a single entity without regard to corporate forum.

By contrast, Royal Dutch Shell submitted extensive evidence in the form of sworn affidavits and corporate records made in the ordinary course of business to show that Royal Dutch Shell is truly separate from its subsidiaries. Petitioners have not controverted any of that evidence.

While petitioners accuse Royal Dutch Shell of unfairly frustrating their effort to satisfy their judgment against Iran, the Court has to realize that if they are successful, the cost of petitioners' victory against Iran will be borne by the shareholders of Royal Dutch Shell. There is no reason to believe that if and when UK and EU trade sanctions with Iran are lifted, the National Independent Oil Company of Iran, against whom there is this payable, would consider the Shell subsidiaries STIL or SITME, S-I-T-M-E, would consider their debts settled by turnover to petitioners.

Our unwillingness to volunteer in excess of $2 billion of Shell's shareholders' funds in favor of petitioners should

not be taken as a lack of sympathy for their position, but it is simply not the job of Shell's shareholders to satisfy that judgment.

Let me propose an order of analysis for your Honor which may help. As I said, these are three independent grounds.

First, to consider subject matter jurisdiction. You should do so because that turns on a discrete question of law that can be answered, we think, in a very simple and straightforward way, whether the statutory exception to immunity from execution set forth in 28 U.S.C. section 1610(g) applies to property outside the United States. Petitioners have withdrawn their other arguments under the Foreign Sovereign Immunities Act. It is clear that this payable is located overseas, and there is no dispute that it is sovereign property

THE COURT: How do you define that the payable is located anywhere other than where the debtor is?

MR. RIVKIN: We believe that it is where the debtor is. And the debtors are two --

THE COURT: If I have personal jurisdiction over the debtor, then (g) would apply.

MR. RIVKIN: But they have made no showing of any personal jurisdiction over either STIL or SITME, and they haven't made a proper request for jurisdictional discovery. By

contrast, we have made a substantial showing that both STIL and SITME are foreign corporations that have no presence in the United States.

THE COURT: But you gave me three different arguments. That's only two different arguments. The argument you just gave me is your personal jurisdiction argument. You said that there was a separate subject matter jurisdiction argument, and your papers indicate and you debate about whether or not (g) gives the right to assert this claim.

If there is personal jurisdiction over Royal Dutch Shell, if there is personal jurisdiction, then what would be the lack of subject matter jurisdiction if Royal Dutch Shell owed a debt?

MR. RIVKIN: I think we need to separate several issues in your Honor's question, which is an entirely appropriate question. The first is that this is a turnover proceeding under state law. New York law clearly requires that a turnover proceeding can only be brought against the actual owner of property rather than a constructive owner. There is no evidence in the record that Royal Dutch Shell owes this payable. The evidence in the record is quite clear that the payable is owed by two of its independently operated subsidiaries.

THE COURT: I didn't understand that to be your subject matter jurisdiction argument.

MR. RIVKIN: That is part of the subject matter jurisdiction argument. It clearly applies only to assets held outside the United States. There is no evidence that this asset is held anywhere but outside of the United States.

THE COURT: We just started with a different premise. We started with the premise that you just, I thought, conceded that if Royal Dutch Shell has a presence in the United States and there is personal jurisdiction over Royal Dutch Shell in the United States, then (g) would apply to the obligation that they owe to the Iranian entity.

MR. RIVKIN: Let me be clear. I didn't concede that if you have jurisdiction over Royal Dutch Shell, and for many reasons we say that you don't -- Royal Dutch Shell doesn't own this payable. The payable is owned by two of its independent subsidiaries. What you asked at the beginning was whether the payable was located where the debtor is.

THE COURT: What standing do you have to object if you don't owe the debt? They are only asking for a turnover of the debt. They are asking for the seizure and turnover of the debt that Royal Dutch Shell owes to the Iranian authority. If you owe no debt, that doesn't seem to be a subject matter issue. That seems to be a factual issue. If it is not your debt, then you can prove that it is not your debt.

But that doesn't say that (g) doesn't apply. I thought your argument was that (g) doesn't apply, because the

asset was outside the United States. I understood that to be your primary subject matter argument. Is that your primary subject matter argument?

MR. RIVKIN: That is correct, that it's outside the United States. It is not a debt of Royal Dutch Shell. It is a debt of two of its subsidiaries.

THE COURT: I know. Slow down.

MR. RIVKIN: They are located outside the United States.

THE COURT: Slow down. That is a different argument.

MR. RIVKIN: It is not. It relates to --

THE COURT: Wait. Let me articulate what I'm interested in. If your argument is that Royal Dutch Shell does not own the debt, that is an argument to be made unrelated to whether or not subject matter jurisdiction in general applies under (g). The question of subject matter jurisdiction, as you presented it to me in your papers, and you can correct me if I'm wrong, was primarily that because the property is not here in the United States, the Court does not have subject matter jurisdiction under any of the provisions, and particularly the one that they now you say have exclusively relied on, (g).

I thought I heard you say that if there was personal jurisdiction over a debtor and that debtor was here, had a presence in the United States, so that personal jurisdiction, that if that debtor owed a debt, there would be subject matter

jurisdiction over the debtor and the debt so that this Court would have authority to prevent the debtor from paying the debt and to order the debtor to instead pay the money over to the plaintiffs who have a judgment against the defendant. Do you say that you have a legal argument that that is not the case?

MR. RIVKIN: Yes, your Honor.

THE COURT: What is your legal argument that, given the scenario that I just laid out, given those assumptions, why would there not be subject matter jurisdiction to tell the debtor who the Court has personal jurisdiction over to not pay the debt to the Iranian authorities but to pay the debt instead to the plaintiff?

MR. RIVKIN: Because, your Honor, with respect, I think that the analysis as you have described looks at the issues in a backwards manner. Let me start back from the beginning.

It is clear that property owned by a sovereign is absolutely immune and that the sovereign is immune from jurisdiction in the United States unless one of the exceptions in the Foreign Sovereign Immunities Act is met. Unless that exception is met, there can be no subject matter jurisdiction for this Court.

THE COURT: What is the exception in (g) that you say doesn't apply? (g) requires what?

MR. RIVKIN: (g) requires that the asset be located in

the United States.

THE COURT: What do you define as the asset? Isn't the asset the debt owed?

MR. RIVKIN: Yes. The asset is --

THE COURT: The debt owed.

MR. RIVKIN: -- the payable owed by two Royal Dutch Shell subsidiaries.

THE COURT: Under what theory is that debt owed in UK, China, or Iran, as opposed to the United States if the company that owes the debt is in the United States.

MR. RIVKIN: It is plaintiffs' responsibility to prove subject matter jurisdiction. That's where I was going.

THE COURT: What's missing?

MR. RIVKIN: They have not proven --

THE COURT: Proven what?

MR. RIVKIN: -- that there is any asset in the United States over --

THE COURT: The asset is the debt owed.

MR. RIVKIN: Right, but they have not proven that the debt owed, they have not even made a prima facie case that the debt owed --

THE COURT: If I'm here in the United States and I decide that I want to buy a Mercedes Benz directly from the company in Germany, they ship the car to me, I get the car, I drive around in it, they write me a letter and say you owe us

the money, tell me where the debt is located.

MR. RIVKIN: That debt would likely be located in United States.

THE COURT: OK. So I don't understand your argument. Where is this debt located? That's what I'm trying to understand.

MR. RIVKIN: Your Honor, this debt is located in the UK.

THE COURT: Why?

MR. RIVKIN: Because the two Shell subsidiaries that owe the debt are located outside of the United States. The only evidence in the record relating to this payable shows that it relates to activities that were conducted entirely outside of the United States by subsidiaries that were located entirely outside of the United States and that have no U.S. contacts and no jurisdiction. It is plaintiffs' responsibility to demonstrate that this Court has subject matter jurisdiction.

THE COURT: I understand that. The fact that is determinative of your argument on subject matter jurisdiction are a finding that Royal Dutch Shell does not have the obligation and that Royal Dutch Shell does not have the presence in the United States. If they had a presence in the United States and they owed personally -- I shouldn't say personally. If they have a presence in the United States for personal jurisdictional purposes and they owe the debt, you

would agree that (g) could apply? Or no?

MR. RIVKIN: Your Honor, it is plaintiffs' responsibility.

THE COURT: Wait. You have to answer my question first; then you can say but if. You would agree, wouldn't you, or do you have a different legal theory, that if Royal Dutch Shell owes the obligation and Royal Dutch Shell has a presence in the United States for personal jurisdictional purposes, that (g) would apply? Would that be correct? I'm just trying to figure out the limits of your argument. Yes or no.

MR. RIVKIN: Only if Royal Dutch Shell has actual rather than constructive ownership of the asset.

THE COURT: Let me change my question, then. Royal Dutch Shell has actual ownership of the debt.

MR. RIVKIN: And not through a subsidiary.

THE COURT: If they have actual ownership of the debt and they have a presence in the United States, you would agree that (g) would apply and I don't have to go through some analysis to try to figure out where the, quote, property is, right? You would agree with that general proposition?

MR. RIVKIN: If by presence in the United States you mean that --

THE COURT: I mean whatever you mean by that. I haven't gotten there yet. I want you to tell me whether or not that is an appropriate legal proposition. If they have a legal

presence in the United States and they legally have an obligation to pay the debt, you would agree for subject matter jurisdiction purposes that they could be ordered to turn over the debt that they owed and they would have authority to do that because they have a presence in the United States?

I'm just trying to get that abstract principle. If you're arguing that that is not so, then I'm struggling to figure out what the limits of your argument are. So, is that a correct statement? I will take whatever definitions you want to use of what I just said. But I assume that you agree that that is a correct statement of law. Or do you have a different argument?

MR. RIVKIN: That is a correct statement of law if the Court has personal jurisdiction over Royal Dutch Shell under the standards enunciated in the Daimler and related cases -- if I could finish -- and if Royal Dutch Shell has actual rather than constructive ownership of the asset, meaning that it is the actual owner of asset and it doesn't own the asset through a subsidiary. That's New York law.

THE COURT: What difference would that technically make? If they don't have ownership of the asset, then an order to them to turn over the asset wouldn't have much effect, would it?

MR. RIVKIN: As long as the separateness of the incorporated parent and subsidiaries is recognized, that is

correct. Again, this Court only has jurisdiction over Royal Dutch Shell if the plaintiffs can prove that the payable is located in the United States. It is plaintiffs' responsibility to demonstrate a prima facie case that this Court has subject matter jurisdiction.

THE COURT: I have subject matter jurisdiction, under which you just argued, if Royal Dutch Shell owns the debt?

MR. RIVKIN: And you have personal jurisdiction over Royal Dutch Shell.

THE COURT: I can't buy that argument. Slow down. Let me finish my question. You will have a full opportunity to argue. This is what I'm interested in. You can persuade me. Otherwise, you can just talk.

The personal jurisdiction analysis starts and ends with the personal jurisdiction analysis. If I find that there is no personal jurisdiction over Royal Dutch Shell, I need not involve myself in any further subject matter jurisdiction analysis. The personal jurisdiction analysis is dispositive.

It is not an argument that if I don't have personal jurisdiction, therefore I have to dismiss the case because I don't have subject matter jurisdiction. If I don't have personal jurisdiction, I dismiss the case because I don't have personal jurisdiction. Right?

MR. RIVKIN: Yes. But the two issues are related. If you don't have personal jurisdiction over Royal Dutch Shell --

THE COURT: The case is finished.

MR. RIVKIN: -- then the case is dismissed on that ground.

THE COURT: Right.

MR. RIVKIN: But also then the obligor of the debt, whether it is Royal Dutch Shell or the two subsidiaries -- again, there is no claim made against the two subsidiaries who actually have this debt. But your Honor's question started with the premise that the debt is located where the obligor is.

THE COURT: You didn't disagree with that.

MR. RIVKIN: I know. But the obligor is only here if you have jurisdiction over the obligor.

THE COURT: That is the beginning and end of the analysis. I don't even get to a subject matter analysis if I don't have personal jurisdiction.

MR. RIVKIN: That's fine.

THE COURT: That's the kind of analysis that would be done.

MR. RIVKIN: Either way, we win, which is the point I was trying to make at the beginning, your Honor.

THE COURT: You win on two different, unrelated grounds.

MR. RIVKIN: Right.

THE COURT: The way you are arguing, if I don't have personal jurisdiction, then you win, because I cannot issue an

order against you if I don't have personal jurisdiction. If you don't owe the debt, if you don't personally owe the debt, you argue that there is no subject matter jurisdiction.

There is a jurisdictional issue about whether or not you owe the debt. That seems more of a failure to state a claim rather than a jurisdictional issue. If I don't claim you owe the debt and I say I want you to seize the money, I'm not sure I'd define that as a subject matter jurisdiction issue.

MR. RIVKIN: Your Honor, the Foreign Sovereign Immunities Act defines that as a jurisdictional issue.

THE COURT: Which?

MR. RIVKIN: Section 1610(g) defines that issue as a subject matter jurisdictional issue.

THE COURT: Which issue?

MR. RIVKIN: If you have jurisdiction over the debt, the second one.

THE COURT: I know. Wait. If I have jurisdiction over the debt, that is not the same definition of saying you don't own the debt. That's a different factual determination. I could have jurisdiction over the debt and you can still not own the debt, right?

MR. RIVKIN: That's true.

THE COURT: That is not the same analysis. That is not what it is referring to in terms of jurisdiction. It says whether you have jurisdiction over the property, over the debt.

If I have jurisdiction over the debt, I have subject matter jurisdiction. I may have the wrong defendant, but I still have subject matter jurisdiction.

If you say to me, you don't owe the debt, the subsidiary owes the debt, so therefore it is not appropriate for me to order you to turn over the money, then the question is not whether I have subject matter jurisdiction over the turnover order. I still have subject matter jurisdiction over the turnover order if the person who owes the debt is in the United States, right? You may not be the right defendant, but that doesn't strip me of jurisdiction over the litigation itself.

MR. RIVKIN: Your Honor, let me turn to the personal jurisdiction in a second, but let me answer that question quickly and briefly. The reason why it does impact your jurisdiction is that this Court only has subject matter jurisdiction under the FSIA under section 1610(g) if there is property located in the United States, and there is only property located in the United States if the obligor is in this court and owes the debt. That is where the issues are related.

THE COURT: What you just said is not correct. The subject matter jurisdiction, if there is an obligor in the United States who owes the debt, that is slightly different from what you just said, right?

MR. RIVKIN: That obligor has to be in front of this

Court. Otherwise, the debt, the payable, is not in front of you.

Let me turn to the question of personal jurisdiction, because that is obviously a concern of your Honor. It is quite clear that for personal jurisdiction purposes, plaintiff has not met any prima facie case against Royal Dutch Shell, who is the only defendant in this action. As we said, it is their burden on the subject matter jurisdiction. I'll circle back to that perhaps after dealing with the personal jurisdiction.

There is no question that petitioners bear the burden of proving that Royal Dutch Shell is at home in New York. That is the standard laid out in the Daimler case, in the Goodyear case. The Supreme Court has made that clear, and it has made clear that that is a very high threshold standard to meet.

Shell has introduced evidence in the form of testimony and documents showing that its U.S. subsidiaries are separately managed, independent entities. As a result, their contacts with the forum cannot be imputed to Royal Dutch Shell, contacts with the subsidiaries.

Even if the subsidiaries' contacts were attributable to it, Shell is still not at home in the forum, because its place of incorporation, its headquarters, and the vast majority of its assets and operations are overseas. That is essentially the same analysis that the Supreme Court applied in the Daimler case. When the plaintiffs there tried to say that Daimler is a

big international company and therefore its operations in California are sufficient to say that it is at home there, the Supreme Court rejected that out of hand.

Petitioners' argument in this case is essentially no more than Shell is a big, worldwide company and therefore it must be at home in the United States. That is simply not the standard. It is not its place of incorporation, it is not its headquarters, and it is not where a majority of its assets and operations are located. It is precisely because Shell has worldwide operations and most of its operations are overseas that New York is an inappropriate forum for general, all-purpose jurisdiction, which is what they have to prove.

Let me turn to some of the key facts. Petitioners allege only limited contacts between Royal Dutch Shell and the United States. Frankly, they resorted to presenting your Honor with inaccurate information when the initial contacts on which it sought to rely were shown to be lacking.

The contacts that are normally marshaled to support jurisdiction don't exist here. Royal Dutch Shell maintains no officials in New York or in the United States. It has no employees based in New York or in the United States. It owns no property or bank accounts here, either, other than its ownership interest in subsidiaries, which is not a sufficient basis for jurisdiction.

The petition alleges four contacts between Royal Dutch

Shell in the forum: Its ownership of separately incorporated U.S. subsidiaries; its listing of securities on the New York Stock Exchange; the role of Bank of New York Mellon, an independent agent, independent company, as depository bank; and a single investor presentation made by one person, Ken Lawrence, who is not himself an employee of Royal Dutch Shell.

We showed in our initial papers that none of those can be proven. So, plaintiffs resorted to presenting your Honor with some facially incorrect evidence. They tried to rely on the prevalence of Shell service stations in New York, pipeline network, the number of employees of Shell subsidiaries. All of those facts merely embellish that Shell is the parent company of Shell Oil Company, but they have made no attempt to show that Shell Oil Company is the agent or the alter ego of Royal Dutch Shell.

They completely fail to distinguish between the operations and activities of Shell Oil Company and RDS. As we pointed out in our papers, the service stations, for example, are not even owned by Shell Oil Company. They are owned by a separate and independent company called Motiva, of which Shell Oil Company only owns half.

The opposition brief did not address at all the evidence we presented to your Honor of the subsidiaries' observation of corporate formalities, ample capitalization, separate boards of directors, separate financial statements.

They haven't tried to address those. And those are always the key issues in a personal jurisdiction case. Instead, what they do is misquote some press reports and rely on unauthentic evidence, including what appears to be a business school homework project that was posted on the Internet, to try to support its claims.

What I am referring to by the business school project is Exhibit 13 to the position brief. It is not a real Shell document. It is clear on its face that it is not a real Shell document. It was clearly not obtained from Royal Dutch Shell. It is addressed to XYZ.

It cites Wikipedia and as a source IBSCDC.org. That is an online business school case study website. That is clearly not something that a Shell internal document would be referring to. It was authored by somebody whose other uploads consisted of finance essays. We pointed out the facts of this in Mr. Taft's second declaration to you.

If you read the document, you will see it is full of typos, odd syntax. It has a sentence that says, "So we are constantly involving in creating a constant stream of innovative goods and services." That doesn't sound like something written, as they claim it is, by either Shell Oil Company or Royal Dutch Shell, one of the world's largest companies, and given out to all of its employees. It cannot be.

Other examples of facially unreliable evidence. Exhibit 14, which is congressional testimony in 2004 regarding the prevalence of U.S. shareholders relating to a predecessor entity, Royal Dutch. That has been merged out of existence. That has no bearing on whether this company that has been sued can be found to have jurisdiction here, is at home in this jurisdiction. Plaintiffs should know that because their documents also made clear that they were aware that the old entity had been merged out of existence.

In Exhibit 7 they present you with annual reports for a different predecessor entity, Shell Trading & Transport Company, dating back to 1997. Again, that entity is not Royal Dutch Shell, which is before you today.

They present an online white pages listing that links to a nonworking number for Shell Oil Company, the U.S. subsidiary at Rockefeller Center. Your Honor, trying to rely on evidence like that to bring an important company and a $2 billion claim into this court should not be countenanced, frankly

THE COURT: Isn't the very straightforward analysis with regard to any of this documentation whether or not any information in this documentation is true or not true and whether or not you are disputing something that they say they are relying upon in order to assert jurisdiction?

MR. RIVKIN: Your Honor, the documents I'm referring

to on their face are not true.

THE COURT: That's what I'm saying. That's the only analysis. It is not a question of whether the documents are true. The question is whether or not the information in the document that they are asserting against you, whether there is any basis for you to either acknowledge its truth or to deny its truth. I assume that the critical point here is that any contacts that they are relying upon that are specifically articulated in these documents, you say that those contacts don't exist.

MR. RIVKIN: Your Honor, my point is that relying on a 1997 annual report of an entity that does not exist, cannot possibly have any facts bearing on --

THE COURT: Only if you tell me the facts in the document are not true. That's all I need to know. If you tell me that it is not true that certain contacts do exist currently, then that's the end of the inquiry, isn't it? I don't have to figure out who wrote it. Anybody could have written it. I couldn't care less.

The question is, is it true? If it is not true, then those contacts don't exist. If those contacts do exist, simply because they stumbled onto it or happened to state a fact which they didn't really know but it really turns out to be true -- the only thing that helps your analysis is that these contacts don't exist.

MR. RIVKIN: Your Honor, again, what helps my analysis is that it is plaintiffs' obligation to present you with evidence.

THE COURT: Right. They say that these facts exist, and that's evidence. If it doesn't exist, all you have to do is say no, it doesn't exist. You could hide behind the fact that you think the source is unreliable but you know that it is true, the information is true. The critical question is whether or not they presented evidence that is asserted, if true, as a sufficient basis for jurisdiction, and if that is the case, whether or not it is in fact true.

Isn't that my analysis? Whether you say they have the burden, that's fine and dandy. But the burden could be met by asserting certain facts that, if true, and they say they are true, would be sufficient to assert jurisdiction and you can't in good faith deny the existence of that fact, because that is the only fact that I would have before me.

They say the fact exists, you say it doesn't exist. If you tell me it doesn't exist, I'm more likely to give you, as they say, the benefit of the doubt than to simply listen to an argument that tells me that somebody not in the know wrote the document but just happened to say something that they guessed at and didn't know but it really is true.

I assume your argument is that none of these contacts that they say are being asserted in these documents exist. Is

that your argument or not your argument?

MR. RIVKIN: Your Honor, let me step back a second. That is the argument, but let me step back a second.

Under Daimler and related cases, it is their obligation to present you with a prima facie case that Royal Dutch Shell has such systematic and continuous contacts with this forum, New York, on its own that this Court may properly find that it is at home in New York. That is the standard. That is their burden.

THE COURT: Right.

MR. RIVKIN: They came forward in the petition with various statements that were not true.

THE COURT: That's the end of the analysis.

MR. RIVKIN: Let me finish to fill this out. What we did was in our motion to dismiss -- it is not just a question of our word against theirs -- we submitted sworn testimony by people who do know the facts as to the independent nature of Shell's U.S. subsidiaries.

We submitted sworn testimony about the evidence of where the payable is located and which Shell subsidiaries know that fact. We submitted sworn testimony and evidence that this Court should consider that the Shell subsidiaries to which they had pointed are independently operated, that they have separate boards of directors, that Royal Dutch Shell does not control their operation such as to find them either to be agents or

alter egos of the company.

That is evidence in the record for this Court to consider. Under the case law, they are then required to come back with evidence that counters the sworn evidence in your record, evidence on which this Court can rely.

My point is that they did not submit any evidence that counters the evidence that you have in these declarations. They did not submit any evidence that shows that the subsidiaries that operate in the United States are not independent. They did not submit any evidence that shows that they have overlapping boards of directors or that Royal Dutch Shell controls their operations in any way.

They did not submit any evidence that Royal Dutch Shell has offices in the United States or employees in New York. They did not submit any evidence to show that the subsidiaries don't observe formalities or have ample capitalization or that they don't create separate financial statements.

So, there is no evidence in the record on which the Court could find a basis for personal jurisdiction under the relevant standard.

THE COURT: I understand.

MR. RIVKIN: We have submitted the only evidence relating to that.

The documents which they did submit do not undercut

that evidence in any way. This isn't a question of our word against theirs. It cannot be that a 1997 annual report of a completely separate entity can have any bearing on the issues that I have just put to you. It cannot be that testimony in Congress relating to an entirely separate entity can have any bearing on the issues on which we have submitted evidence to you about Royal Dutch Shell.

When plaintiffs say to your Honor that SITME, one of the subsidiaries that owes the payable, has stated that one of its major markets is North America, which is what they said in their papers, and you look at their exhibit that says it, it is clearly not a document in which SITME or Shell states anything. It is a comment by a third party on the Internet that is simply stating some information about certain companies. As we pointed out to you in Mr. Taft's second declaration, if petitioners had taken 30 seconds, they would have seen that that exact same language is copied by this third party onto multiple corporate descriptions across the web.

So, for them to say that they can contradict the sworn evidence which exists in testimony and in documents that are ordinary corporate documents prepared in the regular course, for them to say to you that SITME had stated something to the contrary when the document itself clearly shows that SITME hasn't stated that, your Honor, they are not playing correctly with you. When they present evidence related to other

entities, they are not playing correctly with you.

Of course, if there were a record before you where we said certain things and they presented viable evidence that overcame the evidence that we had presented, then your Honor would have some factual issues to determine. But they have not met that burden in any way, and that's what the cases require before this Court moves forward.

Their argument is nothing more than Royal Dutch Shell is the world's largest company and therefore it must be home in the United States. That just doesn't hold water under Daimler and Goodyear and other cases.

Typically, as you know, a foreign corporation is only at home in its place of incorporation, and for Royal Dutch Shell that is England or its headquarters, and that is the Netherlands. This is straight out of the Daimler case.

The paradigmatic example described in the case law is a foreign corporation with no overseas operations whose CEO is located in the United States, from where he oversaw the entirety of the company's business. That is the Perkins Supreme Court case from 1952, where they found that a foreign corporation was in fact home in the United States. Those facts couldn't be any more dissimilar than the facts of Royal Dutch Shell.

The mere quantum of contacts between Shell and the forum is not the relevant factor. As we have said, they

haven't shown any contacts between Royal Dutch Shell, the parent company, and this forum.

In any event, even if you could attribute some of the subsidiaries' actions to Royal Dutch Shell, and they have not presented any basis to do so, even if you could, that would not show that Royal Dutch Shell was at home in New York. Look at the Daimler case. It said that even if you attribute Mercedes Benz USA's, MBUSA's, contacts with California and activities in California to the parent company Daimler, and the Supreme Court said there is no basis for doing so, but even if you did, there would be, what they showed, much larger contacts with California, actual operations in California, a sizable percentage of MBUSA's cars sold in California, and that was still not sufficient to find either MBUSA or Daimler at home in California.

That should take care of personal jurisdiction for you. They have presented no evidence to you on which you could base a finding of personal jurisdiction.

They also seek to rely on Rule 4(k)(2). That similarly does not apply. Rule 4(k)(2) was created to ensure that causes of action created by federal law could be brought against defendants who had sufficient contacts to support jurisdiction in the country as a whole but who lacked sufficient contact with any particular state. It was meant to fill in the gap with respect to claims under federal law so

that a claim under federal law could be brought somewhere in the United States. It was enacted in direct response to a Supreme Court decision identifying this narrow gap.

Multiple courts of appeals -- the Ninth Circuit, the First Circuit, the Fifth Circuit -- have all recognized that the drafters of the rule took pains to avoid expanding the jurisdiction over foreign defendants in state law causes of action. The advisory committee, as it's been presented to you, said that this rule is a "narrow extension of federal reach, and it applies only if the claim is made against the defendant under federal law. It does not establish personal jurisdiction if the only claims are those arising under state law or the law of another country, even if there is diversity or alienage subject matter jurisdiction."

This claim is a state turnover claim. The fact that in order to get to this point you have to find that you have subject matter jurisdiction under the FSIA doesn't impact this analysis. It cannot be that any claim on which there is some basis for federal jurisdiction, like federal subject matter jurisdiction, if your Honor were to find it existed under 1610(g), it cannot about that any claim which meets a federal jurisdiction standard gets to use rule 4(k)(2).

The advisory committee made clear this is a narrowly aimed rule to fill the gap only where the claim is brought under a federal statute and which otherwise might not be

brought somewhere in the United States.

That analysis has been described in considerable detail in the Ninth Circuit case Goetz v. Boeing, which we presented to you. It is consistent with decisions reached by the Fifth and First Circuits in the World Tanker Carriers case and the U.S. v. Swiss American Bank case.

Enforcement actions like this are governed by state law, not federal law. Levin v. Bank of New York, which we have presented to you, points out about blocked assets. It says while these assets are susceptible to attachment, the motion for turnover has to comply with New York's C.P.L.R. 5225(b), as required by Federal Rule of Civil Procedure 69.

We don't dispute that their cause of action against Iran, on which you have already ruled, arose under federal law. But that is not what is before you today. What is before you today is a state law turnover action, and rule 4(k)(2) cannot have any application to such a state law action.

We know that one other Southern District judge, Judge Forrest, in the Peterson v. Iran case, held that the test for subject matter jurisdiction met the requirement under rule 4(k)(2). We don't know what was presented to Judge Forrest. We do know that Judge Forrest did not cite the advisory committee notes that I just described to you and that her analysis is much briefer and looks at the purpose of the rule in much less of an analytical way than the Ninth, First, and

Fifth Circuit cases that I have set out.

I should also point out that Judge Forrest's decision in the Peterson case is only dicta. She had already found that there was an independent basis for jurisdiction, she didn't need to rely on 4(k)(2) at all. Certainly that decision is not one which binds your Honor in any way, nor should your Honor feel uncomfortable coming to a different decision. It was dicta, it did not go into the same level of analysis, and it did not consider the advisory committee notes, which clearly set out the narrow purpose of rule 4(k)(2).

Putting that aside, the contacts on which plaintiffs try to rely for Royal Dutch Shell are clearly insufficient. The fact that Shell owns U.S. subsidiaries is not sufficient to find it to be at home in New York under the relevant case law. The cases are also clear that the U.S. listing of Royal Dutch Shell securities is insufficient. There can be no dispute about that.

The fact that there are numerous New York shareholders is insufficient. There can be no dispute about that. Again, many cases say that. The use of Bank of New York Mellon as a depositary bank is insufficient. Again, there can be no dispute about that.

The Shell service stations that they mentioned repeatedly cannot be a basis. As we pointed out, we submitted sworn evidence that those service stations are not owned by

either Royal Dutch Shell or by its U.S. subsidiary Shell Oil Company. They are 50 percent owned by Shell Oil Company in a company called Motiva, which operates independently, has some boards of directors. So there are multiple layers between those service stations and Royal Dutch Shell. They cannot be a basis.

Certainly a single investor presentation in New York by an employee of one of the subsidiaries is insufficient. We presented to you many cases on that.

They cannot impute the contacts of U.S. subsidiaries under an agency theory. The Daimler case criticized that. The recent Samara case decided by the Second Circuit after Daimler made that clear. The Second Circuit said that Daimler expressed doubts as to the usefulness of an agency analysis like that that the Second Circuit had used in the Wiwa case that focuses on a forum state affiliate importance to the defendant. The opposition brief inaccurately states that the Wiwa test is different from the test criticized in Daimler. It is not at all when you compare them.

To support jurisdiction, an agent has to be acting on behalf of the foreign defendant. Where the subsidiaries carry out their own businesses, the subsidiaries cannot be deemed the agents of the parent company.

All of the contacts that they have mentioned -- service stations, pipelines, refineries -- those all relate to

the business of subsidiaries, not to the business of Royal Dutch Shell.

While I mention the Wiwa case for a minute, I should point out that not only did the Daimler analysis undermine, really take away, the analysis the Second Circuit used in Wiwa, but the facts that were relied on by the Second Circuit in the Wiwa case don't exist here. There is no longer a Shell investor relations office in New York which they relied upon.

The entity involved in Wiwa is not the same entity. The parent company there is not the same entity as current Royal Dutch Shell. That was a premerger entity. As I said, Royal Dutch Shell is a new and different company that operates through these subsidiaries.

THE COURT: What different does it make to the analysis?

MR. RIVKIN: One can't simply say that just because the same entity has been found to be present in New York and Wiwa is present here, it is a different entity.

THE COURT: I'm not sure why that advances it one way or another, the analysis.

MR. RIVKIN: It does not. What I am pointing out is the facts upon which the Wiwa court determined don't exist in this case.

THE COURT: What determinative fact doesn't exist?

MR. RIVKIN: The Second Circuit put a lot of reliance

on the fact that that Shell company, not this one, had an investor relations office that operated in New York on a systemic basis. That was a determinative fact for the Second Circuit. It does not exist with respect to this company.

THE COURT: It wasn't what the pre- or post-merger nature of the parent is. That is not important.

MR. RIVKIN: I was merely pointing that out, your Honor, so that you would understand that you have different facts to apply to a different company, not the same facts that apply to that company in the Wiwa case. That's all. That was my point.

Of course, now we have the Daimler and the Goodyear decisions, which present entirely different standards that have to apply here in the Second Circuit as well. So you have different legal standards and different facts from Wiwa. Wiwa doesn't have any importance here at all.

As I said, your Honor, the petitioners have presented absolutely no evidence in the record on which you can rely to find even a prima facie basis of personal jurisdiction. The evidence in the record that you have to consider strongly points out that there is no basis for finding that Royal Dutch Shell is at home in New York.

Let me turn for a minute to an additional argument we have, which is comity. It is clear from the papers, from the only evidence that is before you, your Honor, that the payable

relates to activities that were conducted entirely outside of the United States and that the payable was held up not by U.S. sanctions but by UK and EU sanctions.

Therefore, if this Court were to order turnover of the payable -- again, because there is a lack of subject matter jurisdiction and lack of personal jurisdiction, we don't think you can do so under the law. But if your Honor disagreed with us on both of those points, your Honor would still have to understand that what you would be doing is ordering a company to take an asset which has been blocked by a foreign sovereign's sanctions and bring it to the United States. Frankly, I don't think our clients could do that without a license from the UK.

THE COURT: I'm not sure I understand why such an order is somehow inconsistent with the frozen assets and the determination to freeze the assets in the UK as opposed to consistent with what the UK has done. The UK has basically said, look, our sanction is that you can't turn over these assets to the Iranian government or any Iranian related authorities. Why is the nature of this lawsuit and the otherwise disposition of the assets somehow inconsistent with the UK determination that Iran shouldn't get the assets?

MR. RIVKIN: Your Honor, I think you answered the question simply from the way you asked it. It is the UK's determination that these assets should be blocked, they should

not be turned over to Iran or to anyone else. They are blocked. That is the way the EU and the UK regulations operate.

It is for the UK to make the decision that you just described. It is not for this Court to make the decision. The sanction was imposed by the UK and EU governments. When you look at the requirements of comity, which go back centuries --

THE COURT: I don't understand why that is inconsistent with what the UK can and might want to do. If the UK decided that this was inconsistent with their determination of what should happen to these assets, they could say so and assert that.

MR. RIVKIN: Your Honor, that is my point. It is not for this Court to determine that. It is for the UK to determine that.

THE COURT: Why not?

MR. RIVKIN: If they went to a UK court and they said we should be entitled to this payable, the UK court can decide how the sanctions are to be applied.

THE COURT: It is a little inconsistent with a determination before that that there is personal jurisdiction here, that the assets are here, and the subject matter jurisdiction here. In that case comity would be that they should let the United States decide what to do with the funds.

MR. RIVKIN: Your Honor, no. Comity always applies in

the circumstance where a court does have both personal and subject matter jurisdiction.

THE COURT: Right. If I determine that there is personal and subject matter jurisdiction, then who has the greater interest in distributing these assets, the UK or the U.S.?

MR. RIVKIN: Clearly, the UK does.

THE COURT: Why?

MR. RIVKIN: Because even under your analysis, if you were to find that there was personal or subject matter jurisdiction, it would be on the basis that you had jurisdiction over an entity here that was in actual control of the payable even if it is located abroad and that you have the right under the New York turnover statute to order them to bring it to the United States. You would not be finding that --

THE COURT: They don't have to agree to bring it to the United States.

MR. RIVKIN: They do in order to bring it within the statute.

THE COURT: That's a fiction. The asset is the debt. What property are you telling me they have to bring to the United States?

MR. RIVKIN: The payable. If they were actually ordered to pay out $2 billion --

THE COURT: Isn't that somewhat of a fiction?

MR. RIVKIN: No, your Honor.

THE COURT: Wait. Go back to my Mercedes Benz analysis. If I owe you the debt and I'm here in the United States, tell me on what theory I have to pack up the debt, put it on a ship, and bring it from England to the United States.

MR. RIVKIN: Your Honor, if your only bank account is in England and that account has been frozen by the British authorities so that the only way you could pay the debt is through that --

THE COURT: Is that the case?

MR. RIVKIN: Yes, that is the case.

THE COURT: That Royal Dutch Shell's bank account has been frozen in the UK?

MR. RIVKIN: This payable has been frozen in the UK.

THE COURT: No.

MR. RIVKIN: That is the debt.

THE COURT: You said UK has issued a similar order saying that you owe the debt and we say you cannot transfer, you cannot meet that obligation by taking money that you have and paying that debt. They do so because they have personal jurisdiction over Royal Dutch Shell.

Royal Dutch Shell couldn't do it even if they wanted to take the money out of their Chinese bank account and pay Iran, because the UK has said to them, we have personal

jurisdiction over you, we have subject matter jurisdiction over you, and we are going to order you personally not to satisfy this debt out of any asset even if all of those assets were in the United States. Wouldn't that be true? Right?

MR. RIVKIN: Yes. That is precisely why.

THE COURT: That doesn't involve moving the debt.

MR. RIVKIN: Yes, it does, your Honor. What you just described is precisely why a U.S. court should not be interfering in the UK government's decision about the debt.

THE COURT: What is that interfering with?

MR. RIVKIN: This is a debt owed by a UK company for activities entirely outside of the United States that has been frozen by UK and EU sanctions. It is up to the UK and the EU to determine how that debt ought to be dealt with, not a United States court. That is the whole purpose of comity, where a U.S. court should not be interfering with the sovereign decisions of another country.

THE COURT: Why does that interfere with the sovereign decision of another country if the UK has the equal authority to tell and has already told the company that they cannot satisfy the debt? If I issue a turnover order, I assume that turnover order, I would have to consider whether or not in comity I would do something to try to enforce that order while the UK has issued a different order that the asset should go nowhere. There may be a compelling argument that out of comity

I should not do anything to enforce the turnover order until and unless the UK says yes, we are satisfied that you can turn over that money as long as we know the money is not going to Iran. I could understand that argument.

Quite frankly, right now I don't know what the effect would be. I assume the effect would be nil, but I don't know what the effect would be of a turnover order. It might give them a right to have the money. Whether or not the UK would allow Royal Dutch Shell to turn over the money while they have a sanctions order that the money should go nowhere is a different question. Whether or not Royal Dutch Shell would be somehow in violation of my order if the UK said no, you cannot do that until we decide what should happen with the money, and then if there is a conflict, comity may play a part.

If many people have a claim to this asset, why is it inconsistent for those people who have claims around the world against Iran, why is it inconsistent for them to say, look, I am going to preserve my right to collect on this claim? So at any point that any outstanding order is not inconsistent with my right to the money, if the UK says fine, we've got no problem with that, you've got a claim against Iran, as long as we know royal Dutch is not paying it to Iran, fine, we think this is a good use of the money, why am I somehow interfering with the UK decision at this point simply by issuing such an order?

MR. RIVKIN: I think your Honor's points would effectively eliminate the doctrine of comity. A court always, when comity is being applied, has personal jurisdiction and subject matter jurisdiction but it finds that the interests of the foreign sovereign are greater than those here.

THE COURT: What is their interest in depriving the plaintiffs of their duly obtained judgment in the United States against Iran? I don't understand anything that is necessarily inconsistent with that. I don't know whether the UK would want that to happen or not want that to happen. Why am I supposed to assume that that is somehow inconsistent?

They haven't said no, give the money to a third party, and if I say give it to the plaintiffs, that's inconsistent with that. I would understand that. Their only thing is don't give the money to Iran. My order doesn't conflict with that intent.

MR. RIVKIN: If you are talking about a hypothetical order that doesn't require Royal Dutch Shell to actually pay any money to plaintiffs because it still remains subject to the UK and EU sanctions, then I don't necessarily disagree with you.

THE COURT: I can't imagine a scenario where I would order Royal Dutch Shell to turn over the money to the plaintiffs and the British jurisdiction decided, or whatever court had to decide the issue, said that is inconsistent at

this point with what we intend by our order. It is difficult for me to imagine that I can do that without giving great consideration to comity.

But it doesn't seem that we are at that point at this point. I don't know whether they are going to say, good, we are glad somebody who deserves the money is getting it because our only concern is that we think for the reasons that we have stated, we don't think Iran should get it.

MR. RIVKIN: If it stops there, I don't disagree with your Honor. Of course, in order to get there -- I'll summarize for you because I appreciate that you have let me talk for a while. To summarize, you can only get there if you find that you have both subject matter jurisdiction and personal jurisdiction. Our point is that there can be no dispute that you only have subject matter jurisdiction if the claim relates to property in the United States. There is no extraterritorial jurisdiction under 1610(g).

THE COURT: I'm sorry, to interrupt you, but this is important. Where do you contend the property exists? Where?

MR. RIVKIN: We don't just contend. We presented evidence that the property exists outside the United States.

THE COURT: Where?

MR. RIVKIN: In the UK and Bermuda, where the two debtors of the payable are located. They are independent subsidiaries. Even though we submitted evidence to your Honor

with our motion, they submitted no evidence at all with respect to those subsidiaries to challenge this evidence in any way. Those debts are owed by STIL and SITME. Those are UK and Bermuda companies. They are independently owned through a series of companies.

THE COURT: I was trying to understand whether you have some sort of a different definition than I am proceeding on. I'm proceeding on the definition that the debt exists where the debtor who intend to pay it exists.

MR. RIVKIN: We agree with that. The only evidence in the record is that the debt exists outside of the United States. There is no evidence in the record to the contrary. It is owed by those two companies. The plaintiffs have not presented any evidence to pierce the corporate veil between research Dutch Shell and those two entities. They have not presented any evidence to get to them under an agency theory or any other way. That is the deficiency.

We understand your Honor would like to find ways to satisfy the plaintiffs in this case.

THE COURT: No, that's not my interest. My interest is to do what is legally required.

MR. RIVKIN: I agree. The fact is that the plaintiffs have a very high burden to meet on personal jurisdiction under the Daimler and related cases, and they have a very high burden to meet under subject matter jurisdiction to show that the

property is in the United States. They have not submitted any evidence, no evidence, that would support either of those propositions.

THE COURT: Let me ask you this. If a company has its principal place of business elsewhere and is incorporated elsewhere but has sufficient contacts so that it is determined that it is at home in the United States, where do you say the debt exists in that hypothetical?

MR. RIVKIN: There are a couple of points. First of all, on the sufficient contacts to be at home in the United States, the Supreme Court said in the Daimler and the Goodyear cases it is a very rare case if the principal place of business and the corporation are outside the United States.

THE COURT: I'm giving you that rare case. It's been argued to me already. The Supreme Court did not mean to say, and it is being misinterpreted to argue that the Supreme Court said, that the only place that you are at home is where you were incorporated and where your principal place of business is. That is not what the Supreme Court said. I want to make sure that we are not proceeding on that theory, that that is not the theory that you are trying to argue.

I am just giving you a hypothetical. If there is a sufficient basis to conclude that a company is at home in the United States even though its principal place of business is someplace else or its place of incorporation is someplace else,

is it your position that the debt owed is not in United States?

MR. RIVKIN: If again the standard is if it is systematic and continuous contacts as to feel at home, if in the rare case you could find that plaintiffs have met that very high burden, which they haven't here, plaintiffs would still fail because Royal Dutch Shell is not the actual owner of company.

THE COURT: That is not my question. I know that is what you want to protect against, but that is not my question. My question is a very simple question. I am trying to understand the limits and the extent of your argument here. Am I correct that you would agree that, in the abstract, even though a company is incorporated someplace else and has its principal place of business someplace else, if a determination is made that they are at home in the United States, you would not be able to make the argument on that scenario that the debt isn't here for enforcement? Or yes, you would?

MR. RIVKIN: Only if that company has actual ownership, not constructive ownership.

THE COURT: I'm assuming actual ownership.

MR. RIVKIN: That is an important difference in this case.

THE COURT: I'm not asking you in this case. That's not an important difference in my hypothetical.

MR. RIVKIN: That's fine.

THE COURT: My hypothetical is that they owed the debt. I am concentrating on your place of where the debt is. Your argument is not that the place of the debt is simply where they are incorporated or simply where their principal place of business is. Under an analysis as we have just discussed it, an argument can be made, and not a very strong argument can be made to the contrary, that the debt is where the defendant can be sued on the debt, right?

MR. RIVKIN: Yes.

THE COURT: That's all I wanted to know.

MR. RIVKIN: That is correct. Having said that is correct, I want your Honor to understand that in this case the plaintiffs not only have the burden of meeting all those other standards to get to the point you just did, they also have the burden of showing that the debt which is owed by two subsidiaries which have not been brought to this Court and over which this Court would have no basis for jurisdiction, that the debt is not owed by Royal Dutch Shell, it is owed by these two subsidiaries.

So, in addition to meeting all those other burdens, they also would have to meet the burden that the debt is actually owed by Royal Dutch Shell and not by these subsidiaries, and they are not going to be able to meet that burden, either.

THE COURT: Let me give you one more hypothetical. If

Royal Dutch Shell announced tomorrow that they are going to pay the debt, would it be your position that the plaintiffs could not then seek a turnover order to prevent them from paying over that debt to Iran and to say that that debt should be turned over to them rather than paid to Iran?

MR. RIVKIN: If Royal Dutch Shell admitted to ownership of the debt as you have described, then I agree with you.

THE COURT: No, I didn't give you the hypothetical. It doesn't matter to me whether they admit that they owe the debt. They say they are going to pay the debt. They say, we are going to pay it on behalf of our subsidiary. I'm asking you, under that scenario, would you say that their intention to satisfy the debt on behalf of the subsidiary, that because of your argument simply that they don't own the debt, there would be no legal recourse to seek either seizure of that transfer or a turnover order of those funds before they put it in the hands of Iran?

MR. RIVKIN: Under that hypothetical, I would not disagree.

THE COURT: So it is not just determinative of who owns the debt.

MR. RIVKIN: It is.

THE COURT: The question here, the UK has already said to Royal Dutch Shell, you can't satisfy this debt.

MR. RIVKIN: With respect, your Honor, the UK has not said that to Royal Dutch Shell. The UK has said that to SITME and to STIL.

THE COURT: You think, pursuant to the order outstanding, Royal Dutch Shell could satisfy the debt and not be in conflict with the outstanding order?

MR. RIVKIN: No, because Royal Dutch Shell doesn't own --

THE COURT: It doesn't matter who owns it.

MR. RIVKIN: Of course it does.

THE COURT: You say Royal Dutch Shell could pay this debt and not be in violation?

MR. RIVKIN: No, they can't.

THE COURT: You said they don't own it. What difference does it make whether they own it or not? They are precluded from transferring this money to Iran.

MR. RIVKIN: That's right.

THE COURT: To satisfy a debt that they owe or to satisfy a debt somebody else owes, right?

MR. RIVKIN: Yes.

THE COURT: Regardless of whether they owe it?

MR. RIVKIN: My small difference with the way you formulate it. What you said, your Honor, is that the UK has told Royal Dutch Shell it cannot pay. What I want to be clear is that the UK has said, under broad sanctions, nobody can pay.

THE COURT: That nobody can.

MR. RIVKIN: And the debt is actually owed by a UK and Bermuda company. The payable is located in the UK or the EU, and therefore it can only be paid there. That's my only point.

THE COURT: If there were a representative of Royal Dutch Shell sitting in the audience and had a briefcase full of cash, and we turned to them and said what, do you intend to do with that briefcase full of cash, and they said, we are getting ready to give this to Iran to satisfy the debt of the subsidiary, you would agree that an application for a restraining order and a turnover order would be an appropriate thing for the Court to consider?

MR. RIVKIN: Yes, in that very odd hypothetical, yes.

THE COURT: Thank you very much.

MR. RIVKIN: Thank you, your Honor.

THE COURT: Let me give the court reporter a short break, and then I will hear from the plaintiffs.

(Recess)

THE COURT: Yes, sir.

MR. SINGER: Your Honor, if I might approach. I have some argument exhibits that I would like the Court to consider that come from the record in our brief.

I would like to begin, if I might, your Honor, with a point that the Court questioned Mr. Rifkin extensively on, which is that if there is personal jurisdiction over RDS, then

it can order RDS to pay over that money whether one considers that money to be in the United States, out of the United States, because the jurisdiction is what gives the Court the authority to do that. I believe mr. Rifkin conceded that in large measure in his argument.

But whether he concedes it or not, that is the law. I refer the Court to tab 10, which are cases we have cited in our brief. In the JW Oilfield Equipment case in the Southern District of New York, a German bank was ordered to turn over a judgment debtor's German-based bank account balance to a judgment creditor.

It cited the New York Court of Appeals in the Kohler case, which states that a New York court with personal jurisdiction over the defendant may order that defendant to turn over out-of-state property regardless of whether the defendant is a judgment debtor or a garnishee. The Tiffany case in the Southern District of New York in 2012 is similar.

We think there are two bases that the Court can deal with in what they call subject matter jurisdiction argument. I think in fact, as the Court itself apprehended, it is not really a subject matter jurisdiction argument at all. Either we can deal with it simply by establishing personal jurisdiction, which is sufficient under general practices to consider within the United States if you are executing on a judgment, or under 1610(g), which I would like to spend a

little time talking about.

Before I address the specific arguments on subject matter jurisdiction and personal jurisdiction and very briefly on comity, I would like to, if I might, make two observations.

First, RDS misconceives the burden that the plaintiff has at this point in the proceedings. Mr. Rifkin has spoken extensively that we haven't proven this and the record evidence doesn't show that. However, at this point in the proceedings, while we believe we have presented evidence that goes beyond our burden, our burden to go further is simply to make prima facie allegations and nothing more.

That is established by the Dorchester case in the Second Circuit. At tab 4 in the materials that I have provided is a quote from Dorchester, which is largely reproduced from our brief. "Prior to discovery, a plaintiff challenged by a jurisdiction-testing motion may defeat the motion by pleading in good faith legally sufficient allegations of jurisdiction."

At a minimum, if nothing else, we get to take jurisdictional discovery. We think we have presented a lot of evidence showing --

THE COURT: That's not necessarily true. You get jurisdictional discovery if there is any possible likelihood that what you are searching for exists.

MR. SINGER: Yes, your Honor.

THE COURT: I'm not sure what you are searching for

other than what you already know exists.

MR. SINGER: There are a lot of things we don't know in this case.

THE COURT: What do you think you're going to find? Not what you don't know. I know there are a lot of things you don't know. That doesn't help me. What you think you can find can help you. This is sort of a backwards discussion here to discuss jurisdictional discovery first. But what is it that you would look for, and what is it that you don't know that would be determinative of this issue that you think is likely that you will find?

MR. SINGER: First of all, I think that the issue of whether or not these subs actually have the debt as opposed to RDS or whether RDS is going to pay that, real question. They have never said this money is held in escrow somewhere in the name of these subs.

THE COURT: What do you think is reasonably likely that you will find in discovery with regard to that issue?

MR. SINGER: That RDS would have to pay that obligation if there was no blocking statute that applied, that RDS would need to downstream $2 billion to these subs, and it would actually be RDS money that would be used to satisfy these obligations. I think that is reasonably likely to be found. We have established evidence coming both from RDS and from Iran that it views RDS as the party that owes this obligation.

THE COURT: Where do you live it that RDS owes this obligation?

MR. SINGER: Their annual report, which is at tab 11, the RDS annual report simply talks about RDS currently has approximately -- that we, and the "we" is a royal "we." Maybe it includes the subsidiaries, maybe it is RDS, but they certainly have reported it in an RDS annual report that "we" have approximately 2.36 billion, essentially $2.3 billion payable to the National Iranian Oil Company and we are unable to settle that right now because of applicable sanctions. That is coming from the RDS side, tab 11.

Your Honor, we supplemented the record at tab 2 with a statement from Business Week on May 21st of this year which quotes an interview with an official of the National Iranian Oil Company, a Mr. Ghamsari, who is a director of international affairs at that oil company, who says that Royal Dutch Shell has not settled its debts without revealing further details and that he has put together a working group for collecting the $2.3 billion debt from Royal Dutch Shell.

Now, they have put annual reports and things in the record, but the contracts that gave rise to this obligation, whether any of the money ever flowed to the United States, whether to pay this obligation, they would need to look to the parent company to get money. Those are some of the things which I think are not established. But if we just looked at

what both Royal Dutch Shell says in its annual report and what Iran has said publicly, these were stated to be Royal Dutch Shell obligations.

Then you have the question of whether these two subs, even if they technically own this operation, are really bona fide independent subsidiaries independent of Royal Dutch Shell.

THE COURT: You have no basis in this record to argue anything other. You are not piercing the corporate veil. You don't allege that they are not recognizing corporate formalities. You don't make the argument that somehow Royal Dutch Shell and any of their subsidiaries aren't legitimate separate corporate entities. Are you even attempting to make that argument? On what basis?

MR. SINGER: Your Honor, we argument that they are agents.

THE COURT: That's a different question. What you just argued is not agency. What you just argued is piercing the corporate veil.

MR. SINGER: What we have alleged in the petition for turnover is that RDS has this obligation, and that's where the allegation stands. They have come back and said it is not really RDS, it's these two subs. That's a merits issue.

THE COURT: On what basis do you say RDS has the obligation? Just these vague references?

MR. SINGER: I think this is certainly a prima facie

basis for an allegation, that you have Iran saying it is owed by RDS and you have RDS saying it is an obligation of RDS. That is, I submit, even more than you would normally have at the outset of a proceeding to say it is an RDS obligation.

THE COURT: If there is a sufficient basis for a prima facie allegation that it is an RDS obligation or that you believe that further discovery could establish that it is an RDS obligation, is that all you think is at issue with regard to subject matter jurisdiction?

MR. SINGER: No. First of all, the issue of subject matter jurisdiction is a misnomer. This Court has subject matter jurisdiction going back to the original judgment. If one looks at tab 13, the Supreme Court recently in the Republic of Argentina case said there are two types of sovereign immunity. There is immunity from jurisdiction and immunity from execution.

We clearly have jurisdiction here. A foreign state, which is Iran, is not immune in a terrorism case. That is 1605(a). That's why the Court had jurisdiction over this entire proceeding.

Once you have that jurisdiction, you have subject matter jurisdiction to proceed with execution issues. There may be merits issues of whether we can prove that an asset is owned by the party that we are seeking a turnover petition from, but it is not an issue of subject matter jurisdiction.

The Second Circuit, in First City at 281 F.3d 48, said, "We think that where subject matter jurisdiction under FSIA exists to decide a case, jurisdiction continues long enough to allow proceedings in aid of any motion for summary judgment that is rendered in the case."

As the Court apprehended in questions to opposing counsel, this isn't an issue of subject matter jurisdiction. You have that. The issue here is whether ultimately we will be able to prove up a claim. We can do that in one of a number of ways.

If we have personal jurisdiction over RDS and the Court agrees that a judgment against RDS is enforceable, whatever the asset is, because they are here and you are talking about a debt and it is a fiction to say the debt is in Britain or Bermuda or Abu Dhabi, where the subsidiary has offices --

Tangentially, I don't know why Mr. Rifkin says the debt is in Bermuda. His pleadings say that the offices of this company, which is a Bermuda corporation, are actually in Abu Dhabi. There is no showing that they do anything in Bermuda other than being incorporated there. But the existence of a debt is a fiction as to where it exists.

If this Court finds RDS has presence here sufficient for personal jurisdiction and that RDS has sufficient control over that, we think that is all the Court needs

THE COURT: Sufficient control over what?

MR. SINGER: Over the debt. I disagree with Mr. Rifkin that there is some greater test of actual ownership as opposed to constructive ownership that is required for execution by this Court. I don't see why that is the case. I don't see any of the cases saying that.

If you look at section 1610(g) itself, your Honor, it talks about the ability to collect against an interest of a party which is responsible whether that interest is held directly or indirectly in another juridical entity. We have reproduced that at tab 6.

It says, "The property of a foreign state against which a judgment is entered under section 1605(a)," which is this judgment, "and the property of an agency or instrumentality of such a state," which this Court has determined in IOC to be, "including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment."

I think if there is sufficient control by RDS over this asset under the language of 1610(g), that would be sufficient, if we show personal jurisdiction over RDS, for the Court to have an enforceable order.

The second point we make there, your Honor, is that 1610(g) does extend to all property and it does not have that limitation just to assets within the United States. The Court

probably doesn't need to interpret that based on what we have just discussed about personal jurisdiction extending and the concession by RDS's counsel to the Court's questioning. 1610(g) by its text is not limited to assets in the United States. 1610(b) and 1610(c), those provisions are, but this is not.

The case law which we have cited, including the recent Gates case from the Seventh Circuit which we have provided supplemental authority to, which was decided just on June 18th, talks about the breadth of 1610(g). This was Congress looking at obstacles that had been placed in the way of enforcing judgments on the state-sponsored terrorism.

They said, we want to sweep those away. We want to broadly provide a right under the Foreign Sovereign Immunities Act to reach property that belongs to a foreign state adjudged to have committed a terrorist act or one of its instrumentalities. They didn't say property within the United States.

At tab 7 we quote a few of those cases, which include the Gates case, the Heiser case, where it said, "Congress made no exceptions to its reach. The language of 1610(g) is broad and without reservation, and the court will not now read a significant exception into 1610(g) that is not otherwise found in the text."

That, your Honor, is consistent with what the Supreme

Court also said just last week in the Republic of Argentina v. NML Capital case: That you read the Foreign Sovereign Immunities Act as it is written and you don't put on limitations there.

Their issue was trying to imply a limitation on the scope of extraterritorial discovery. Argentina said you shouldn't allow the petitioner to get discovery into assets outside the United States, the Foreign Sovereign Immunities Act doesn't allow it. And the court said no, if Congress wants to restrict the scope of extraterritorial discovery, they need to amend the FSIA.

The same thing is true here with respect to 1610(g). If Congress wanted to limit that to property in the United States, they would have said so. They did say so in 1610(b) and (c), they didn't in 1610(g).

The legislative history is consistent with that. You have statements saying that this is to provide justice to those who have suffered at the hands of terrorists, that the legislation is intended to fix problems with being able to execute. Quote, this is from the House conference report on the legislation, "that it was broadly written to subject any property interest in which the foreign terrorist state enjoys a beneficial ownership to attachment and execution."

we think that the text of the statute, the Supreme Court's decisions, other court decisions, and the legislative

history are all-important in coming to that conclusion.

What does RDS say? They say look at cases like Morrison, there is a presumption against extraterritorial application of laws. But Morrison was a case involving principally domestic law, section 10(b) of the Securities Act. It is understandable there that you have a presumption that unless Congress intends things to reach internationally, it shouldn't be read to. That is not the Foreign Sovereign Immunities Act.

By definition, 1610(g) deals extraterritorially. You are dealing with foreign states and their instrumentalities that have been adjudged to have committed a terrorist act. Of course, that has to apply in an extraterritorial or international scope.

The other case that they rely on, Kiobel v. Royal Dutch Shell, which dealt with someone seeking to hold Royal Dutch Shell responsible for human rights abuses in Africa, that was dismissed under the 1789 alien tort statute, which was read to read things in the United States that needed to be brought in federal court as opposed to state court. That does not control the interpretation of the Foreign Sovereign Immunity Act. All the other authorities they cite actually predate 1610(g).

We think that essentially, your Honor, you have three ways of dealing with the subject matter jurisdiction argument.

One, it is not a subject matter jurisdiction argument at all, it simply goes to the merits of where this property can be reached. Second, under published principles of execution, if we have personal jurisdiction over RDS, that will be sufficient to have subject matter jurisdiction for an enforceable turnover order. Third, it is consistent and authorized by 1610(g), which, by its text and by its purpose, is not limited to property that is found in the United States.

THE COURT: What is your basis for personal jurisdiction?

MR. SINGER: Your Honor, that is what I will now address.

We think there is general jurisdiction over RDS even after Bauman, either under New York law or alternatively under rule 4(k)(2), due to RDS's own activities and the activities of its subsidiaries, which we allege are attributable to it either under an agency theory, which the Second Circuit has already approved involving a predecessor to this very defendant in the Wiwa case, which I will speak more about, or as alter ego, which we do allege with respect to these issues, or consent to jurisdiction, because there are eight subsidiaries that have been found to have consented to jurisdiction in New York. If any of them are found essentially not to be separate companies from Royal Dutch Shell, that consent would carry over to Royal

Dutch Shell.

What have we alleged? If you turn to tab 15, we have alleged that they own subsidiary companies doing substantial business in the U.S., including Shell Oil Company, that operates in all 50 states, employing more than 22,000 people, that it has shares listed on the New York Stock Exchange.

We supplemented that record with the announcement just last week that Royal Dutch Shell is having an IPO for a new subsidiary that is going to be formed and will go to the market on the New York Stock Exchange. One of the things that the Second Circuit said in Wiwa was that Royal Dutch Shell's predecessors took advantage of the New York capital markets. That's taking advantage of the New York capital markets by Royal Dutch Shell.

THE COURT: I don't have a recollection that that case said that that was the basis for personal jurisdiction. The basis for personal jurisdiction was just the determination of the agency with regard to the investor relations office.

MR. SINGER: Yes.

THE COURT: As a matter of fact, it specifically said that it is insufficient to simply say that because they are on the stock exchange and have activities to maintain the stock exchange, that that in and of itself is sufficient for jurisdiction.

MR. SINGER: I agree with your Honor that in and of

itself is not sufficient. If that's all we have, that wouldn't be enough.

THE COURT: What else do you have? I want to take it separately. There are three arguments that I want to hear. What specific argument do you have that Royal Dutch Shell itself as a corporate entity has taken sufficient actions that would be sufficient for personal jurisdiction? What activity do you say the subsidiaries take on behalf of Royal Dutch Shell that you say gives a basis for jurisdiction under an agency theory? And on what basis do you argue that the subsidiaries themselves are a sufficient basis to assert jurisdiction over Royal Dutch Shell, since the case law is clear that simply having a subsidiary in the United States is insufficient to assert jurisdiction?

MR. SINGER: Let me point to one exhibit. Remember, under law all we need is allegations at this point.

THE COURT: You need factual allegations.

MR. SINGER: We have one exhibit that covers all of those factual allegations. If you would turn, your Honor, to tab 17. The first page of that is an excerpt, but behind that is the actual Exhibit 19 to our declaration. They talked a lot about statements coming from the Internet. This is a statement from the chief executive of Royal Dutch Shell, Ben van Beurden, reported in The New York Times very recently. This is January 2014.

They have the assertion in their reply memo and in certain of their declarations that RDS subsidiaries are separately managed, independent entities. Mr. van Beurden says, "In halting plans for drilling in Alaska," this is in the fourth paragraph, first page, Mr. van Beurden says that he, he, "was responding to a ruling this month by the U.S. Court of Appeals for the Ninth Circuit that brought into question Shell's ability to drill."

THE COURT: What do you say that is saying about Royal Dutch Shell?

MR. SINGER: That's saying that Royal Dutch Shell directly, through its CEO, is reaching into the United States and making decisions for its subsidiaries about whether to drill.

THE COURT: What is the decision they are implying that Royal Dutch Shell made in the United States?

MR. SINGER: He said in the next paragraph, "Mr. van Beurden told reporters that he was frustrated by the court decision and that he was not prepared to commit further money and employee time to the project, which has already cost Shell $5 billion, until these issues are cleared up."

THE COURT: What is the activity that you say constitutes a basis to assert personal jurisdiction based on that statement?

MR. SINGER: This is Shell Oil's decision, multi-

billion dollar decision in the United States, drilling in Alaska. It shows that RDS is not simply a passive parent corporation.

THE COURT: It doesn't matter. They don't have to be a passive parent corporation. There is obviously a relationship. Every parent has some relationship with its subsidiary. That argument could be made in most cases that the parent has influence and an interest in the success of its subsidiaries. The court has never said that this is a sufficient basis to assert jurisdiction over the parent.

MR. SINGER: This is beyond just influence. This is saying he is making the decision.

THE COURT: In what way?

MR. SINGER: He said he was responding, that he was frustrated and he was not prepared to commit.

THE COURT: His being frustrated is irrelevant. What is it you're saying that Royal Dutch Shell is doing that is a basis for personal jurisdiction?

MR. SINGER: They are actively managing the operations of Shell Oil and other subsidiaries in the United States.

THE COURT: How?

MR. SINGER: By having RDS make those decisions.

THE COURT: How?

MR. SINGER: By the CEO making these decisions.

THE COURT: Tell me practically what you say is going

on.

MR. SINGER: For example, if you turn to the very next page --

THE COURT: Where does it say that each subsidiary isn't making their own corporate decision? Are you alleging that each subsidiary doesn't have a board and a management and isn't responsible for making its own decisions? In what way are you alleging that there is any basis to allege that Royal Dutch Shell is pulling the strings of the puppet corporations in the United States?

MR. SINGER: If your Honor turns to the very next page of this exhibit, it says van Beurden was going to review all of Shell's 150 or so businesses. He says in the next paragraph that two main targets for restructuring were Shell's North American shale oil and gas business and the oil refining business. It says Mr. van Beurden said he planned to cut the number of shale areas in which Shell is participating. These are decisions made by RDS.

THE COURT: Tell me what decision was made. Tell me what you say they did, not what he said. Tell me what it is you say they did.

MR. SINGER: I can only take it from this document --

THE COURT: What are you trying to imply from this document? What activity are you saying that I am supposed to rely on? Not his intent, I assume. You're saying that this is

reflective of them taking an active role in conducting business in the United States.

MR. SINGER: Yes.

THE COURT: What is it that you say this is supposed to be referring to? What activity are you saying this indicates that Shell took in the United States that I should use to assert jurisdiction?

MR. SINGER: RDS's active management of shale oil and oil drilling in the United States.

THE COURT: Give me an example of the active management.

MR. SINGER: I think deciding not to proceed with a $5 billion plan in Alaska.

THE COURT: Do they do that?

MR. SINGER: He says that, yes, "In halting plans for drilling in Alaska." That to me says they have made a decision to halt that drilling, that he made it, not Shell Oil.

THE COURT: In what way does that statement make Shell Oil an active company in the United States?

MR. SINGER: I think there is no question that Shell Oil is an active company.

THE COURT: I'm sorry. RDS.

MR. SINGER: Because this is their chairman. They have put in declarations before your Honor saying that RDS is not involved.

THE COURT: What is it that you are accusing the chairman of doing? Tell me exactly what he did to effectuate it, that you say I should imply that he did to effectuate it? He went to the meeting and told the subsidiary, today we are changing our business model?

MR. SINGER: Yes, that we are discontinuing that particular aspect of business in the United States.

THE COURT: Did that happen?

MR. SINGER: I believe it did. I don't know that for a certainty.

THE COURT: That's the more important issue, isn't it? The more important issue. You want me to infer by these statements that they are doing business in the United States because they say saying that he wishes to exert influence over the activities of the subsidiary.

MR. SINGER: Your Honor, he isn't saying he is going to exert influence and persuade people at Shell Oil of something. He is saying he is making these decisions, he is doing this.

THE COURT: In what way did he make these decisions?

MR. SINGER: I presume by directing the subsidiaries that are beneath Royal Dutch Shell to take or not take these actions. How else would he be able to implement it?

THE COURT: Even if I were to assume that direction, how is it that you say we are supposed to assume that that

direction was effectuated?

MR. SINGER: I think it is a fair inference from the fact that he said he halted plans and that he was going to review all of their businesses, and that if a company is not competitive, they will be sold, and that Mr. van Beurden said he planned to cut the shale areas. All this shows exerting control over U.S. domestic subsidiaries.

THE COURT: Let me ask you the direct question, because this is what I am looking for. Do you have any basis to factually allege that any particular decision, corporate decision, that was executed by any U.S. subsidiary was done solely by the directive of the RDS?

MR. SINGER: I think this shows that the RDS chairman was making these directives on these decisions.

THE COURT: Tell me what happened. What do you say happened as a result of this statement?

MR. SINGER: I think drilling in Alaska by U.S. subsidiaries of Shell stopped as a result of RDS's chairman.

THE COURT: Doing what?

MR. SINGER: Saying it was going to stop.

THE COURT: To whom?

MR. SINGER: Presumably to the subsidiary.

THE COURT: To whom?

MR. SINGER: To Shell Oil, or the another subsidiary.

THE COURT: To the president of Shell Oil, to the

board of directors of Shell Oil to the extent that they did not have the responsibility and obligation to take independent action to do so?

MR. SINGER: Your Honor, we don't know that.

THE COURT: We do know that. They are a corporation and they have their own board of directors and their own management. Unless it is assumed that they didn't do that. You are supposed to give me some facts that would counter the presumption that they did do that. You don't disagree that they are a separate corporate entity with their own corporate structure. You don't disagree with that.

MR. SINGER: They have their own board of directors. They are a separate corporation. But we think that under the analysis in Wiwa and consistent with Bauman, you can apply an agency theory and look at whether or not these are just subsidiaries operating independently --

THE COURT: That's not what Wiwa says. Wiwa says that if the subsidiary is engaged in activity which is for the benefit of the parent, they are its agent. It doesn't say that because the parent might try to exert influence over the subsidiary by indicating what the parent would like to see happen, that in and of itself is a basis for asserting jurisdiction over the parent. Wiwa doesn't say that. It says explicitly that the investor relations office was there to do their business. Where is it that you allege that?

MR. SINGER: First of all, we meet that, too. There are two things which have changed since Wiwa was handed down, one factual, one legal. The factual one is that the investor relations office was closed in New York and now it's operating in Houston. Under rule 4(k)(2) we are allowed to look at national contacts. I'll address their legal argument on that in a moment. But assuming that we are correct and your Honor can look at the nationwide contacts of Royal Dutch Shell, then we have a basis to look at what's going on in Houston just as much as what is going on in New York.

THE COURT: I'm trying to identify what Royal Dutch Shell activity you claim is going to on in the United States that is sufficient for personal jurisdiction. Let me put one part aside. You don't assert at all that Royal Dutch Shell as a company is directly engaged in any activity in the United States that would be a basis to assert jurisdiction over Royal Dutch Shell other than what you are relying upon through its U.S. subsidiaries; would that be a correct statement?

MR. SINGER: I think we would need the subsidiaries to get to the presence necessary under Bauman.

THE COURT: That would be a correct statement?

MR. SINGER: Yes.

THE COURT: You have no activity that you are asserting that Royal Dutch Shell is independently engaged in that would be the basis to assert jurisdiction over Royal Dutch

Shell absent what you claim is done through the subsidiary?

MR. SINGER: Through either the subsidiaries on an agency theory, an alter ego theory, or a consent theory. But, I want to add this, your Honor. It is relevant in that mix that RDS is also directly doing things or through its subs going to the market. It is not independently sufficient, but it is important that they are going into the New York Stock Exchange.

THE COURT: Going into the New York Stock Exchange on RDS stock or the subsidiary stock?

MR. SINGER: Both. RDS shares, ADR shares are traded.

THE COURT: I'm trying to figure out what you are relying upon. Are you relying upon going to the market on the subsidiaries' shares or are you relying on some assertion that they have independent actions with regard to RDS being in the market that you say is sufficient for jurisdiction.

MR. SINGER: We think it is relevant, it adds to the presence, that RDS itself is in the New York Stock Exchange with ADR shares, that's directly; that they have the Bank of New York --

THE COURT: You are not asserting that a foreign company that is in the market with ADS is a basis on which to assert personal jurisdiction?

MR. SINGER: Not standing alone, I agree with you.

THE COURT: I want to make sure I understand. That is

not your basis. The court said clearly that maintaining a market, even if it wasn't ADS's, in an activity related to, even Wiwa, which you rely on, specifically said that is not a basis. It says it's not that activities necessary to maintain a stock exchange listing do not count, but rather without more, they are insufficient to confer jurisdiction.

MR. SINGER: Which is exactly our position: They count, but there is more. The more is supplied by the subsidiaries, it is supplied by the facts that we talk about here.

THE COURT: But it is not supplied by the subsidiaries. There is no argument, unless you're talking about the agency theory that was used in Wiwa or unless you're talking about piercing the corporate veil. You would agree that the activities of the subsidiary, regardless of whether it benefits the parent company -- and one would expect that every action that the subsidiary takes would in some way benefit the parent or most activity -- you are not arguing that other than agency or piercing the corporate veil because they are ignoring corporate formality, you are not arguing that what the subsidiary does is somehow attributable to the parent for jurisdictional purposes?

MR. SINGER: I agree with your Honor. You need to either show agency, as was accepted in Wiwa; alter ego, which we have alleged; or, and this is partly alter ego, the consent

of eight of their subs combined with alter ego also gets you to jurisdiction even aside from presence.

THE COURT: I'm not sure I understand that.

MR. SINGER: There are eight subsidiaries, including Shell Oil, which have registered to do business in New York and consented to general jurisdiction. There is no dispute on that. If we can show that one or more of those essentially are alter egos with Royal Dutch Shell, that would also suffice to provide general jurisdiction over Royal Dutch Shell.

THE COURT: If they are alter egos, you don't even have to go that far.

MR. SINGER: That's probably correct, your Honor.

THE COURT: Realistically, give me one fact that would be an indication of alter ego. You are talking about piercing the corporate veil.

MR. SINGER: On alter ego, yes.

THE COURT: You are talking about these are not legitimate corporate entities, that they are simply structured in a way to ignore corporate formalities, but it is really RDS doing business under the guise of these Shell companies. Those aren't the facts you allege.

MR. SINGER: Your Honor, there are 1268 at least, because that is in the record, 1268 subsidiaries at various levels of Royal Dutch Shell. Is it credible to believe that over 1,000 subsidiaries are actually operated and maintained as

separate companies?

THE COURT: Yes, it is credible. Why isn't that credible?

MR. SINGER: I think it would be extraordinary to have a thousand of them.

THE COURT: Simply because of the number, is that what you are saying I'm supposed to imply, because there are a lot of subsidiaries, that they must be alter egos? No. You don't think you can proceed on that assumption, do you? That's not a presumption that you get: Because they have a thousand subsidiaries, at least one of them must be an alter ego. That is not a legitimate conclusion.

MR. SINGER: Your Honor, I think at this juncture what we are talking about is our entitlement to get at the facts regarding this.

THE COURT: No. Your entitlement is to get at the money.

MR. SINGER: That's relevant, too.

THE COURT: You've got to give me a factual allegation that, if it goes unrebutted, would be a basis to conclude that there are sufficient contacts by the parent to be sued in the United States.

MR. SINGER: Let me try to identify several specific ones. First of all, going back to Wiwa, the maintaining of an investor relations office in New York which benefits the parent

was sufficient.

THE COURT: Right. You don't have that.

MR. SINGER: We have it in Houston rather than New York.

THE COURT: You have an investor relations office in Houston --

MR. SINGER: In Houston.

THE COURT: -- that is doing the same activity that the investors relations office was doing in New York on behalf of the subsidiary?

MR. SINGER: On behalf of Royal Dutch Shell.

THE COURT: What is your bad-faith basis to allege that?

MR. SINGER: Investor relations, by definition, involves the public company. There is only one public company here, Royal Dutch Shell. We believe in good faith that they moved that operation from New York to Houston --

THE COURT: What makes you believe that?

MR. SINGER: Because it is still an investor relations office.

THE COURT: Of Royal Dutch Shell?

MR. SINGER: It is operated by a subsidiary for the benefit of Royal Dutch Shell. In Wiwa the office in New York wasn't a Royal Dutch Shell office.

THE COURT: I know. What makes you say it is an

investor relations? You don't say it is an investor relations office that is ostensibly an RDS investor relations office?

MR. SINGER: We think it is the same --

THE COURT: Whose investor relations office is it?

MR. SINGER: It's owned by a sub, but we believe it operates for the benefit of Royal Dutch Shell.

THE COURT: What do you believe it does on behalf of Royal Dutch Shell?

MR. SINGER: Solicits individuals, goes to meetings and presentations.

THE COURT: What makes you think that?

MR. SINGER: They went to one in New York. We have that.

THE COURT: They went to one and did what?

MR. SINGER: Presented on behalf of RDS.

THE COURT: Who did?

MR. SINGER: The gentleman who works for --

THE COURT: Whose the investor relations?

MR. SINGER: -- for investor relations. That is set forth in the petition.

THE COURT: OK.

MR. SINGER: Your Honor, we have no reason to believe, and there is nothing in the record to suggest, that this office has changed in function from when Wiwa was decided.

THE COURT: What do you say is their function?

MR. SINGER: To benefit the parent.

THE COURT: How?

MR. SINGER: By promoting the stock of RDS, by answering questions of investors.

THE COURT: Is there any evidence that they are promoting the stock of RDS?

MR. SINGER: I think that follows from being an investor relations office.

THE COURT: No, it doesn't. I can't do that. Wiwa wouldn't allow me to do that. That's not the way they decided the case, that you must assume that they are doing business. They didn't say that. They said that there was in fact such evidence undisputed.

MR. SINGER: Your Honor, that is why jurisdictional discovery is appropriate. We have made that allegation. But Wiwa was decided with discovery, with evidence. Bauman was decided with evidence. Your Honor had a prior case in this court where your Honor looked at 4(k)(2) and contacts in the United States for a number of defendants. You found a lot of those defendants, which were largely individuals, in 2011 weren't subject to jurisdiction, but you allowed the petitioners discovery to get at that.

THE COURT: Because there was a rational basis to articulate what it is that could possibly be found. You have already conceded that you don't want to do discovery to find

any direct actions by RDS that are in the United States, because you don't expect to find that. You don't expect to find that they have an office. You don't expect to find that they have a bank account. You don't expect to find that they have employees. You don't expect to find that they are independently doing any activity in the United States.

You want to do discovery to find out whether or not the investor relations office of a sub in Texas is really the agent of RDS.

MR. SINGER: Yes.

THE COURT: And whether RDS is making decisions on behalf of U.S. subs.

MR. SINGER: Yes.

THE COURT: Inconsistent with those companies being independent corporate entities?

MR. SINGER: That would be alter ego.

THE COURT: Right.

MR. SINGER: I think agency requires less, that the operations of these U.S. subs are sufficiently for the benefit of RDS and they are tightly integrated with RDS.

THE COURT: Sufficiently for the benefit is not the test. The test is that they are doing work on behalf of the subsidiary.

MR. SINGER: Right, which, if not otherwise done by the sub, would have to be done by the parent company.

THE COURT: What is it that you think you might possibly find?

MR. SINGER: That RDS actively manages these subs making decisions for them in a way where their operations are for the benefit of RDS.

THE COURT: That is not an agency theory. That is not even a Wiwa agency theory. That is a piercing the corporate veil theory.

MR. SINGER: Why would it say, your Honor, and this is at page 96, 226 F.3d 88, 96, that "RDS's core business is the operation of an integrated international oil business." We allege, this is in our petition at paragraph 3, that the operations of RDS and its subsidiaries are centrally managed. We have even presented, and they criticized the --

THE COURT: What case are you relying upon that says that's the appropriate analysis?

MR. SINGER: There is a series of cases, this is at tab 26, that deals with when an agent's, for the purpose of New York law and Second Circuit law, activities are attributable to a parent. RDS relies on this case called Nouvelair. The cases I'd ask the Court to look at are two cases from this court, Rates Technology v. Broadvox Holding Company, cited there at tab 26, and Bellomo v. Penn Life Company, and draw the distinction between the parent subsidiary relationship when the parent is an investment company, like in Nouvelair, and it just

passively has corporate acquisitions and investments in its various subsidiaries, and where you carry on the business of the parent through the subs, which is an integrated company like Royal Dutch Shell.

Rates Technology, for example, this court, Southern District of New York, said subsidiaries be agents where, as here, the parent was "more than just an investment mechanism that diversifies risks through corporate acquisition and was instead 'in the same business as its subsidiaries,'" which true here of Royal Dutch Shell.

We think that the agency theory, which does not require showing that Shell Oil is not an independent company with it own board but allows us to prove that even if we don't win on alter ego, those contacts which are as substantial as one can imagine in this country, Shell Oil Company, are imputed as agents of Royal Dutch Shell such that Royal Dutch Shell is present in this jurisdiction.

THE COURT: But that is not the agency theory. The agency theory is that the subsidiary is taking actions that are directly functions to be performed by the defendant.

MR. SINGER: I think that's, your Honor, what cases like Rates and Bellomo are saying. That because these are actively in the same business. If you didn't have Shell Oil here, you would have Royal Dutch Shell doing the same thing Shell Oil is doing.

THE COURT: No, I'm sure the cases don't stand for the proposition that because they are actively in the same business, that gives you jurisdiction over them.

MR. SINGER: Not standing alone. It is saying that it distinguishes a parent-sub relationship where the parent is an investment company and it has a lot of different subs in different businesses and the parent stands up here and you have those investments and those investments are each independently managed, then you don't have an agency.

But when you have a parent, like RDS, which is an integrated oil and gas company, and you have subs in the United States, and it is directing, if those subs were not doing that work, it would be done by a division of RDS and would be RDS itself, that is sufficient agency to impute those contacts.

THE COURT: Give me an example of that. Give me an example of that that you say is one of the examples that I should rely upon in making my decision.

MR. SINGER: An example with respect to a case?

THE COURT: No. An example with regard to an activity that you say took place by the subsidiary that was directed by the parent in the United States.

MR. SINGER: I go back, as one example, your Honor, to what Exhibit 17 talked about. You have a Shell subsidiary in the United States.

THE COURT: That did what?

MR. SINGER: That engaged in exploration of oil.

THE COURT: All right.

MR. SINGER: This goes well beyond simply selling items in the United States.

THE COURT: So it is exploring.

MR. SINGER: It is extracting. The parent company, Mr. van Beurden --

THE COURT: Told them to do what?

MR. SINGER: To stop.

THE COURT: You have evidence that he told them to stop and then they stopped solely because of his direction, without any corporate decision-making?

MR. SINGER: Your Honor, I don't know whether there was a separate board meeting, but it certainly is a sufficient basis --

THE COURT: What do you know? That's what I'm trying to figure out. I'm trying to figure out whether or not your argument is primarily that you alleged sufficient facts in order for me to determine personal jurisdiction, or your argument is simply, well, I don't know exactly what they did, I need discovery.

MR. SINGER: The facts that we have alleged that we think is sufficient to get us to the next stage are that these companies in the United States are agents of an integrated oil company, RDS, which is operating a very substantial U.S.

business.

THE COURT: Give me an example of the agency decision that they made that directly is a decision that RDS would have made.

MR. SINGER: That example, even though we don't need to do more, is Exhibit 19, which is Royal Dutch Shell's announcement at the level of the CEO that he was taking action to stop the action by a Shell subsidiary to drill in Alaska. That is action taken in the United States by RDS through a subsidiary. That is control over a subsidiary.

THE COURT: He did what? I'm still not sure.

MR. SINGER: He directed the subsidiary to stop drilling for oil in Alaska.

THE COURT: You say they served as his agent by doing what?

MR. SINGER: I think that the company serves as an agent of RDS.

THE COURT: By doing what?

MR. SINGER: By operating exploration and downstream distribution that, if it wasn't being done by those separate companies, would be done by RDS.

THE COURT: In what way do you say that RDS realistically and actually financially benefited from it? This was not a decision that the profits that came from this was put in an RDS bank account.

MR. SINGER: Presumably, if they saved money as a result of that, that would be presumably upstream to RDS. There are consolidated financials that they report on. The distinction I'm making, your Honor, is that under the cases, and I've given you two Southern District cases, you have an agency relationship when you have a big integrated company.

What can't happen, it is not appropriate for RDS to sit off in the Netherlands and in London and say we are not in the United States, we will reach into the United States to make decisions, we will have Shell Oil and these other subsidiaries do our bidding, but you can't reach us, because we are RDS.

THE COURT: But they can say that. They can say that if the subsidiary is not the agent by the definition of the subsidiary is doing the work that is directly the work of the parent or that there is any evidence that the parent is ignoring corporate formalities and that they are simply an illegitimate company that is not an independent subsidiary.

MR. SINGER: I think we have three, at least, specific allegations with some supportive evidence that goes there, your Honor. We have, first, the fact that you have the investor relations operation which assists them. We have three. And I would like to address something in addition to that, which is the overall presence of Shell. But this goes just to the issue of the subsidiaries.

THE COURT: The overall presence of Shell? I don't

know of anything you have alleged that would be sufficient to assert personal jurisdiction based on their overall presence.

MR. SINGER: Our point is that this is different from Bauman. Bauman dealt first of all with claims. This was the very first thing that the Supreme Court said. "This case concerns the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States." It was activity in Argentina, by a Mercedes Benz subsidiary in Argentina, and they are trying to get Daimler AG on the basis of MBUSA's contacts in the State of California.

Here we are dealing with a judgment that arises from a terrorist incident, a judgment by this court, by a jurisdictional exercise over RDS that they could satisfy just by interpleading these funds into the registry of the court. But it certainly isn't an activity unrelated to the United States. That's point one.

THE COURT: You don't claim RDS independently owes this money to Iran as a contractual relationship?

MR. SINGER: They say that they are the obligor and Iran says that they are the obligor. Why do we disregard that at this juncture?

THE COURT: All right.

MR. SINGER: I think that is sufficient to go further

on that. RDS is operating the world's largest company. A large part of that, we have alleged, is in the United States. 25 percent of the revenue, and this is in Exhibit 8 of our declaration, 25 percent of the revenue of RDS comes from the United States.

THE COURT: That's never been a basis to assert jurisdiction.

MR. SINGER: I think it is relevant on the agency analysis post-Bauman.

THE COURT: No, it is not. You could say that about almost any parent and subsidiary. That is not a basis to assert jurisdiction over a foreign parent.

MR. SINGER: I think we need that plus the existence of an agency relationship. Then the question is, is that existence of the agency sufficient enough that they are continuous and systematic contacts at home?

THE COURT: You want me to imply that there is sufficient agency relationship based on these references that the corporate parent wants things to happen and wants the subsidiary to take certain actions?

MR. SINGER: Not. Just wants them to do it, your Honor, but is making the decisions. This didn't say that he wanted the subsidiary to do something. I did said that he was responding. It said that he was not going to commit further money and employee time to the project. It says that he

planned to cut the number of shale areas in North America, in the United States.

THE COURT: Why should I assume that means he can do it without a corporate resolution of the subsidiary? Everybody says that. Bill Gates could say that.

MR. SINGER: That's what discovery is for.

THE COURT: That's not what discovery is for. Discovery is for you to find what you think you can articulate to me that you will likely find to support a basis for jurisdiction. To say to me that you think that it is more likely than not that in discovery you're going to find that he just picked up the phone after he made this announcement, called somebody at the subsidiary, and directed them to take action, I would venture to guess that that's not what you are trying to urge upon me that you are really going to find.

MR. SINGER: I don't know the way that decision was communicated, but he has publicly stated that he has made these decisions, him personally. Your Honor, he could have said, our subsidiary Shell Oil has decided to do X, Y, and Z. He could have even said, using the "we," that we as a corporate enterprise decided that. He said he has decided that.

THE COURT: You would agree that this is smoke, not fire? The fire is you tell me what it is the subsidiary did, actually did, on behalf of the parent that you say is a basis for me to conclude that they are only their agent and that it

is the subsidiary that is calling all the shots. I'm looking for something of substance for you to give me, and I you haven't articulated that for me.

MR. SINGER: These are decisions which are being made by the chairman -- by the CEO.

THE COURT: What decision? Tell me the decision that was made.

MR. SINGER: To stop drilling in Alaska.

THE COURT: Who decided the stop drilling in Alaska, which subsidiary?

MR. SINGER: I don't know whether this is Shell Oil or another U.S. subsidiary, because I'm not sure of their operations as to whether --

THE COURT: You have no idea. Do you even know whether drilling had stopped?

MR. SINGER: My understanding is that it stopped.

THE COURT: What do you base that on? What is it that I can look at in the record to determine that in fact that's what happened?

MR. SINGER: The statement of the RDS CEO --

THE COURT: That is the statement before it happened.

MR. SINGER: He said, quote, "In halting plans for drilling in Alaska, Mr. van Beurden said that he was responding to a ruling this month by the U.S. Court of Appeals for the Ninth Circuit."

THE COURT: Who do you say stopped drilling in Alaska?

MR. SINGER: A Shell subsidiary in the United States.

THE COURT: Which one?

MR. SINGER: I don't have enough information to say whether it is Shell Oil or a different exploration company. But this goes beyond, your Honor, what we need at this juncture. This is not just an allegation. This is statements at the RDS level. All we need under the Dorchester case is allegations at this level, that the agency relationship exists between RDS --

THE COURT: Between whom?

MR. SINGER: Between Shell Oil, for one, and RDS.

THE COURT: Which subsidiary?

MR. SINGER: I would start with Shell Oil, which operates throughout the United States.

THE COURT: We are going to take a break. I'll let you finish up, get lunch, and finish your argument after lunch.

Other than this reference to drilling in Alaska, what other action do you say was taken by which subsidiary that you say was simply a direction by the parent?

MR. SINGER: There is a decision which is referenced in the same article.

THE COURT: Are you relying on anything other than this article?

MR. SINGER: Your Honor, they criticize it because

they say this is the prior company because of the merger, but they haven't shown that the evidence is different with Royal Dutch Shell.

THE COURT: What facts are you relying on?

MR. SINGER: This is Exhibit 14. Under oath, in testimony before Congress, there were statements that Royal Dutch Shell is owned to a very large extent by U.S. institutional shareholders and that it has very strong ties with the United States, 25, $30 billion of stock traded every day.

THE COURT: What part of that do you say any court has said is legally the basis for asserting personal jurisdiction?

MR. SINGER: Your Honor, as I said --

THE COURT: The number of U.S. shareholders, no?

MR. SINGER: I think it is relevant.

THE COURT: No.

MR. SINGER: Not independently but collectively. When you have a company that is 25 percent -- there has never been a finding by any court that a company like Shell --

THE COURT: If I'm a company in China, I have ADRs, and I got 10,000 people in the United States that bought ADRs, that would make me --

MR. SINGER: Not by itself. If you had a company, your Honor, that employed 22,000 people through a subsidiary in the United States, that is an integrated organization, like

Shell, that has 25 percent ownership in the United States, where 25 percent of your global revenue comes from the United States, where eight of your subsidiaries have consented to jurisdiction in the State of New York, where you have assets all throughout the United States through a set of subsidiaries --

THE COURT: Which case says that?

MR. SINGER: I think Wiwa comes the closest to that.

THE COURT: No. Wiwa says one discrete thing. It says that if you have an office that is doing the bidding of the parent and that that is the job that the parent would independently be doing for itself, then the subsidiaries doing the work of the parent company is enough for jurisdiction. That's all that it says. It doesn't say anything about the number of shareholders or the amount of money. None of that is in Wiwa.

MR. SINGER: They didn't have to go beyond that.

THE COURT: Then you can't rely on Wiwa to go beyond that.

MR. SINGER: I think the reasoning of Wiwa with the agency theory applies, your Honor, because of those things being benefiting and directed by the parent. Also the two other cases I gave you.

THE COURT: I just don't know what things you are talking about. That's the problem I have. Take your lunch

break. If you can make that list of the things either the parent company did or the subsidiary did that you say is business activity of the parent company in the United States sufficient individually or collectively for personal jurisdiction, I want to hear it.

The fact is that you would have to concede that simply a parent-subsidiary relationship, a foreign parent company that has numerous subsidiaries in the United States, whether it be five, ten, or a thousand, is in and of itself insufficient to assert jurisdiction over the parent company that otherwise does no independent business in the United States. You would agree with that?

MR. SINGER: Only if I couldn't show an agency relationship.

THE COURT: Right.

MR. SINGER: If I could show an agency relationship, I think that gets us there.

THE COURT: Agency is not what the parent says they are going to do. Agency is the evidence of what you say the subsidiary is doing that you say is the work that they are doing for the parent. That is what Wiwa was talking about. It says that the investor office of the subsidiary, they were doing the work of the parent.

MR. SINGER: Right.

THE COURT: They articulated exactly what work the

parent would be expected to do on its own for it is own parent company.

MR. SINGER: Right.

THE COURT: That's what I'm looking for you to articulate.

MR. SINGER: That has not stopped by virtue of moving the location from New York to Texas. I will try to articulate that further after the break, your Honor.

THE COURT: Let's take a break. Let's come back at 2:30.

(Luncheon recess)

AFTERNOON SESSION

2:45 p.m.

THE COURT: Yes.

MR. SINGER: Good afternoon, your Honor. What I would like to do is, as requested by the Court, begin by identifying seven factual points and then talk about the law as it applies to those with respect to the agency analysis here and Wiwa, and then briefly address the other issues which I haven't reached that Mr. Rifkin talked about, such as rule 4 and comity, and then I'll be done.

The first of those is the investor relations office in Houston. If the Court were to look at the last page of the form 20-F filed with the SEC by Royal Dutch Shell for 2012, this is Exhibit L in our exhibits, that last page says where you can contact Royal Dutch Shell.

Under "Investor Relations" it says you can either contact Royal Dutch Shell PLC in the Netherlands or Shell Oil Company investor relations at an address in Houston Texas. That is exactly the kind of investor relations office which this Court and the Second Circuit affirmed, found was sufficient in Wiwa.

What does an investor relations office do? It fields inquiries from investors and from potential investors. It organizes meetings between RDS and investors, potential investors, and financial analysts, like the specific one we

allege occurred in New York.

These activities can only be for the benefit of RDS, the parent, because RDS is the only public company. There are no separate non-RDS shareholders of Shell Oil Company, which has its investor relations office. So, the investor relations office that Shell Oil is maintaining in Houston today has to be for the benefit of RDS, just as the one if Wiwa was for the benefit of the predecessor to RDS.

The only difference is the physical location. And the physical location does not matter, if the Court agrees with us. Under rule 4 one can look at the national contacts because this case arises under 1610(g).

The second point I would like to make is that RDS has a risk-based control framework. This is something in our papers that we have not talked about before. It is found in the Fermin declaration Exhibit F at 2. It is also excerpted at tab 24 in the book of materials I provided earlier this morning.

It says RDS has a, quote, single risk-based control framework, the Shell control framework, that governs all Shell companies in which the parent has a direct or indirect controlling interest. This is a policy of Shell with respect to how its subsidiaries operate that is dictated from the top down.

Third --

THE COURT: I'm not sure why that is some independent evidence of control.

MR. SINGER: I would think that it is evidence of the parent doing more than passively having a set of subsidiaries that operate, but rather exerting control for all of them.

THE COURT: What do you say a risk-based control framework is indicating about the operation of the company?

MR. SINGER: I am inferring from that. We don't know a whole lot about that.

THE COURT: I don't know a whole lot about it, either.

MR. SINGER: Without discovery, we may not know a whole lot about it other than what they say.

THE COURT: What do you hope it means?

MR. SINGER: That they exert control over the operations in the subsidiaries, windows operations which give rise to risk that would affect the parent company. And the parent company has set a framework up as to how those companies operate.

I will give you an example of apparently how risk did materialize. This is also found in their annual report, which is in the record. It is page 15 of 163 of the annual report. At the bottom it talks about how Shell, which is RDS, consented to a cease and desist order from the U.S. SEC for liabilities associated with certain plans. This was coming out of the fact that a Shell subsidiary agreed to a deferred prosecution

agreement. So there is at least enough interaction with the parent where you have this SEC action that involves Shell as a parent.

THE COURT: This SEC action was against?

MR. SINGER: Shell.

THE COURT: RDS?

MR. SINGER: RDS.

THE COURT: Accusing RDS of what?

MR. SINGER: It I believe dealt with whether or not they had adequate disclosures of the defined benefit plans.

THE COURT: RDS didn't have a defined benefit plan.

MR. SINGER: It is associated with the defined benefit.

THE COURT: Plan of which company?

MR. SINGER: I would need to dig deeper into that, your Honor.

THE COURT: All right.

MR. SINGER: My point is that that is another example of RDS as an entity in its report there being subject to U.S. jurisdiction.

THE COURT: Why isn't a single risk-based control framework just a consistent coordination of similar controls related to all independent companies?

MR. SINGER: I think it shows more the integration of those companies.

THE COURT: Why does that mean that it is integrated? It seems to me that banks and oil companies are the two examples that I think fall into the categories that you are dealing with. I know there are many Citibank entities.

Under your theory, if they make sure that they do business in a coordinated manner, a consistent manner, somehow that is evidence that the Citibank parent company, even if they don't conduct any business in the United States, every Citibank entity that does business in the United States, that's evidence that the parent company somehow has a presence here. That has never been --

MR. SINGER: If I might, your Honor, I'm jumping ahead to the legal point. But to answer your Honor's question, I think the key issue is, does the existence of these types of subs, like Shell Oil, having this type of a framework, such as the one that I just identified, give rise to the type of agency relationship, or plausibly, so that we go forward? I would like to discuss that law in the context of three cases. First of all, the Wiwa case.

In my notes, first of all, Wiwa did say that the defendants did misread the scope of existing case law -- the defendants would be Shell's predecessor -- when they argued that contact related to the stock exchange listings are stripped of jurisdictional significance. It's not that they do not count, but rather without more, they are insufficient to

infer jurisdiction, which is consistent with the position we are taking here.

Then they go to the importance of the investor relations office and they talk about the fact that the investor relations program results not from legal or logistical requirements incumbent upon corporations that list shares on the New York Stock Exchange but from the defendant's discretionary determination to invest substantial sums of money in cultivating their relationship with the New York capital markets.

Of course, here, because we are talking about the United States as a whole, it doesn't matter much whether it is New York capital markets or more broadly, although we think even a Houston relationship can address the New York capital markets.

If you go back a page, they talk about why that is important under the agency cases. They say, "The defendant argues," which Shell's predecessor's argument, "is difficult to square" --

MR. RIVKIN: What page are you on?

MR. SINGER: The jump cite is page 96. It is 226 F.3d 88 page 96.

THE COURT: What is the heading over the section that you are reading?

MR. SINGER: It is the last paragraph in the heading

under "Discussion" and it has sub (a) "Personal Jurisdiction." Number (1) it has "Agency Analysis."

THE COURT: Right. Is that where you are?

MR. SINGER: I will start there and then go down to the following page. Under the "Agency Analysis," the court sets forth the framework here.

THE COURT: Where are you reading from, the first paragraph or the second?

MR. SINGER: This would be under "Discussion," and it says "Personal Jurisdiction," sub(1) "Agency Analysis."

THE COURT: Right.

MR. SINGER: The second paragraph there.

THE COURT: OK.

MR. SINGER: It talks about, "The continuous presence and substantial activities that satisfy the requirement of doing business do not necessarily need to be conducted by the foreign corporation itself." That's a starting point. We don't need to show it's RDS itself.

Then it says they can be conducted by an agent and that when the services go beyond mere solicitation and are sufficiently important to the foreign entity, the corporation itself would perform equivalent services if no agent were available.

We think that is true here with respect to the investor relations office. If they didn't have the office at

Shell Oil, they would do it themselves as RDS, just like they tell people you can contact either office. And if they didn't have Shell Oil's subsidiary operation, their huge presence through the United States, they would conduct that business through a division of RDS.

We then go down to the point where it says the agent must be primarily employed by the defendant and not engaged in similar services for other clients. That's true here. This Shell Oil office is not doing that for anyone but RDS. It's not a general brokerage firm.

THE COURT: You say they are not doing it for the subsidiary?

MR. SINGER: No. The investor relations has no benefit for the subsidiary.

THE COURT: Who does it work for?

MR. SINGER: The individuals there are paid by Shell Oil. But the benefits of an investor relations office, just like the investor relations office in Wiwa with Shell Oil's office, it wasn't RDS, it was Shell Oil's. The same is true in Houston. It is benefiting the one company that has investors, that is, investors other than RDS, public investors. That is the reason why it is true that this is an agent employed by the defendant, not engaged in similar services for other clients.

Right above that, your Honor, on that paragraph, the court stated, "To come within the rule, a plaintiff need

demonstrate neither a formal agency agreement," so we don't need a formal agency agreement with Shell Oil, "nor that the defendant exercised direct control over its putative agent." So, these issues of control are helpful, but they are not essential to establishing the agency relationship that is required here.

The court went on, and now if I could turn to the next page. This is page 96. It says, "The defendant's argument is difficult to square with the facts of the seminal agency cases Brupert and Gelfand, which are New York cases. In those cases the foreign corporations were not absolutely required to keep New York as the locus of their reservation services. They could have located those operations elsewhere. However, in both those cases the defendants chose to locate offices in Manhattan to establish easy access to New York's rich market of potential customers."

Of course, here the argument is you have the investor relation offices in the United States looking at the U.S. as a whole.

There are two further cases.

Before I leave Wiwa, let me emphasize this is a controlling decision from the Second Circuit Court of Appeals involving a predecessor company of Royal Dutch Shell, which found that because the investor relations office, on top of the issues with respect to being on the stock exchange and all --

those were there but not sufficient -- the investor relations office tipped the balance.

The only difference in this record is the location of that office. Both were Shell Oil rather than RDS. Both were helping the parent, the RDS parent company. There has been no contradiction of that in any of the papers which RDS has served on us and presented to your Honor.

There is nowhere that they have come up and said this investor relations office is not really benefiting RDS or saying we've got it wrong and the office isn't operating in Houston anymore. This in itself is sufficient to bring us within the scope of Wiwa, Wiwa being binding Second Circuit authority.

They do argue that Wiwa is not good law in light of Bauman. They essentially are arguing Bauman means you can only be sued in the place of incorporation or principal headquarters. As your Honor has already recognized in questioning Mr. Rifkin, that is not what Bauman says. You can be found to be present in the United States under Bauman as long as you have continuous and systematic contact sufficient to be at home.

That is where we submit that if any company is at home in the United States and is headquartered abroad, RDS fits that bill, given all the points we have raised: The 22,000 employees, the buildings, the 25 percent of its national

revenue. The only places where it would be sued, they wouldn't be sued all over the world. You're talking about Holland.

THE COURT: You ran through that list, and that list is not RDS.

MR. SINGER: That is RDS if the agency analysis applies.

THE COURT: No, it is not RDS, even with the agency analysis. It is the agent's employees who are doing work on behalf of RDS. They are not RDS employees. You don't argue that they are RDS. I assume you argue that the 22,000 employees in and of itself of any subsidiary is somehow a basis to assert jurisdiction.

MR. SINGER: Let me go back, your Honor, to Wiwa. I will turn to Shell Oil and its employees in a moment. But to fall within Wiwa, we think it is sufficient that we have the same office, which is a benefit for RDS, with only a physical location change, with no contradiction or evidence before your Honor saying that somehow it is not performing these services for the parent and is operating any different from the one in Wiwa.

THE COURT: The key is not the office. The key is the activities. Wiwa basically said that the activities, which range from fielding inquiries from investors and potential investors to organizing meetings between the defendant officials and investors, potential investors, and financial

analysts, was sufficient work on behalf of the defendant in order to constitute sufficient activity to assert jurisdiction.

MR. SINGER: Right. We have that here.

THE COURT: That's where I need to concentrate. It has nothing to do with having an investor relations office, it has nothing to do with where they are. It has to do with the nature of the activity and whether the activities are significant and substantial enough to be activities directly on behalf of the parent company.

MR. SINGER: Let me address the points your Honor has just raised. Is it substantial? It is the only office that they identify outside of the Netherlands for investor relations. It is continuous. It has apparently operated since they moved it from New York. It is not a transitory office, it's a permanent office.

It appears to be dealing with soliciting investor comments and questions because they in writing say "investor relations" and provide that office as an address. They have interaction with investors. The one meeting in New York shows that.

And there is no contradiction of any of that in any of the papers that RDS has submitted. There is not anything that RDS has submitted which says that this investor relations office is not there for the purpose of meeting RDS investors, of meeting analysts who follow RDS stock.

Nor is there anything to say that it benefits Shell but it doesn't benefit RDS, the parent. Any assertion like that really would be impossible because the subsidiary is not a publicly traded company. It has one shareholder, which is another level up subsidiary, which also has one shareholder, which goes up to RDS.

So, when they are talking about investor relations, it has to be the public investors, which is only one company, the parent company, RDS. That is essentially what the court found in Wiwa. You had a Shell Oil Company that had an investor relations office in New York. It had the services of interacting with investors, of arranging meeting with analysts, and that was found sufficient in Wiwa to meet the jurisdictional test. That is still good law. The Second Circuit has not overruled Wiwa.

They point to a case which has questioned it since Bauman came down. But that case, the Samara case, did not overrule Wiwa. It remains binding precedent. It is for the Second Circuit, if it is going to change the law in that regard, to say why Wiwa is not good law.

Based just on the investor relations office and Wiwa and the fact that 4(k)(2) applies, and we can look at national contacts, so the fact that it is in Houston rather than New York is not jurisdictionally significant, that gets us to the finish line here. That gets us to a denial of this motion just

based on those contacts. I don't want to lose that in talking about some other issues, but I think that is significant. Wiwa is an independent answer to their arguments on jurisdiction.

Your Honor, the other legal strand that I wanted to go into answers the question of even aside from the investor relations office, should this Court allow us, for agency purposes for jurisdiction, to look at even the broader operations of Shell Oil Company as a whole. The two decisions that I mentioned before lunch that support that are the Bellomo case and the Rates Technology case. They talk about when you can impute for jurisdictional purposes a subsidiary's agent.

First, I would like to talk about the Bellomo case. This is found at 488 F.Supp. 744. It says the plaintiff seeks to predicate jurisdiction and venue not on the activities of the defendant itself but on the activities of several of its subsidiaries.

Then, and this relies on Frummer, it articulates a test of when the subsidiaries' activities are sufficient and when they are not sufficient for imputation for agency. The court says that when the subsidiaries are created by the parent to carry on the business on its behalf, there is no basis for distinguishing between the business of the parent and the business of the subsidiaries. There is a presumption in effect that the parent is sufficiently involved in the operation of the subsidiaries to become subject to jurisdiction.

They contrast that to a situation when you have an investment mechanism. It says where a holding company is nothing more than an investment mechanism, a device for diversifying risk through corporate acquisitions, the subsidiaries conduct business not as its agents but as its investments and that the business of the parent is the business of the investment, and that business is carried out entirely at the parent level.

On the other hand, when you have a parent like Royal Dutch Shell that is in the oil and gas business on an integrated international scale --

THE COURT: It is not in the oil and gas business. What business does it conduct other than through its subsidiaries?

MR. SINGER: That's the point, your Honor.

THE COURT: No, that's not the point. That's legal gymnastics. Either it is incorporated and has day-to-day operations as a company and you can tell me that that company is engaged in some business or it is the holding company for the subsidiaries who are engaged in that business. You are not telling me that there is any business that the parent is engaged in that is involved in oil and gas exploration without a subsidiary.

MR. SINGER: Precisely, your Honor.

THE COURT: Not precisely. What do you mean

precisely? That means that they are a holding company.

MR. SINGER: The difference is they are a holding company that doesn't just manage investments. They are a holding company for the parent to carry on business on its behalf. This is not Berkshire Hathaway, for example, which has a lot of stock investments in a lot of different companies. It is not a hedge fund, which may have a lot of investments in a lot of different companies.

This is a parent that operates through a lot of subsidiaries in the oil and gas business. If they did not have Shell Oil as a separate subsidiary, one presumes that they would operate Shell Oil as a division of Royal Dutch Shell.

THE COURT: Why would you presume that? That's true of any parent holding company. I don't understand that argument being distinctive to this. This is the same as any parent holding company.

The distinction you are not making is I think important. If you tell me you have a company that is involved in doing independent business in oil and gas and it sets up a subsidiary that also helps it do business in oil and gas, I can understand that, because I can see that that is the business of the company.

But if you have a company that is not independently entering into any oil and gas contracts, is not engaged on a daily basis in any oil and gas exploration, that does nothing

other than conduct what you say is its business through its subsidiaries, that's the distinction between a company that's in the oil and gas business and a holding company that owns a company that's in the oil and gas business.

MR. SINGER: Your Honor, if that was the case, Bellomo and the Rates case would have turned out differently.

THE COURT: In the Bellomo and Rates cases, the only thing the parent companies did was to conduct business through the subsidiary?

MR. SINGER: I believe so.

THE COURT: That's true of every parent company. That can't be a distinction they are drawing. What parent company, holding company, doesn't meet that definition?

MR. SINGER: One is a passive company that makes investments in different businesses and which isn't operating one integrated business.

THE COURT: How does one operate one integrated business?

MR. SINGER: You start with it being in the same area, oil and gas and energy.

THE COURT: The same area of what? There is no business that the parent conducts that is not through the subsidiary, that is the same business as any of the subsidiaries, is there?

MR. SINGER: I think there would be no business of the

parent if it weren't conducting that business through the subsidiaries.

THE COURT: I don't understand that argument. I'm sorry, I can't follow that. That's true of every parent company. You may want to argue about whether or not they are controlling or making the decisions on behalf of the subsidiary, but the distinction those cases are trying to draw can't simply be that they are the parent company of an oil and gas company and so therefore they are in the oil and gas business. No. They have to be in the oil and gas business independent of the subsidiaries to fit that definition.

If I'm just holding on to the subsidiaries and the subsidiary is involved in the oil and gas business but I'm not independently involved in the oil and gas business, you may have an argument that they are exercising control over the subsidiary, but you don't have the argument that the parent company is otherwise engaged in the oil and gas business.

MR. SINGER: Their own public filing -- this is Shell, this is again talking about Royal Dutch Shell -- says it is one of the largest independent oil and gas companies. They say themselves they are one of the largest oil and gas companies.

THE COURT: What does that mean? That's dealing with semantics. That doesn't tell me anything about what business they are involved in on a day-to-day basis. You have to agree that there is no evidence that they are involved in any

business of oil and gas on a daily basis independent of the activities that the subsidiaries conduct. Wouldn't that be true?

MR. SINGER: Respectfully, I disagree, your Honor.

THE COURT: Tell me what oil and gas activity they are involved in that is not an act done by a subsidiary.

MR. SINGER: The acts are carried out by the subsidiary, but they are engaged in that business.

THE COURT: You say they are engaged in that business because they own the subsidiaries?

MR. SINGER: Yes.

THE COURT: Or because they are directing the subsidiaries?

MR. SINGER: Because they own the subsidiaries.

THE COURT: That can't be true. I can't accept that. That is not true. Simply because they own an oil and gas company that is in the oil and gas business does not make them in the oil and gas business. It doesn't.

MR. SINGER: There is one additional fact I was going to raise. They are an integrated company where you have this central control. For example, this morning we were talking about Exhibit --

THE COURT: That's a different point. I understand your argument there. But that's like saying to me if Shell went out tomorrow and bought a computer company and they held a

computer company, that puts RDS in the computer business. It does not. The company they bought may be in the computer business, but that doesn't put them in the computer business because they own a computer company. That is not the argument you're making, is it?

MR. SINGER: I think your Honor has probably expressed better the argument I am making. What you have defined, if they don't actually exercise some control, then by default they would be some type of passive investment company. They own the subsidiary but they don't control the decisions.

THE COURT: You're saying the distinction is they have to be a passive investment company in order to not be responsible for all of the acts of the subsidiary?

MR. SINGER: They have to at least be not an integrated company where decisions are being directed from the top.

THE COURT: I don't know what you mean by an integrated company. Give me an example of the way they are integrated.

MR. SINGER: The risk control.

THE COURT: They have similar risk controls. What does that mean? Is it the same guy who does risk control for the parent and one or two subsidiaries that makes it integrated? What do you mean by that?

MR. SINGER: The cases talk about that it is not

simply a passive investment vehicle.

THE COURT: You're saying that I have to determine that they are a passive investment vehicle in order to determine that they don't have sufficient activity with regard to subsidiaries for me to --

MR. SINGER: There are two things which follow from the argument. You would find, number one, they are wholly owned subsidiaries. Number two --

THE WITNESS: Wholly owned subsidiary doesn't get you there.

MR. SINGER: It is just the starting point.

THE COURT: I assume every company is a wholly owned subsidiary that we would start with. That is not a point to make.

MR. SINGER: The analysis in these cases involves --

THE COURT: What I'm trying to get to, let me interrupt you, is what makes the difference between a wholly owned subsidiary in which the parent is a foreign company and a wholly owned subsidiary where you say the parent is not a foreign company but can be sued and I have personal jurisdiction over it. Being a wholly owned subsidiary doesn't make the distinction for me.

MR. SINGER: Two things, your Honor: One, that it is not simply a passive investment vehicle; two, that they are exerting control from the parent level over subsidiary

decisions, that it is not simply an autonomous subsidiary that is operating independently of the decision-making at the parent company level.

THE COURT: All right.

MR. SINGER: We have not only alleged that, but we have established that with Exhibit 19. Over the lunch break we did confirm from some public sources that the halt on drilling in Alaska was implemented. That was I think a question the Court had.

This is, again, the CEO of Royal Dutch Shell saying he made that decision. He was going to review all these companies and decide which ones would be continuing in business with respect to shale oil and gas drilling and exploration in the United States. That is certainly a prima facie case coming directly from the mouth of the CEO.

THE COURT: That kind of analysis wasn't even reviewed in Wiwa.

MR. SINGER: I think we get past jurisdiction on Wiwa with the investment office in Houston. I think that if we were to go further and have to look at the Shell Oil contacts, then you can't to this level of analysis. The office in Houston, there is no question but that it is benefiting RDS, because they are the only company with public shareholders.

THE COURT: You said they had evidence other than an investor relations office and risk-control framework.

MR. SINGER: There is the IPO that RDS was going to the capital markets for. I mentioned that.

THE COURT: The IPO of what?

MR. SINGER: Of a subsidiary that RDS announced. This is at tab 3. "Royal Dutch Shell announced today that its wholly owned subsidiary, Shell Midstream Partners, has filed a registration statement with the SEC and intends to list its common units on the New York Stock Exchange under the stock ticker symbol SHLX."

THE COURT: Is your argument that that is a basis for asserting personal jurisdiction?

MR. SINGER: That it is, as the court in Wiwa said, relevant although not independently sufficient.

THE COURT: You want to give me a sort of cumulative list. If you give me ten things that you say each one of them is zero, then if you give me ten zeros, you still have zero. That's my first analysis. You're not saying that issuing this IPO is in and of itself an indication that there is sufficient contact for asserting jurisdiction?

MR. SINGER: Standing alone, I agree with your Honor, it would not. The one that is standing alone because it fits Wiwa completely is the investor relations office.

THE COURT: I understand that. I just wanted to get through the other.

MR. SINGER: I think the other one that would,

standing alone, meet the test if the Court agreed with us based on Exhibit 19 and the other discussion we had is control, if that shows control over Shell Oil Company, because then you have one of the largest companies in America as an agent of RDS. That would be independent.

THE COURT: I'm sorry. Which one are you saying? You said you had a number and you gave me investor relations office, risk-based control framework, IPO.

MR. SINGER: This would be the next one. This would be the operations of Shell Oil as an agent.

THE COURT: What do you mean operations of Shell Oil as an agent?

MR. SINGER: That the business operations of Shell Oil are sufficiently integrated with RDS's other operations and directed by RDS, such as the whole discussion about the CEO of RDS exerting that control, that they can properly be considered for jurisdictional purposes as the acts of the agent of RDS.

THE COURT: I don't understand anything you just said other than the CEO exercising control. What else are you referring to other than the previous reference to the CEO and Alaska?

MR. SINGER: I think the CEO and Alaska are the link to answer your Honor's question of what do you need more than have a big sub and a parent to establish agency.

THE COURT: You may or may not need more. I'm just

asking you, is there any more, is there any more than that, or is that all you're relying on when you say that you have evidence of operation of Shell Oil as an agent?

MR. SINGER: Exhibit 19. There is one other.

THE COURT: What other fact other than this statement?

MR. SINGER: We have it in the record. They question how much weight should be given it. It is a public source. It is an encyclopedia that is cited.

THE COURT: What is the fact that is cited in the encyclopedia?

MR. SINGER: Downstream and upstream integration and control by RDS.

THE COURT: What does that mean?

MR. SINGER: I think what it means is that decision-making is concentrated, that instead of a decentralized business with RDS allowing each sub to go its own way, you have centralized decision-making by RDS as the parent.

THE COURT: You base that on what?

MR. SINGER: We don't have discovery yet, so you have to look at public sources. This was in our papers. It was an encyclopedia, a public encyclopedia, that referenced that. I can get the exact page reference.

THE COURT: What facts is it referencing?

MR. SINGER: The facts, and they are general facts, but the facts that they put in are equally general about not

exerting control --

THE COURT: Exerting control is a conclusion, not a fact. Tell me what facts demonstrate that they are exerting control.

MR. SINGER: This talked about the operational structure of both upstream and downstream RDS and saying that those are centrally --

THE COURT: It may be paddling up the creek, but I don't know what that means. What is upstream and downstream?

MR. SINGER: The upstream operations are the extraction of oil and gas, and the downstream is when they sell it. It talks about historically downstream has been very centralized.

THE COURT: What does it have to do with RDS having activity in the United States?

MR. SINGER: It shows that RDS is controlling its subsidiaries in a centralized manner.

THE COURT: Where does it say that? Where does what you just referenced say that RDS is controlling the activities of the company?

MR. SINGER: I think when you are talking about a parent company exerting that type of centralization --

THE COURT: Does it say that? Does it say the parent company is exerting that kind of centralization? Those are conclusory words. I'm not sure which one you are referring to.

I don't have any recollection that that's what --

MR. SINGER: If I might have a moment on that, your Honor?

THE COURT: Yes. I'm not sure that you mean to represent that that is what was said with regard to RDS.

MR. SINGER: That's why I want to cite it exactly.

THE COURT: Quote me exactly.

MR. SINGER: Exhibit 10, the New World Encyclopedia.

THE COURT: Exhibit 10 in the binder you gave me?

MR. SINGER: No. This is Exhibit 10 to the declaration exhibits that we submitted with our opposition.

THE COURT: Exhibit 10, what is the language that you rely on?

MR. SINGER: It's under the heading "Corporate Governance." It says, "Traditionally, Shell was a highly decentralized business worldwide, especially in the downstream, with companies operating in over a hundred countries with a considerable degree of independence. The upstream tended to be more centralized, receiving detailed technical and financial direction from the central offices in the Hague."

It goes on to say in the next paragraph, "In the 1990s the independence of operating companies around the world was gradually reduced, and today directly managed global businesses have been created in all sectors."

THE COURT: What am I supposed to take from that about

what activity RDS does in the United States?

MR. SINGER: I submit this is a sufficient basis for an allegation of the central control over subs like Shell Oil, which operates in the United States, which provides support for imputing for agency purposes, for jurisdictional purposes, Shell Oil's operations to the parent.

Here we have a general statement, admittedly general. In Exhibit 19, with the chairman and CEO of Royal Dutch Shell, identifying certain specific decisions, that he, the RDS chairman of RDS -- no employee of Shell Oil, that he, the RDS chairman -- is taking, there is a specific example of what this source is generally talking about. That is without any discovery. That is just from looking at public sources indicating that this is a company that has this type of centralized control.

When you are talking about global businesses and centralization, receiving detailed technical and financial direction from central offices in the Hague, that means RDS. These examples we give you are consistent with that. I would submit that probably goes beyond what is needed at a pleading, prejurisdictional discovery stage to get to the next level, and that is independent of the Wiwa investment company office, which we think is sufficient ground to simply deny the motion and move on with the merits of the issue.

THE COURT: How many points did you say you had?

MR. SINGER: There was one more factual point that I wanted to raise. In addition, there is trading activity which is engaged in by RDS through its North American commodity trading arms. This is a document that I'm going to mention to your Honor. We had copies made over the lunch break. It is not currently in the record. Whether one considers it as a proffer or an indication of an additional piece of evidence.

It is a letter by Shell Energy North America in April of 2010 to the Commodity Futures Trading Commission. It says that Shell Trading U.S. Company and Shell Energy North America U.S. are the North America commodity trading arm of Royal Dutch Shell PLC, which is the public company. Then it goes on to describe the nature of those businesses.

THE COURT: How does that reflect Royal Dutch Shell's activity in the United States and contacts in the United States for purposes of personal jurisdiction other than the same assertion you start with, that they own subsidiaries there?

MR. SINGER: It is another subsidiary along with Shell Oil that is engaged in activities for the benefit of the parent, the trading arm of the parent, being conducted in the United States.

THE COURT: I don't understand what you mean by trading arm of the parent. You would recognize that Wiwa and all the cases say that trading activity in and of itself is not sufficient.

MR. SINGER: We are talking about two different types of trading, your Honor. The trading activity of RDS shares on the New York Stock Exchange, which standing alone is not by itself --

THE COURT: You're not talking about that?

MR. SINGER: I'm not talking about that. This is trading of commodities contracts on the commodities exchanges.

THE COURT: Whose trading commodities contracts?

MR. SINGER: Shell Energy U.S. and Shell Trading North America.

THE COURT: How is that evidence of RDS contact?

MR. SINGER: That they are doing that as, according to their own statement, the trading arm of RDS. If your Honor is pointing out that the trading arm of RDS is an ambiguous general statement, I would agree.

THE COURT: I'm not saying it is an ambiguous general statement. I'm not sure what it means with regard to their contacts and presence in the United States.

MR. SINGER: These two entities are in the United States, there is no question about it.

THE COURT: Right. Those two entities, if you wanted to sue them, you would have a great suit. You had your personal jurisdiction. They couldn't argue that you didn't. It's that second step that you want.

MR. SINGER: Yes. This is just more agencies who we

believe, like Shell Oil, fit that model which we have been discussing.

THE COURT: All right.

MR. SINGER: Cumulatively, and this comes from the 2007 Royal Dutch Shell report, 25 percent of the overall revenue of Royal Dutch Shell, the parent company, is in the United States.

THE COURT: Say that again.

MR. SINGER: 25 percent of the revenue of Royal Dutch Shell is in the United States, of the consolidated revenue.

THE COURT: I assume what you mean to say is 25 percent of Royal Dutch revenues comes from the activities of its U.S. subsidiaries.

MR. SINGER: They didn't say it that way in their report, but I think they mean that.

THE COURT: Do you mean it any other way?

MR. SINGER: I think they mean that even though they --

THE COURT: I assume you didn't mean in it any other way than that.

MR. SINGER: No. This just gives the idea of the magnitude of what we are talking about relative to Shell's worldwide operations. For instance, in the Mercedes Benz case, 2 percent of revenue was in California. Here we are talking about 25 percent. The only places in the world which would be

greater would be in Europe, presumably the UK and the Hague. So when you are talking about being at home somewhere, it is no great stretch to say Shell is at home.

In fact, if I might point to one other quote from the Wiwa case, which is the fairness that they address of holding Shell's subsidiary to a general jurisdiction standard. This is at page 99 of the decision.

They talk about the defendants control a vast far-flung business empire which operates in most parts of the globe, they have a physical presence in the forum state, have access to enormous resources, face little or no language barrier, have litigated in this country on previous occasions, and are the parent company of one of America's largest corporations, which has a very significant presence in New York. They argue fairness in terms of the Asahi case. Wiwa answered that back in 2000, and that answer remains valid today.

THE COURT: I assume most of your argument is not based on personal jurisdiction under New York law.

MR. SINGER: We can win under New York law by imputation, but we don't think we need to go there.

THE COURT: What New York connection is there that you are relying on?

MR. SINGER: The IPO is in New York. People come up from Houston do things here. There is a New York connection.

THE COURT: You ran through that quickly. I still haven't heard a single significant contact with New York that you could base jurisdiction on.

MR. SINGER: We will make it easier, your Honor.

THE COURT: Obviously, investor relations is not even in New York anymore.

MR. SINGER: I think 4(k)(2) is so clearly applicable that the Court gets to a denial of the motion on the U.S. contacts. If I might refer to one more slide here, which is Exhibit 23 in the binder I gave you this morning. In their initial motion Royal Dutch Shell didn't say anything about 4(k)(2). We responded that that applies. We cite the Peterson case, which is from this district, because that is the directly on point case which deals with 4(h)(k)(ii) applying to a section 1610(g) turnover case.

It says that where plaintiffs prove that federal sovereign immunity entitle them to a turnover of bonds, that's only because you have a federal law basis that allows you to proceed against those bonds. The same thing is true herein. The only thing that gets us a basis to proceed is 1610(g) and federal law. This is under the Foreign Sovereign Immunities Act. You can't separate out those things.

We have cited in addition the Touchcom case, which we submitted in supplemental authority. The court says that 4(k)(2) applies to a case that arises under the court's

jurisdiction. That is from the Federal Circuit in 2009. And their cases were distinguishable. The Goetz case, which they cited, we think actually helps us, not Shell. There it said that 4(k)(2) can't be used where the only federal issue is a defense. Obviously, we are not raising it as a defense. It is the basis for claims here.

Your Honor, I can even point to a precedent from this court where in connection with the MDL action, in In re Terrorist Attacks on September 11th, the court applied a 4(k)(2) analysis to a number of allegations about individuals and entities which the court ultimately found were not doing business anywhere in the United States and were not subject to general jurisdiction, but it applied that. It only could apply that analysis if it agreed with the principle that 4(k)(2) is relevant to a federal cause of action under 1610(g), such as this.

The state turnover law provides a procedure for attachment, but the guts of the claim, the basis for the claim, is the right to go after these assets which otherwise would be immune.

THE COURT: In most of those instances, it was because the property was here.

MR. SINGER: That's true.

THE COURT: It had to do with the property. It was not under (g). It wasn't an abstract obligation. It was that

there was property found in the jurisdiction.

MR. SINGER: It could be a building or something here.

THE COURT: Right.

MR. SINGER: Because it is abstract, we think it goes back to two things: One, what the Court was talking earlier about today, that if we find jurisdiction over Royal Dutch Shell and that they own the obligation, then they can be compelled to turn it over.

THE COURT: But you can't have a circular argument. You can't say if there is jurisdiction, then they should turn it over, and if they should turn it over, that means you have jurisdiction. One drives the other. They can't drive each other.

MR. SINGER: We have already dealt with subject matter jurisdiction. We have subject matter jurisdiction because the Court has jurisdiction over the initial case and that carries over to execution.

We have then two bases under which you can have the ability to compel Royal Dutch Shell. One is New York law, where we believe if you find that Royal Dutch Shell owns the asset, then that liability to National Iranian Oil Company is something that this Court can compel them to pay. If we have jurisdiction over Royal Dutch Shell, it's like any other party: They can be compelled to pay that.

The second is the specific language of 1610(g) which

is not limited, as we discussed earlier, to property in the United States. No court has ever had to deal with that particular issue. It's not necessary for this Court to reach it.

But if you do, for all the reasons we discussed earlier -- the intent of Congress, the language of the statute, the fact that this is directed specifically at foreign state terrorism -- we think that if there is personal jurisdiction, it doesn't matter, this fiction as to whether the debt is sitting in Bermuda or England or the United States. If there is jurisdiction, you should be able to order it to be turned over just as if you had that briefcase out here from someone from Royal Dutch Shell in the courtroom, you could stop that from being paid to the Iranian government.

4(k)(2) applies to a case like this. The only authority that is on point is Peterson and this Court's prior practice in doing it. That allows you to find either on the basis of the investor office in Houston or on the basis of the other allegations we made about agency and control that we have sufficient contacts to find presence in the United States.

I would like to spend just a few moments on the comity issue. I think that even Mr. Rifkin conceded it would be premature for the Court at this point to dismiss the case on comity grounds when we don't know whether in fact the UK would refuse to obey a direction from this Court, would object to a

direction from this Court, which took this money and didn't pay it to Iran but rather paid it to victims of a terrorist act.

The purpose of the blocking statute is that money not go to benefit Iran. It isn't to stop compensation to victims of terror. So there is no basis at this juncture to make any ruling on comity. If we have to go down the line after one is poised for judgment, the issue could be revisited in both weighing the very strong fundamental interests of the United States in seeing that these victims be compensated, that the judgment your Honor entered is not just some dead letter that is tacked to a wall or put in a pile, that it is actually implemented.

Congress has reacted to that several times, including with 1610(g), directed solely for victims of this type. That is a very strong interest that has to be weighed against whatever interests England articulates, if they do articulate an interest that this not be paid, which has never happened.

The one other point I would make, your Honor, is that the recent case from Republic of Argentina suggests that these issues of comity are all worked out by the Foreign Sovereign Immunity Act and that the Court should not lightly get into the business of restricting jurisdiction because of concerns of comity when Congress hasn't said that. That's at slide 31 in the book. Certainly, the whole issue of comity is premature to deal with at this time.

Unless the Court has further questions, I appreciate the lengthy time that we have had a chance to raise these issues with the Court.

THE COURT: I will let them reply.

MR. RIVKIN: Your Honor, I think I only need a few minutes to reply. But could we take a five-minute break to give the court reporter a break?

THE COURT: Definitely.

(Recess)

MR. RIVKIN: Thank you very much, Judge Daniels, and Mr. Singer. Let me thank you for the attention you have given to this. Let me try to conclude very briefly by providing a few citations and clean up a few things Mr. Singer said and give you a few cites that may be helpful to you as you consider the arguments that have been made today.

Let me start with the brief point on the comity issue, which Mr. Singer ended with. You asked a question to me earlier about who would be barred by the UK regulations. We cite the UK regulation on page 15 of our reply brief. To be clear, it says that any person dealing with funds belonging to, owned by, or held by a designated person, in other words, Iran, is controlled by the regulation. And "deal with" is defined to include any action that would result in any change in their location or ownership.

Turning it over to plaintiffs or turning it over to a

court escrow account or anything would fall within the scope of that regulation. I just wanted to make sure you saw that.

Second, I spoke this morning, and you asked a number of questions about the scope of the turnover law in New York. I was very careful several times to say that the actual owner rather than a constructive owner, in other words, the owner not through a subsidiary, could potentially be asked to turn over a debt, a payable that may be outside of the jurisdiction.

I was referring to a New York Court of Appeals case from last year, which I discovered had not previously been presented to you. I gave to it Mr. Singer after lunch and presented it to your clerk. It's called Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Commerce, 21 N.Y.3d 55. They said it is from April of last year.

What is interesting about it is that it was the New York Court of Appeals responding to questions posed to it by the Second Circuit specifically on the scope of a turnover proceeding. In the very first paragraph the court says, "We hold that for a court to issue a post-judgment turnover order pursuant to C.P.L.R. 5225(b) against a bank entity," and it is that upon which the petitioners are relying here, "that entity must itself have actual, not merely constructive, possession or custody of the asset sought."

That is the distinction that I was drawing in our conversation. I wanted to give you the citation for that. It

comes from the New York Court of Appeals.

THE COURT: I'm not sure why those definitions apply to this situation. Why is this constructive rather than actual? What is constructive about it?

MR. RIVKIN: If the debt is owned by subsidiaries of Royal Dutch Shell rather than by Royal Dutch Shell, then it would be constructive ownership rather than actual ownership. That is precisely the question posed to the New York Court of Appeals.

That case involved assets owned not by the bank that was in New York but by its subsidiaries. The court said you can't use a turnover proceeding against assets that are not owned by the party which you have jurisdiction over but rather owned only by a subsidiary of that party. That is why it is a direct parallel. You will be able to see the case.

Speaking of the turnover proceeding, I want to again clear up something Mr. Singer said in his argument. He constantly tried to rely upon nationwide contacts and 4(k)(2). He referred to the Peterson decision of this Court. As I said this morning, we looked at the Peterson decision. Judge Forrest didn't at all look at the advisory committee notes that described what was being done, that it was meant to be a very narrow gap-filling measure with respect to federal causes of action.

It is very clear here that the cause of action is the

turnover proceeding. That is the New York law that gives the right to obtain assets on execution. If you look at 1609 and 1610 of the Foreign Sovereign Immunities Act, you will see they do not create causes of action. They state which assets may be subject to execution if there is a right to execution.

The right to execution comes, of course, as we know from Federal Rule of Civil Procedure 69, comes from the state law. That's the turnover proceeding. 1610(g) is a basis for subject matter jurisdiction if this Court has one. It says that an asset that would be otherwise immune from execution because all sovereign assets are immune from execution until they fall within one of these exceptions. An asset that would otherwise be immune from execution under state law may be executed against under the FSIA because this exception applies.

That is the way 1609 and 1610 are framed, so that is the cause of action. This is a state law cause of action. 4(k)(2) is definitely not intended to provide a nationwide basis for finding contacts any time a federal court may otherwise have subject matter jurisdiction, which is the way petitioners would have you read 4(k)(2).

The Goetz decision in the Ninth Circuit makes this very clear. It is not limited in the manner Mr. Singer said. As I said, the First and the Fifth Circuits agree with the Ninth Circuit. The Touchcom case in the Federal Circuit dealt with a specific patent issue.

We don't think it analyzed the intended scope of 4(k)(2) in the proper way. But you will be able to look at the advisory notes and the way they specifically limited the purpose of 4(k)(2). It would otherwise be read the way petitioners wanted, to eviscerate the idea of statewide jurisdiction.

While I'm talking about 1609, let me also very briefly deal with the extraterritoriality issue on 1610(g). We discussed this morning, and we don't need to repeat it, what might happen if you have personal jurisdiction over the debtor who has actual possession of the debt. That's fine.

The question is, can that be applied? Petitioners would say that doesn't matter, you can use 1610(g) for any property anywhere in the world. That is simply not the case. 1609 creates the framework for 1610. 1609 refers specifically to any property in the United States may be executed if one of the exceptions in 1610 and 1611 applies. The Supreme Court in the NML v. Argentina case referred to 1609 and providing that kind of a cap and 1610 in that way.

On the Argentina case, I should mention there was no issue of personal jurisdiction there. That is why it is largely irrelevant for purposes petitioners want to make it. Argentina had specifically waived its immunity from execution as well as its immunity from jurisdiction in this court. That obviously doesn't exist here. Iran hasn't waived its immunity.

The cases are very clear, going back to the Schooner case which we cite to you from 1812, that states may only exert jurisdiction with respect to assets within their own territory. That's what the Schooner case said in 1812. The NML case, NML v. Argentina, a court decision of just a couple of weeks ago, repeated the same thing. This has been true for a couple of centuries. Our courts generally lack authority in the first place to execute against property in other countries. So how could the question ever have arisen?

That is why the Supreme Court in the Morrison and Kiobel cases has said very specifically you can only apply a statute extraterritorially if there is an affirmative statement by Congress that it is intended to be applied extraterritorially. You can't rely, Kiobel said, on any language in the statute. There has to be an affirmative statement, and there is none in the passage of 1610(g) by Congress.

The language that Mr. Singer cited you to in the Congressional Record relating to the passage of 1610(g) related to eliminating other barriers with respect to property in the United States, such as the commercial activity exception. Those are the barriers that are wiped away through 1610(g). It is certainly not any national barrier; Congress would have to specifically have said so under the relevant Supreme Court precedent.

When Mr. Singer said to you that one assumes extra-territoriality with respect to a broad international statute like the Foreign Sovereign Immunities Act as opposed to a domestic statute like the Morrison case, that is just wrong. It is precisely the opposite. The Supreme Court has said in many cases it is the international statutes that could run afoul of other sovereigns' powers, and therefore that's why the extraterritoriality has to be defined and given very specifically.

In the Morrison case, if you will recall, the plaintiffs tried to rely on language in the securities act referring to foreign commerce. They said that's not enough. In Kiobel it was a potentially foreign-reaching statute, it was the alien tort statute, and the court said no, it doesn't apply extraterritorial, because there is no specific indication.

Again, none of that may matter if what you are focused on is whether or not there is property in the United States. But I didn't want you to leave here thinking that it could apply more generally. The case law is quite clear on that. As plaintiffs have had to admit, there is not a single case applying 1610(g) extraterritorially.

THE COURT: Let me make sure I understand your argument. If the subsidiary that owes the debt was one of the U.S. subsidiaries, is it your position that a turnover order could not be issued against that subsidiary?

MR. RIVKIN: No. If it owns property in the United States, then it would fall within the exception.

THE COURT: Which property in the United States? Any property?

MR. RIVKIN: If the debt is within the United States.

THE COURT: Again, I can't get my mind around that concept that the debt is in the United States. I'm not sure I can latch on to the argument you're making. I'm not sure that you are making the argument that if a Shell subsidiary, a U.S. subsidiary, owed a debt to Iran, whether or not the rationale you just gave me says that they could or could not get a turnover order against that U.S. subsidiary.

MR. RIVKIN: I think under the framework that you have stated, if the U.S. subsidiary is before this Court and you have jurisdiction over it and it owes a debt to Iran, then that could be considered as property in the United States, and then the extraterritoriality issue doesn't come up.

THE COURT: That's what I don't understand. What makes that property in the United States as opposed to the example that you heard?

MR. RIVKIN: I think the cases are not all uniform about where a debt is located and whether it is always located where the obligor is. I think if it is a U.S. subsidiary but it only operates foreign bank accounts, there could be an argument that under 1610(g) that is not property located in the

United States even though you have personal jurisdiction over the U.S. sub.

THE COURT: I can't imagine a scenario where I would have jurisdiction over a corporate entity in the United States and that corporate entity has no assets in the United States.

MR. RIVKIN: I agree. I agree with that.

THE COURT: That's what I'm saying. I'm not sure what you are saying that rule that you are trying to get me to apply, how it would affect execution.

MR. RIVKIN: I agreed with you this morning that if you have a U.S. subsidiary, so it has the debt, then potentially you could apply 1610(g) to that U.S. subsidiary.

THE COURT: I wouldn't have to go through an analysis of where the U.S. subsidiary keeps its money?

MR. RIVKIN: That's right. In this case the evidence is that it is not U.S. subsidiaries and that the debt is located abroad. But that's right for that framework.

THE COURT: Only if I come to the conclusion that the parent company is not located, by definition, in the United States. If the conclusion is that they are located in the United States, I'm not quite sure I understand what your argument is that the debt is someplace else.

MR. RIVKIN: I agree with you, your Honor. I was simply trying to clear up something Mr. Singer had said that the statute could be and was intended to be applied extra-

territorially. The case law and the legislative history are quite clear to the contrary. But I'm not disagreeing with that.

THE COURT: I don't understand what extraterritorial means in this context if this there is personal jurisdiction over the debtor.

MR. RIVKIN: I think you probably don't need to get it if there is jurisdiction over the debtor, the actual debtor. I agree with that.

In terms of the actual debtor, Mr. Singer said several times that Royal Dutch Shell has stated that it owes the debt. That statement is not correct. He cited the Royal Dutch Shell form 20-F in an annual report, which is Exhibit L to the petition. He used the word "we." He didn't actually point you to the language. Let me point you to two parts of that.

The first is on page 3, right under the heading "About This Report." The report says, "In this report, 'Shell' is sometimes used for convenience where references are made to the company and its subsidiaries in general. Likewise, the words, 'we,' 'us,' and 'our' are also used to refer to subsidiaries in general or to those who work for them."

It goes on to talk about the fact that these are consolidated financial statements. The case law is quite clear that the fact that a parent company consolidates its subsidiaries' accounts into a single set of financial

statements does not create an agency relationship or alter ego or otherwise provide a basis for jurisdiction. There is no question about that.

Then, in the portion of the annual report that specifically mentions the payable to the National Iranian Oil Company, which is on page 51, it again says at the very bottom of that section, at the end of page 51, "Currently, we have approximately $2.3 billion payable to National Iranian Oil Company." The "we" again is used there as the Shell group of subsidiaries. It is certainly not an admission that Royal Dutch Shell owes the money or that the payable is in the United States. Mr. Singer didn't give you that language for context.

He also didn't read you earlier in the page where the payable is specifically referred to. It says there, "The activities listed below have been conducted outside the U.S. by non-U.S. Shell subsidiaries. We do not believe that any of the transactions or activities listed below violated U.S. sanctions."

So, the evidence in the record, in the statements by Royal Dutch Shell, is that the payable results from activities conducted outside the United States by non-U.S. subsidiaries. That is the only evidence in the record, and it is a sworn SEC statement.

The other statement that Mr. Singer pointed to, which is just a press report by an Iranian official who loosely

referred to Royal Dutch Shell, perhaps because that is the parent company and he may not know the subsidiary owes the debt, that is obviously not evidence in the record about who owes the debt. The strong evidence in the record comes from Shell's own SEC statement.

While I'm talking about the SEC, Mr. Singer also tried to rely on the fact that there was an SEC action against the parent company Royal Dutch Shell. Of course that is true. That is the listed entity. Companies are frequently sanctioned for the activities of their subsidiaries if they are the registered entity. That has nothing to do with agency law or anything else.

Similarly, he relied a lot on this press report about statements that were supposedly made by the CEO. Of course, that is a press report. The "he" he kept referring to, there were always indirect quotations. They certainly can't be seen as admissions. He put a lot of weight on it. In any event, it doesn't matter for all the reasons that you described in your questions to him.

It is not at all uncommon for parents and subsidiaries to make decisions jointly. It doesn't mean that if the CEO wanted something, that the U.S. subsidiary didn't make the decision in the proper way given its independent board, given its independent actions, and so forth.

Mr. Singer also tried to rely upon the fact that there

is this risk-based control framework which Mr. Fermin mentioned in his declaration that we had presented to you. As your Honor pointed out, that is certainly not a basis for asserting jurisdiction.

To give you one cite, it is Gior v. Centea, 2003 Westlaw 1900826, which is a Southern District decision from April of 2003, which said simply that a parent company may impose procedures. The fact that a parent company has policies for its subsidiaries is no more than the normal business influence of a common parent. It is certainly not a basis to allege alter ego or agency.

Mr. Singer also tried to rely upon this discussion in the New World Encyclopedia. Again, we know that those kinds of sources can't be trusted, certainly not next to sworn witness statements from people who actually know.

I did notice, by the way, in looking at the language that Mr. Singer was quoting, I looked at the Exhibit 13 to the same affidavit, which was this business school project that I referred to this morning. If you or your clerk take a look at the language, you will find that this business school project seems to have plagiarized from the New World Encyclopedia, for whatever that is worth. The language is almost exactly the same.

Let me end with a comment on Wiwa, because Mr. Singer put so much emphasis on it. It is quite clear that the Daimler

case undermines the agency theory and really eliminates the agency theory in Wiwa. What we are talking about in Wiwa and the current investor relations office, on which he relies a lot, is a small operation, a few employees. If under the old standards it was systematic and continuous presence, it is not a systematic and continuous presence that shows that the company feels at home, which is what Daimler requires.

Wiwa, while it is a Second Circuit decision, I'll come to it into second. The Samara decision continually questions the continuing validity of Wiwa. Certainly, this Court can, and I think is obligated to, look at the standards under the current law and whether the Daimler and the Goodyear cases have changed the standards in a way from the Wiwa case that would make a difference even applying to the same facts. But we are talking about a small operation.

By the way, the Lawrence affidavit also shows that the investor relations is done in Canada as well as from Texas

THE COURT: Let me ask you this specifically. If the only public investors are in RDS, what work other than the work for RDS would an investor relations office do for wholly owned subsidiaries?

MR. RIVKIN: The investor no doubt would have questions about --

THE COURT: Which investor? There is no investor in the wholly owned subsidiary.

MR. RIVKIN: A public investor in RDS would no doubt have questions about the operations of Shell Oil Company as it may impact the financial results of RDS.

THE COURT: I assume the investor relations office is set up to deal with investors of RDS. There are no other investors.

MR. RIVKIN: There are no other investors.

THE COURT: What does it do on behalf of the subsidiaries as opposed to on behalf of RDS?

MR. RIVKIN: The employees are employees of the subsidiary.

THE COURT: Say that again.

MR. RIVKIN: They are employees of Shell Oil and of Shell Canada. Mr. Lawrence has submitted a declaration as an employee of Shell Canada.

THE COURT: I'm just talking about their function. What work are they doing for the subsidiary if they are the investor relations office and the only investors to relate to are RDS investors?

MR. RIVKIN: They are undoubtedly answering questions from investors in RDS about RDS's operations through their subsidiaries, including Shell Oil, which is why it makes sense to have some people in Houston who are close to what is going on in Houston with the Shell Oil Company, which is one of the large subsidiaries of RDS.

THE COURT: Which company do you say the investor relations office is working for?

MR. RIVKIN: I'd say they are ultimately working for RDS. I would also say that under the current standards as laid out in Goodyear and Daimler, that is not nearly sufficient in order to find personal jurisdiction over RDS.

If you look at the language of Wiwa, which only referred to the New York law and the systematic and continuous presence, and you look at the language of Daimler and Goodyear and Samara -- let me turn to those now.

THE COURT: You want me to reevaluate Wiwa. Is there any different factual or legal analysis with regard to how Wiwa evaluated the investor relations office than how the investor relations office works now?

MR. RIVKIN: As a factual matter, no. As a legal matter, yes. The legal standards under Daimler and Goodyear and as the Second Circuit reflected in Samara are very different from the legal standards applied to those facts.

THE COURT: I'm saying that there is no reason for me to say that the investor relations office in Texas in and of itself, what they do or how they exist, would change any analysis as it is laid out in Wiwa. I would have to say that Wiwa is no longer the applicable analysis in order to come to a different result.

MR. RIVKIN: Actually, there are two things. One is

that Wiwa is based upon a presence in New York. Mr. Singer even read to you the language in which the Second Circuit pointed out that Shell had chosen to place its investor relations office in New York.

The fact that the investor relations office is in Houston does not give this Court jurisdiction unless you apply 4(k)(2), which, for the reasons I mentioned before, you can't apply, because we are dealing here with a state law cause of action and not a federal cause of action. That is an important factual difference which leads to a different result by and of itself.

THE COURT: I will have to look at it again. I don't remember whether Wiwa made a distinction between 4(k)(2) --

MR. RIVKIN: Using 4(k)(2).

THE COURT: You would not say 4(k)(2) would not apply?

MR. RIVKIN: No. But other cases and the advisory notes to 4(k) would say that 4(k)(2) would not apply where you are dealing with a state law cause of action, which is what you are dealing with here. It is a turnover action under 5225(b).

This is not an action under the Foreign Sovereign Immunities Act that is the basis for jurisdiction. It is not the substantive cause of action. That is a big difference. So, you can't look at the Texas office as a basis for jurisdiction in New York, and that is a factual difference with Wiwa.

Now let me turn to Samara, which was decided April 25, 2014, by the Second Circuit. It involved some activities by a Turkish corporate defendant. On page 6 of the printout, page 4 of the slip opinion, under the heading (c) -- I'm not going to try to pronounce the Turkish company's name, maybe I will try. "Sukarova."

Anyway, the Turkish company had contacts with New York. The Second Circuit said Daimler expressed doubts as to the usefulness of an agency analysis like that espoused in Wiwa that focuses on a foreign state affiliate's importance to the defendant rather than on whether the affiliate is so dominated by the affiliate as to be its alter ego.

Then it went on to quote Daimler, saying, "The inquiry into importance stacks the deck, for it will always yield a pro-jurisdiction answer. Anything a corporation does through its affiliate is presumably something that the corporation would do by other means if the affiliate did not exist." So, the Supreme Court said you really can't use the test which Mr. Singer kept presenting to you today.

The Second Circuit went on to say, "For our purposes, we need not consider whether the agency principles announced in Wiwa survive in light of Daimler." They went on to say, "Even assuming that all of certain contacts should be imputed to this Turkish company, the company's contacts do not come close to making it a home there.

If you look at the facts, the contacts that they were relying on there, you will see it is actually more substantial than the investor relations office of a few employees not even in the state. It shows that the Second Circuit there did not consider those facts to be sufficient.

I'll read you a continuing quote which also answers something Mr. Singer said. We did not say to you, your Honor, that under Daimler it can only be the place of incorporation or the principal place of business. We know that under Daimler, in a rare case there can be some other place where a corporation views itself as home, but it is a rare case that has a very high threshold

THE COURT: In every case I hear, one of the lawyers tells me that.

MR. RIVKIN: I'll read you the cycle, read you what the Second Circuit says. "Although Daimler and Goodyear do not hold that a corporation may be subject to general jurisdiction only in a forum where it is incorporated or has its principal place of business." That is the end of the quote from Daimler. Those cases made clear that even a company's "engagement in a substantial continuous and systematic course of business" is alone insufficient to render it at home in a forum.

If you look at Wiwa, they went on to find that this Turkish company's contacts, even if they were substantial, continuous, and systematic, were not sufficient to find it to

be at home. If you look at the Wiwa case, the only standard that it applied was whether the contact was substantial, continuous, and systematic. It is quite clear that there is an additional threshold to be met now that was not considered in the Wiwa case.

The Daimler case deals with that as well, again focusing on the contacts which were substantial. By the way, Mr. Singer muddied the facts a bit because he was comparing the contacts in California that were considered in the Daimler case with all of Shell's subsidiaries' operations in the United States. That is not appropriate. Unless you can bifurcate the two, you can only look at contacts in New York.

In any event, Daimler focuses on the home standard. Daimler gave that quote that I just read to you. It is repeated in Samara. There it said on page 20, "Here neither Daimler nor MBUSA is incorporated in California. . . . If Daimler's California activities sufficed to allow adjudication of this Argentina root case in California, the same global reach would presumably be available in every other state in which NBUSA's sales are sizable. Such exorbitant exercise of all-purpose jurisdiction would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" That's the Burger King case, 471 U.S. That is the point.

The problem with Mr. Singer's arguments is that if the Court followed them, basically any large corporation which has many employees and does business in many places and operates through subsidiaries or any holding companies, as your Honor pointed out, would be subject to all-purpose jurisdiction.

You don't need to subject a company which has no conduct, no business of its own, as Royal Dutch Shell has none, to jurisdiction in the United States, because its subsidiaries are operating, its subsidiaries are capitalized, they operate with independent boards, and if they do something that leads to a lawsuit, they can be sued in an appropriate forum.

That is the way the structure of general jurisdiction is set up. That's what the Supreme Court made clear in the Daimler case. For that reason and the others we have discussed, your Honor, that's why we ask that this case be dismissed.

Thank you very much

THE COURT: I thank you very much. Let me get the transcript, and then I'll get to work on it and get back to you.

(Adjourned)