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CENTRAL DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN GARAMENDI,

Plaintiff,

v.

ALTUS FINANCE S.A., et al.,

Defendants.

AND RELATED COUNTERCLAIMS

CASE NO. CV 99-2829 AHM (CWx)
[Consolidated with Case No.
CV 01-1339 AHM(CWX)]
POST-VERDICT ORDER

BACKGROUND

I. The Verdicts and Instructions

After almost nine weeks of evidence and some three weeks of deliberations, the jury returned seven special verdicts. The Verdict Forms are attached as Exhibit A. The parties construe Verdict Form 5, finding that Artemis's joinder in the Altus/MAAF conspiracy caused harm to the BLD's estate, as being inconsistent with the jury's inability to reach a unanimous answer on Verdict Form 7.

Verdict Form 7, in essence, asked the jurors whether Plaintiff had proved

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1 that but for the fraud of Artemis or its participation in the Altus-led conspiracy,
2 Commissioner Garamendi probably would have entered into a transaction with
3 NOLHGA. The jury could not reach a verdict on that issue.

4 Jury Instruction 25 told the jurors that to find “harm” they would have to
5 find that “the Commissioner would have agreed to the NOHLGA bid had the
6 alleged fraud not occurred and [that] the Commissioner’s acceptance of the
7 Altus/MAAF bid caused the ELIC estate to incur losses, costs or expenses that
8 the ELIC estate would not otherwise have incurred if the Commissioner had
9 picked a ‘bonds in’ bid.” The Commissioner argues that in light of Instruction
10 25, Verdict Form 5 shows that the jury found that—notwithstanding Verdict Form
11 7—Mr. Garamendi would have picked the NOLHGA bid, absent Artemis’s
12 participation in the conspiracy. Artemis, in turn, argues that the failure of the jury
13 to reach a verdict on Verdict Form 7 invalidates the jury’s conspiracy/harm
14 findings on Verdict Form 5.

15 What the parties perceive as an ostensible inconsistency results from a
16 misunderstanding of the inter-relation between Verdict Form 5, Verdict Form 7
17 and Jury Instructions 23 and 25.

18 **A. Jury Instructions 23 and 25**

19 Jury Instruction 23 provided in relevant part:

20 The Commissioner relied on a misrepresentation or concealment if it
21 caused him to:

- 22 (A) select the Altus/MAAF bid instead of the NOLHGA bid and
23 submit the Altus/MAAF bid to the Rehabilitation Court for
24 approval; and
25 (B) also caused him to do at least one of the following:
26 (1) transfer either the junk bond portfolio or the insurance
27 assets of ELIC; or
28 (2) not challenge the right of an entity to retain possession
of either the junk bond portfolio or the insurance assets
of ELIC.¹

27 ¹ This instruction specifically applied only to the misrepresentation and
28 concealment claims. It does not mention conspiracy because reliance is not an
element of a conspiracy claim.

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Jury Instruction 25 provided, in full:

The Commissioner claims that the ELIC Estate was harmed by his selecting the Altus/MAAF bid instead of the NOLHGA bid. In order to find that the Commissioner was harmed, you must determine whether the Commissioner would have agreed to the NOLHGA bid had the alleged fraud not occurred and whether the Commissioner's acceptance of the Altus/MAAF bid caused the ELIC Estate to incur losses, costs or expenses that the ELIC Estate would not otherwise have incurred if the Commissioner had picked a "bonds in" bid.

B. Verdict Form 5

Verdict Form 5 was about the Commissioner's conspiracy claims. In essence, it resulted in the jury finding that Artemis joined the Altus-led "scheme to obtain assets from the ELIC Estate by fraud" and that the "scheme" caused harm to the ELIC Estate.

C. Verdict Form 7

Verdict Form 7 dealt with the "NOLHGA Premise." For purposes of this Order, I will use that phrase to refer to the Commissioner's contention that if he establishes liability on any claim, then at the damages phase he would be entitled to premise his "lost profits" damages on the profits he would have derived if he had selected the NOLHGA bid initially (rather than the Altus/MAAF bid).

D. The NOLHGA Premise: Plaintiff Repeatedly Chose, as His Counsel Put It, "To Ride the NOLHGA Horse."

On more than one occasion in the six years preceding the start of trial, the Court pointed out to the Commissioner that his stated intention to prove that absent a fraud or conspiracy he would have awarded the bid to NOLHGA was facially inconsistent with his own words and conduct in 1991, when he eliminated the NOLHGA bid from consideration and narrowed the choice to Altus/MAAF or Sierra. Nevertheless, the Commissioner put all his eggs in the NOLHGA basket. In the Final Pretrial Conference Order, the Commissioner stated that "the Commissioner will establish the principle [sic] economic terms of the alternate transaction he most likely would have engaged in *but for* the defendants' fraud,

1 i.e., a transaction in which the obligation to rehabilitate ELIC was assumed by
2 [NOLHGA].” Revised Final Pretrial Conference Order (“PTCO”), p. 123
3 (emphasis added).

4 In the Commissioner’s Memorandum of Contentions of Fact and Law
5 (“Trial Mem.”), filed Feb. 7, 2005, the Commissioner argued that he “has the
6 burden of proving that he would have rejected defendants’ bid and done a
7 different, more profitable deal had he known the truth The Commissioner
8 will prove that it is proper to measure his damages through calculation of the net
9 economic market on the ELIC entity of a . . . NOLHGA bid scenario, as he would
10 have turned to NOLHGA absent defendants’ fraud.” Commissioner’s Trial Mem.,
11 pp. 33-34.

12 The next day, in the Commissioner’s Trial Brief, filed Feb. 8, 2005, the
13 Commissioner stated in several instances that he would prove at trial that, absent
14 the fraud, he would have selected a NOLHGA bid. See Commissioner’s Trial
15 Brief, pp. 4 (“[m]ost likely he would have revived and selected a bid by
16 NOLHGA,”); 10, 16.

17 In colloquies before the Court regarding jury instructions and verdict
18 forms, the Commissioner’s counsel stated that “I do not want to dispute for a
19 second, your Honor, that we are riding the NOLHGA horse in this case. I don’t
20 mean to back off that for a minute.” April 14, 2005 Tr., 44:3-5. His counsel also
21 said that “we are not going to argue that [maybe the Commissioner would have
22 picked the Sierra bid] at all.” *Id.*, 45:9-12. Indeed, counsel for the Commissioner
23 stated, with regard to harm, that “we’re going to be arguing at least these two
24 things, Your Honor: one, we’re going to say that the NOLHGA bid would have
25 been selected; and, secondly, . . . , we’ll be arguing that we wouldn’t have paid
26 that \$75 million if we had selected any bonds-in bid.” April 15, 2005 Tr., 5:4-9.

27 The Commissioner recognized that, given the central importance of the
28 NOLHGA Premise to his “lost profits” damages theory, it was appropriate to ask

1 the jury whether he had proven that premise. Verdict Form 7 was first proposed
2 by the Commissioner on April 13, 2005. In that submission, the Commissioner
3 included a proposed Verdict Form 4 (for Artemis), as well as a parallel Form 8 for
4 Defendant Francois Pinault, which asked the following question:

5 Do you find that, but for the misrepresentations or concealments that
6 supported your 'yes' answer on Verdict Form 1, 2 or 3, the Commissioner
would have entered into a transaction with NOLHGA to rehabilitate ELIC?

7 Commissioner's Notice of Filing of Revised Proposed Special Verdict Forms, Ex.
8 A (April 13, 2005).

9 The Court distributed revised versions of the parties' proposed verdict
10 forms on April 14, 2005. In that draft, the verdict form covering the NOLHGA
11 Premise was Verdict Form 5, and it applied only to the misrepresentation and
12 concealment claims. It read as follows:

13 Did the Commissioner prove that, but for the misrepresentation(s) or
14 concealment(s) you previously identified, he would have entered into a
transaction with NOLHGA for the benefit of the ELIC Estate?

15 Chorba Decl. Concerning Origin of Verdict Form No. 7, Ex. C (Court's Proposed
16 Verdict Form 5, April 14, 2005).

17 During discussions with counsel on April 14, 2005 about the verdict forms,
18 the Commissioner requested that the NOLHGA Premise verdict form be made
19 applicable to his conspiracy claims as well as to his misrepresentation and
20 concealment claims, just as he had initially proposed. April 14, 2005 Tr., 23:21 -
21 25:2. Defendants' counsel did not object. *Id.*, at 25:11-12.

22 The next day, the Commissioner and NOLHGA objected to the language of
23 Verdict Form 7 that they had previously proposed. Specifically, both the
24 Commissioner and NOLHGA sought to replace the words "but for" with
25 "substantial factor." April 15, 2005 Tr., 7:25 - 9:3 (proposing that Verdict Form 7
26 read that "the misrepresentation, concealment or conspiracy was a substantial
27 factor in causing the Commissioner not to enter into a transaction with NOLHGA
28 for the benefit of the ELIC Estate"); 15:3-25(arguing that the "but for" language

1 in Verdict Form 7 is inconsistent with the elements of fraud and concealment,
2 which use “substantial factor”).² The Court denied the request, but agreed to add
3 the word “probably” to the NOLHGA verdict form. As a result, Verdict Form 7
4 as submitted to the jury read:

5 Did the Commissioner prove that, but for the misrepresentation,
6 concealment or conspiracy that led to your answers to previous questions,
7 he probably would have entered into a transaction with NOLHGA for the
8 benefit of the ELIC Estate?

9 Once again, after six years of litigation and two months of trial, counsel for
10 the Commissioner emphasized the central importance of the NOLHGA Premise,
11 and Verdict Form 7, to his case, explaining to the jury during his closing
12 argument that,

13 Answering the NOLHGA question yes is in support of the Commissioner’s
14 claims. The Commissioner has to show what would have happened had he
15 been told the truth, and he’s shown in this Court that NOLHGA was the
16 other likely alternative once the French bid had been disqualified. There
17 was no testimony that any other bid was likely to succeed. All right? The
18 NOLHGA bid was the most likely alternative.

19 The answer of yes to the NOLHGA question on the form, which I think I
20 have here, “Did the Commissioner prove that he would have picked
21 NOLHGA?” basically, done a deal with NOLHGA, is integral to the
22 Commissioner proving his case.

23 A no answer on that question is a vote - is a no answer on the
24 Commissioner’s case, not a separate NOLHGA case; and you can’t
25 compromise by voting yes on 1 through 6 and voting no on 7. That’s not
26 half a loaf. 7 is required as a required part of the Commissioner’s case.

27 April 18, 2005 Tr., 56:16 - 57:7.

28 **E. Jury Deliberations**

After the jury revealed in a note that there was one verdict form on which it
could not agree, the Commissioner’s counsel stated that he “would like to
preserve, any way we can, the results of the seven verdict forms in which there
appears to be unanimity.” May 10, 2005 Tr., 3:1-3. He also stated that “the jury
needs to be advised that the verdicts they are sending back are final.” *Id.*, 11:9-10.

² Neither the Commissioner nor NOLHGA argued that the “substantial factor”
language applied to the elements of conspiracy or to Verdict Form 5.

1 Artemis stated that it had “no problems at all” with confirming that the jury
2 considered the agreements it had reached to be final and irrevocable before it
3 signed and sealed the seven verdicts on which they agreed. May 10, 2005, Tr.,
4 27:23 - 28:1.

5 On May 10, 2005, at the parties’ request the Court sent what was described
6 as the “Second May 10, 2005 Court Note to Jurors.” The Court stated, in
7 pertinent part:

8 As to the seven verdicts that you report that you have reached a decision,
9 answer this question (without identifying by number or otherwise which verdicts
those are):

10 Does the jury consider its answers to be final and
11 irrevocable as to all such seven verdicts, regardless of
whether it ultimately reaches agreement on the
12 remaining verdict form?

13 Yes ____ No ____

14 The jury answered “yes,” and returned seven signed and sealed verdicts
15 that same day. The Court then read an *Allen* charge; thereafter the jury reported
16 that it was still hopelessly deadlocked; and the court unsealed and read the seven
17 unanimous verdicts. May 10, 2005 Tr., 36:15 - 42:1. Verdict Form 7 was the sole
18 unanswered verdict.

19 Consistent with the parties’ joint requests before the verdicts were opened,
20 and because those seven verdicts themselves are consistent and capable of being
21 implemented, I will incorporate those verdicts into the ultimate judgment.

22 **II. Post-Verdict Developments**

23 On May 12, 2005, the Court issued an order directing the parties to file
24 separate trial briefs addressing (1) whether the Plaintiff has any right to a
25 damages phase before the current jury (and, if so, as to which issues) and (2) if
26 Plaintiff has no right to present evidence at a damages phase, whether he has a
27 right to a re-trial before another jury (and, if so, as to which issues).

28 The parties, predictably enough, staked out extreme positions in their

1 written submissions. Artemis argued that the Plaintiff lost on everything because
2 he had not really established harm on the conspiracy claim, given the jury's
3 failure to return a verdict on Verdict Form 7. Artemis also argued that since the
4 jury had not found that Plaintiff had proved all the elements of fraud, somehow
5 that precluded any basis for finding Artemis liable for having joined the
6 conspiracy, because the jury had not found that Artemis violated any duty owed
7 to the Commissioner. Neither proposition has merit. The various California
8 cases that Artemis cited as to the claimed relationship between duty and civil
9 conspiracy are distinguishable or inapplicable, and in any event Artemis *did* have
10 a duty to the Plaintiff: to make accurate and honest disclosures in its Form A and
11 other filings and to not misrepresent or conceal material information. The jury's
12 answers to Verdict Form 1 and 3 establish that Artemis violated that duty.

13 The Commissioner, for his part, claimed that he had won an outright,
14 unambiguous and unqualified victory on the conspiracy claim against Artemis,
15 that the Court should ignore Verdict Form 7, and that he is entitled to present
16 evidence based upon the NOHLGA premise in seeking "lost profits" damages.
17 As will be set forth more fully below, these contentions lack merit.

18 It is not necessary to summarize the parties' memoranda as to what would
19 be encompassed in any retrial, because no such retrial is necessary.

20 **III. The Parties Have Not Settled**

21 At a short Status Conference on May 20, 2005, the Court informed the
22 parties that it would not resolve any issues relating to the Verdict Forms until and
23 unless they engaged in good faith efforts to settle their disputes. The Court
24 implored the parties to exchange proposals that were reasonable. Despite the
25 imaginative and dedicated efforts of the extremely skillful mediator with whom
26 the parties have been working for years, Professor Eric Green, no settlement was
27 reached at a mediation conducted on June 3, 2005.

28 ///

ANALYSIS

I. The Jury Returned Special Verdicts.

The Court rejects the Commissioner's argument that Verdict Form 7 should be disregarded as a superfluous special interrogatory. Verdict Form 7 was not superfluous; it went to a central contention of the Commissioner. Under Fed. R. Civ. P. 49, Verdict Form 7 is a special verdict, not a special interrogatory. *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020, 1031 (2003) ("If the jury announces only its ultimate conclusions, it returns an ordinary general verdict; if it makes factual findings in addition to the ultimate legal conclusions, it returns a general verdict with interrogatories. If it returns only factual findings, leaving the court to determine the ultimate legal result, it returns a special verdict.") As *Zhang* also noted, "[i]n the case of a special verdict, inconsistencies are problematic and require a new trial only if they arise between two or more factual findings; otherwise the determination of liability can simply be conformed to the factual findings." *Id.* at 1037-1038.

II. The Court's Duty to Reconcile the Special Verdicts with the Jury's Failure to Agree on Verdict Form 7.

The Seventh Amendment to the United States Constitution provides that "No fact tried by a jury, [sic] shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." To apply this command practically, a Court must "attempt to reconcile the jury's findings by exegesis if necessary" *Gallick v. Baltimore & O.R.R. Co.*, 372 U.S. 108, 119, 83 S.Ct. 659 (1963). Phrased another way, "When faced with a claim that verdicts are inconsistent, the Court must search for a reasonable way to read the verdicts as expressing a coherent view of the case, and must exhaust this effort before it is free to disregard the jury's verdict and remand the case for a new trial." *Toner v. Lederle Labs.*, 828 F.2d 510, 512 (9th Cir. 1987) (citations omitted). Here, there is a basis to reconcile the verdict forms.

///

1 **III. The Verdicts Are Consistent**

2 Instruction 25 was part of a series of instructions – numbers 19 through 28
3 – that addressed the Commissioner’s *fraud* claims against both Artemis and
4 Pinault. Those instructions were separated from the conspiracy instructions by
5 two instructions dealing with the defendants’ affirmative defense of statute of
6 limitations. The three instructions dealing with the claims for conspiracy were
7 numbers 30-32. There was no instruction concerning the definition of or meaning
8 of “harm” in the context of/or as applicable to the Commissioner’s *conspiracy*
9 claims.

10 The structure and language of the instructions permit the inference that the
11 jury reasonably could and did conclude that the definition of “harm” for the
12 Artemis fraud verdicts (Verdict Forms 1 and 3) was not applicable to Verdict
13 Form 5, concerning conspiracy. Verdict Forms 1 and 3 referred to the “alleged
14 fraud.” The “alleged *fraud*” was the fraud of Artemis – its misrepresentations and
15 omissions – not the *scheme* of the Altus/MAAF conspirators referred to in
16 Verdict Form 5.

17 **A. Verdict Forms 1 and 3**

18 In Verdict Forms 1 and 3, the jury unanimously found that the
19 Commissioner relied on a false representation and concealment of a material fact
20 by Artemis. In accordance with Instruction 23, the jury reasonably could have
21 found such reliance because by the time that Artemis first “got into the picture”
22 (early February 1993), the Rehabilitation Court had yet to finally accept the
23 Altus/MAAF bid. Judge Lewin did not give final approval of the Modified Plan
24 of Rehabilitation until August 13, 1993. (See exhibits 2353 and 2354). August
25 13, 1993 also was the date that Judge Lewin denied the long-pending motions for
26 rescission. (Ex. 2355). The “reliance” that the jury found, in short, could have
27 been that the Commissioner continued to advocate the consummation of the
28 remaining piece of the Altus/MAAF bid – *i.e.*, the transfer of the insurance assets

1 – instead of rescinding the transaction.

2 However, notwithstanding its findings of misrepresentation, concealment
3 and reliance in Verdict Forms 1 and 3, the jury also unanimously found that
4 Artemis’s fraud – its misrepresentation and concealment – was *not* a substantial
5 factor in causing harm to the ELIC Estate. Instruction 25 stated that in order to
6 find that the Commissioner established harm on his fraud claims against Artemis,
7 the jury had to determine, among other things, that the Commissioner would have
8 agreed to the NOLHGA bid had the alleged fraud not occurred. In applying that
9 instruction to Verdict Forms 1 and 3, the jury reasonably could have found that
10 Artemis’s misrepresentation and concealment – and indeed the earlier fraud of the
11 CDR parties, for that matter – were not a substantial factor in causing harm to the
12 Commissioner because it could not find that the Commissioner would have
13 agreed to the NOLHGA bid had the alleged fraud not occurred. Simply put, the
14 jury’s responses to Verdict Forms 1 and 3 reflect that it found that the
15 Commissioner did not prove that he would have picked the NOLHGA bid – as
16 opposed to the Sierra bid – had Artemis not made a false representation and
17 concealed a material fact. That is the same reason that it could not answer “yes”
18 to Verdict Form 7.

19 **B. Verdict Form 5**

20 In contrast to its findings of no harm for fraud, the jury found on Verdict
21 Form 5 that the Altus-led *scheme* to obtain assets from the ELIC Estate by fraud
22 did cause harm to the ELIC Estate. In so finding, the jury evidently did not feel
23 bound to apply the definition of harm in Instruction 25. The jury undoubtedly
24 understood the phrase “had the alleged fraud not occurred” in Instruction 25 as
25 referring to (and only to) Artemis’s fraud, consisting of Artemis’s own
26 misrepresentations and concealments. Those were the only claims at issue in
27 Verdict Forms 1 and 3. The jury was not directed to apply Instruction 25 to the
28 conspiracy claim, and the format and structure of the instructions (a written copy

1 of which each juror had in the jury room) entitled the jurors to conclude that
2 Instruction 25 applied only to the alleged fraud claims, not to the Altus-led
3 “scheme.” Thus, in answering Verdict Form 5, the jury apparently and reasonably
4 applied a broader notion of harm than that defined in Instruction 25 for the fraud
5 claims – namely, that the scheme caused the Commissioner not to choose *one* of
6 the bonds-in bids (either NOLHGA or Sierra). In other words, to find that the
7 *scheme* caused “harm” on Verdict Form 5, it was not necessary for the jury to
8 find, unlike for Verdicts 1 and 3, that the Commissioner would have picked the
9 NOLHGA bid; the jury could have concluded that he would have picked *either*
10 that bid *or* the Sierra bid.

11 Concluding that the Commissioner would have selected either the
12 NOLHGA or Sierra bid but for the scheme could have led the jury to identify a
13 particular harm suffered by the Commissioner as a result of his selecting the
14 Altus/MAAF bonds-out bid. Evidence was presented at trial that in 1998, the
15 ELIC Estate paid \$75 million to Aurora to settle an indemnity claim that Aurora
16 made against the Estate. NOLHGA’s key witness, Art Dummer, testified that
17 under a bonds-in bid the “indemnification problem” was not an issue and no such
18 claim for indemnification would have been made. March 29, 2005 Tr., 78:17 -
19 80:11. The Commissioner’s counsel in his closing argument reminded the jury
20 that “Dummer testified that a bonds-in bidder like New Cal – like NOLHGA –
21 actually *any* bonds-in bidder would not have demanded that tax indemnity
22 payment . . .” April 18, 2005 Tr., 50:4-5 (emphasis added). According to Mr.
23 Dummer, then, the \$75 million indemnity payment was incurred only because the
24 Commissioner selected the bonds-out Altus/MAAF bid instead of *either* the
25 NOLHGA or Sierra bonds-in bids. The jury could reasonably have relied on that
26 testimony to find “harm” in Verdict Form 5.

27 **C. Verdict Form 7**

28 That the jury could not reach unanimity on Verdict Form 7 is not

1 inconsistent with its internally consistent verdicts on Verdict Forms 1, 3 and 5.
2 Verdict Form 7 specifically (and only) asked the jury whether the Commissioner
3 would have selected the NOLHGA bid – not either of the bonds-in bids – but for
4 the misrepresentation (of Artemis), the concealment (of Artemis) or the Altus-led
5 conspiracy. Having found no harm in Verdict Forms 1 and 3, because the
6 Commissioner had not proven that he would have picked the NOLHGA bid had
7 he not relied on Artemis’s misrepresentation and concealment, the jury again (and
8 not surprisingly) was unable to find that the Commissioner would have picked the
9 NOLHGA bid absent the scheme in Verdict Form 7.

10 **D. The Jury’s Verdict Is Entitled to Be Upheld**

11 That this hardworking, patient jury evidently construed “harm” differently
12 for the conspiracy charge than for the fraud verdicts makes practical sense. This
13 jury was subjected to a bewildering and immensely complicated and lengthy
14 trial. I am convinced that the Artemis defense that the jury understood best, on an
15 issue that Artemis repeatedly hammered throughout the trial, was that even if the
16 Commissioner would not have accepted the Altus/MAAF bid, he would not
17 necessarily or likely have picked the NOLHGA bid as opposed to the Sierra bid.
18 The testimony given by Commissioner Garamendi and his lieutenants as to why
19 and how NOLHGA would have gotten the nod if Altus had not was so flatly at
20 odds with what Mr. Garamendi said (and his aides did) in 1991 and thereafter as
21 to be devoid of credibility. For that reason, I am convinced that no fair-minded
22 jury would ever unanimously adopt the Commissioner’s 2005 version of history.
23 Indeed, if the NOLHGA Premise were the basis of a Rule 50(b)(2) motion later
24 on, I would grant it.

25 **CONCLUSION**

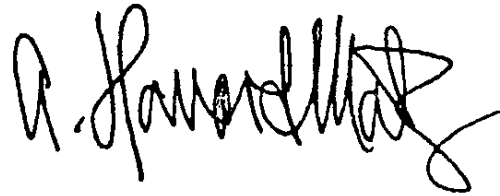
26 There will be a damages phase in this trial. Consistent with this Order, the
27 Commissioner may not proffer the NOLHGA Premise or recover damages for
28 whatever misrepresentations or omissions are reflected in the jury’s responses to

1 Verdict Forms 1 and 3. The damages phase will commence on July 12,
2 2005. The Court will inform the parties of the precise schedule later on, but the
3 presumptive schedule for each court day will be 8:30-3:00 p.m., with a 60 minute
4 lunch break. Each side will be permitted not more than eight hours of
5 questioning and not more than two hours (total) for opening and closing
6 statements.

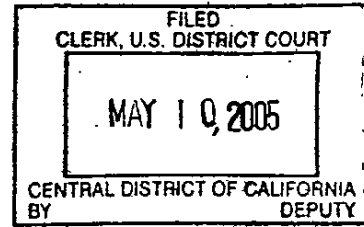
7 To the extent (if any) that the Commissioner seeks and is allowed to proffer
8 additional evidence or argument explicitly addressed to the Court's equitable
9 authority concerning his claim for restitution, he will need to do so immediately
10 after the jury returns its verdict on damages. If there is such evidence and
11 argument, the Court may submit its own questions to the jury, functioning under
12 Fed. R. Civ. P. 39(c) as an advisory jury for those claims only.

13
14 IT IS SO ORDERED.

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16 DATE: JUN 10 2005



17 A. Howard Matz
18 United States District Judge
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN GARAMENDI,

Plaintiff,

v.

ALTUS FINANCE S.A., et al.,

Defendants.

AND RELATED COUNTERCLAIMS

CASE NO. CV 99-2829 AHM (CWx)

[Consolidated with Case No.
CV 01-1339 AHM(CWX)]

VERDICT FORMS

MMW

VERDICT FORM NO. 1 AS TO DEFENDANT ARTEMIS S.A.

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Intentional Misrepresentation

We answer the questions submitted to us as follows:

1. (A) Did Artemis S.A. make a false representation of an important fact to the Commissioner?

 X Yes No

- (B) If your answer to Question 1(A) is "no," stop here, answer no further questions in this Verdict Form No. 1 and have the foreperson sign and date this first verdict form.

- (C) If your answer to Question 1(A) is "yes," you must proceed to Questions 2 through 6. If you complete answers to all those questions, have the foreperson sign this first verdict form. However, if at any point you answer "no" to any of Questions 2 through 6, stop, answer no further questions in this first verdict form, and have the Foreperson sign and date this Verdict Form No. 1. Then go to Verdict Form No. 2.

2. Did Artemis S.A. know that the representation was false or make the representation recklessly and without regard for its truth?

 X Yes No

3. Did Artemis S.A. intend that the Commissioner rely on the representation?

 X Yes No

4. Was the Commissioner unaware of the falsity of the representation?

 X Yes No

5. Did the Commissioner reasonably rely on the representation?


 X Yes No

6. Was the Commissioner's reliance on the representation a substantial factor in causing harm to the ELIC Estate?

 Yes X No

Have the Foreperson sign and date this Form now.

Signed:


Foreperson

Date:

 05/09/05

You should now go to Verdict Form No. 2.

VERDICT FORM NO. 2 AS TO DEFENDANT FRANCOIS PINAULT

COMPLETED

Intentional Misrepresentation

We answer the questions submitted to us as follows:

1. (A) Did Francois Pinault make a false representation of an important fact to the Commissioner?

_____ Yes X No

- (B) If your answer to Question 1(A) is "no," stop here, answer no further questions in this Verdict Form No. 2 and have the foreperson sign and date this second verdict form..

- (C) If your answer to Question 1(A) is "yes," you must proceed to Questions 2 through 6. If you complete answers to all those questions, have the foreperson sign this second verdict form. However, if at any point you answer "no" to any of Questions 2 through 6, stop, answer no further questions in this second verdict form, and have the Foreperson sign and date this Verdict Form No. 2. Then go to Verdict Form No. 3.

2. Did Francois Pinault know that the representation was false or make the representation recklessly and without regard for its truth?

_____ Yes _____ No

3. Did Francois Pinault intend that the Commissioner rely on the representation?

_____ Yes _____ No

4. Was the Commissioner unaware of the falsity of the representation?

_____ Yes _____ No

5. Did the Commissioner reasonably rely on the representation?

_____ Yes _____ No

6. Was the Commissioner's reliance on the representation a substantial factor in causing harm to the ELIC Estate?

_____ Yes _____ No

Have the Foreperson sign and date this Form now.

Signed:



Foreperson

Date:

05/09/05

You should now go to Verdict Form No. 3.

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VERDICT FORM NO. 3 AS TO DEFENDANT ARTEMIS S.A.

2011

Concealment

We answer the questions submitted to us as follows:

- 1. (A) Did Artemis S.A. intentionally fail to disclose an important fact known to Artemis S.A. that the Commissioner did not know and could not reasonably have discovered?

 X Yes _____ No

(B) If your answer to Question 1(A) is “no,” stop here, answer no further questions in this Verdict Form No. 3 and have the foreperson sign and date this third verdict form.

(C) If your answer to Question 1(A) is “yes,” you must proceed to Questions 2 through 4. If you complete answers to all those questions, then have the foreperson sign this third verdict form. However, if at any point you answer “no” to any of Questions 2 through 4, stop, answer no further questions and have the Foreperson sign and date this Form No. 3 and go to Verdict Form No. 4.

2. Did Artemis S.A. intend to deceive the Commissioner by concealing the fact?

 X Yes No

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3. Did the Commissioner reasonably rely on Artemis S.A.'s deception?


 X Yes No

4. Was Artemis S.A.'s concealment a substantial factor in causing harm to the ELIC Estate?

 Yes X No

Have the Foreperson sign and date this Form now.

Signed:


Foreperson

Date:

 05/09/05

You should now go to Verdict Form No. 4.

VERDICT FORM NO. 4 AS TO DEFENDANT FRANCOIS PINAULT

SCANNED

Concealment

We answer the questions submitted to us as follows:

1. (A) Did Francois Pinault intentionally fail to disclose an important fact known to Francois Pinault that the Commissioner did not know and could not reasonably have discovered?

_____ Yes X No

- (B) If your answer to Question 1(A) is “no,” stop here, answer no further questions in this Verdict Form No. 4 and have the foreperson sign and date this fourth verdict form.

- (C) If your answer to Question 1(A) is “yes,” you must proceed to Questions 2 through 4. If you complete answers to all those questions, have the foreperson sign this fourth verdict form. However, if at any point you answer “no” to any of Questions 2 through 4, stop, answer no further questions, and have the Foreperson sign and date this Verdict Form No. 4. Then go to Verdict Form No. 5.

2. Did Francois Pinault intend to deceive the Commissioner by concealing the fact?

_____ Yes _____ No

3. Did the Commissioner reasonably rely on Francois Pinault's deception?

_____ Yes _____ No

4. Was Francois Pinault's concealment a substantial factor in causing harm to the ELIC Estate?

_____ Yes _____ No

Have the Foreperson sign and date this Form now.

Signed:



Foreperson ✓

Date:

05/09/05

You should now go to Verdict Form No. 5.

SCANNED

VERDICT FORM NO. 5 AS TO DEFENDANT ARTEMIS S.A.

SCANNED

Conspiracy - Fraud

1. Did Altus agree with any of the following entities to participate in a common scheme to obtain assets from the ELIC Estate by fraud?

	<u>Yes</u>	<u>No</u>
Credit Lyonnais	<u>X</u>	___
MAAF Assurance or MAAF Vie	<u>X</u>	___
Omnium Geneve	<u>X</u>	___
SDI Vendome	<u>X</u>	___
Financiere de Pacifique ("Finapaci")	<u>X</u>	___

If your answer to any part of Question 1 is "yes," then answer Question 2. If you answered "no" to every part of Question 1, stop, answer no further questions on this Verdict Form, and have the Foreperson sign and date this Form No. 5 and go to Verdict Form No. 6.

2. Did Artemis S.A. become aware of the common scheme to obtain assets from the ELIC Estate by fraud?

X Yes _____ No

SCANNED

If your answer to Question 2 is "yes," then answer Question 3. If you answered "no" to Question 2, stop, answer no further questions on this Verdict Form, and have the Foreperson sign and date this Form No. 5 and go to Verdict Form No. 6.

3. Did Artemis S.A. agree to participate with any of the following entities in furtherance of that scheme, knowing its wrongful objective and before the scheme was accomplished?

	<u>Yes</u>	<u>No</u>
Altus	<u>X</u>	_____
Credit Lyonnais	<u>X</u>	_____
MAAF Assurance or MAAF Vie	<u>X</u>	_____
Omnium Geneve	<u>X</u>	_____
SDI Vendome	<u>X</u>	_____
Financiere de Pacifique ("Finapaci")	<u>X</u>	_____


If your answer to any part of Question 3 is "yes," then answer Question 4. If you answered "no" to every part of Question 3, stop, answer no further questions on this Verdict Form, and have the Foreperson sign and date this Form No. 5 and go to Verdict Form No. 6.

4. If your answer to any part of Question 3 was "yes," did the scheme cause harm to the ELIC Estate?

 X Yes No

SCANNED

Have the Foreperson sign and date this Form now

Signed: 
Foreperson

Date: 05/09/05

You should now go to Verdict Form No. 6.

VERDICT FORM NO. 6 AS TO DEFENDANT FRANCOIS PINAULT

SCANNED

Conspiracy - Fraud

1. Did Altus agree with any of the following entities to participate in a common scheme to obtain assets from the ELIC Estate by fraud?

	<u>Yes</u>	<u>No</u>
Credit Lyonnais	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MAAF Assurance or MAAF Vie	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Omnium Geneve	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SDI Vendome	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Financiere de Pacifique ("Finapaci")	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If your answer to any part of Question 1 is "yes," then answer

Question 2. If you answered "no" to every part of Question 1, stop, answer no further questions on this Verdict Form, and have the Foreperson sign and date this Form No. 6 and go to Verdict Form No. 7.

2. Did Francois Pinault become aware of the common scheme to obtain assets from the ELIC Estate by fraud?

_____ Yes X No

SCANNED

If your answer to Question 2 is "yes," then answer Question 3. If you answered "no" to Question 2, stop, answer no further questions on this Verdict Form, and have the Foreperson sign and date this Form No. 6 and go to Verdict Form No. 7.

3. Did Francois Pinault agree to participate with any of the following entities in furtherance of that scheme, knowing its wrongful objective and before the scheme was accomplished?

	<u>Yes</u>	<u>No</u>
Altus	_____	_____
Credit Lyonnais	_____	_____
MAAF Assurance or MAAF Vie	_____	_____
Omnium Geneve	_____	_____
SDI Vendome	_____	_____
Financiere de Pacifique ("Finapaci")	_____	_____

If your answer to any part of Question 3 is "yes," then answer Question 4. If you answered "no" to every part of Question 3, stop, answer no further questions on this Verdict Form, and have the Foreperson sign and date this Verdict Form No. 6 and go to Verdict Form No. 7.

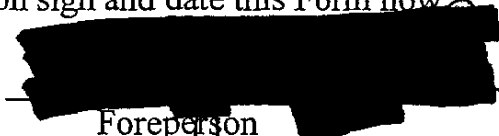
4. If your answer to any part of Question 3 was "yes," did the scheme cause harm to the ELIC Estate?

_____ Yes _____ No

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Have the Foreperson sign and date this Form now.

Signed:


Foreperson

Date:

05/09/05

You should now go to Verdict Form No. 7.

VERDICT FORM No. 8: AFFIRMATIVE DEFENSES

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Affirmative Defenses

We answer the questions submitted to us as follows:

1. On August 20, 1999, the Commissioner notified the defendants of his potential litigation claims against them. Do you find by a preponderance of the evidence that the Commissioner discovered or should have discovered the basis for his fraud claims against Artemis and François Pinault before August 20, 1996?

_____ Yes X No

If your answer is "no," do not answer Question 2 and proceed to Question 3.

2. (A) Do you find that the Commissioner proved that the defendants, by concealing important information, hindered the Commissioner from discovering the basis for his fraud claims until sometime after August 20, 1996?

_____ Yes _____ No

- (B) If your answer to 2(A) is "yes," do you find that before August 20, 1996, the Commissioner had been diligent in trying to determine whether he had a basis to sue the defendants for fraud?

_____ Yes _____ No

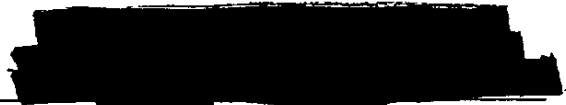
(C) If your answers to both 2(A) and 2(B) are "yes," do you find that the Commissioner had actually discovered the basis for his fraud claims against Artemis and Francois Pinault before August 20, 1996?

_____ Yes _____ No

3. Do you find by clear and convincing evidence that in September, 1999, the Commissioner, with full knowledge of his claims against Artemis and Francois Pinault, intended to give up his right to bring this lawsuit against Artemis and Francois Pinault?

_____ Yes _____ + _____ No

Have the foreperson sign and date this Form now.

Signed: 
Foreperson

Dated: 05/09/05