UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: **SOUTH COAST OIL CORPORATION,** Debtor(s).	Case No: 8:07-bk-12994-TA Chapter: 11 **STATEMENT OF DECISION ON OSC RE CONTEMPT AND ON MOTION FOR TERMINATING SANCTIONS** Date: Jan. 20, 21 and 24, 2011 Time: 10:00 a.m. Location: 5B

This matter last came on for hearing beginning January 20 and concluding January 24, 2011 on the court's Revised Order to Show Cause re Civil Contempt entered July 29, 2009 and the Revised OSC re Civil Contempt entered January 12, 2011 (collectively "OSC"). A related Motion for Terminating Sanctions brought by petitioning creditors' was heard January 28, 2011. These related hearings ended nine days of testimony spread over nearly an 18-month period. Literally hundreds of exhibits were considered and numerous contentious discovery disputes preceded these hearings. At the conclusion of trial, the court requested that each side submit summation briefs which were filed on or near March 31, 2011. After

considering the testimony, exhibits and briefs of all parties, the court renders this decision.

I. Facts

A. Background

There is very little the parties agree upon. The search for truth was made even more difficult by the extraordinary level of animosity and lack of civility which seemed to prevail throughout these many months that the OSC has been pending. Nevertheless, the court believes the following is an accurate (if very condensed) summary of the convoluted facts relevant to the OSC. We begin with some older but very necessary history.

Debtor South Coast Oil Corporation ("Debtor") is a corporation engaged in oil exploration and production. It has a long and tortured history of state court litigation involving shareholder disputes and in-fighting which precipitated corporate gridlock and the filing of an involuntary petition on September 19, 2007[1]. Another consequence of the struggle for control of Debtor was the appointment of a Chapter 11 trustee by the court in November 2007. James Joseph was appointed Chapter 11 trustee and has held that position since November 26, 2007.

One of the most valuable assets of the Debtor is its 100% ownership in subsidiary corporation, Angus Petroleum Corporation ("Angus"). Angus owns a 50% working interest in a collection of oil and gas leases and production facilities called "The Springfield Unit." The Springfield Unit is located in Huntington Beach, California. The other 50% interest was owned as of 1989 by Columbia Gas Development Corporation under an Agreement dated October 31, 1989 ("Agreement") [Exhibit "HH"]. Hunt Petroleum (AEC), Inc. ("Hunt") eventually became

[1] A similar convoluted tale of litigation and internecine shareholder struggles can be reported for a related corporation, Energy Development Corporation, which filed a voluntary Chapter 11 petition 7/21/2006 now pending under case 8:06-11175-TA. Mr. Stephen Harris was formerly CEO and a shareholder of both entities. Mr. Jack Wolfe now serves as Chapter 11 trustee for Energy Development.

the successor to the interests of Columbia Gas in the other 50% interest in the Springfield Unit. Litigation ensued between Hunt and Angus whereby Hunt sought, among other things, capping of the wells and closing of the Angus facility in view of its long dormancy which litigation was still pending when the bankruptcy petition was filed. In addition, since the Springfield Unit had been dormant for some period of years, Angus became the subject of various enforcement actions by the State Division of Oil and Gas and Geothermal Resources ("DOGGR") resulting in a cap and abandon Order #976 issued in July 2005. The order #976 was appealed by Angus. Before the involuntary petition was even filed, Douglas Mahaffey, counsel for the petitioning creditors, and his client Don White, became engaged in an effort to acquire the interest of Hunt in The Springfield Unit [Exhibits "JJ" and "LL"]. At some point in about autumn 2008, the interests of Hunt were acquired by XTO Offshore, Inc. ("XTO") which continued to be represented by the same lawyer, David Ossentjuk of Musick, Peeler & Garrett LLP, who had previously represented Hunt.

B. The TRO

For reasons never fully explained in the record, but undoubtedly part of the internecine and interminable struggles over control of the debtor, Blackstone Oil & Gas, Inc. ("Blackstone"), a corporation owned in whole or in part by dissident shareholders of the debtor Steven Sogard, Merlin M. Witte, Sr. and Michael Witte, Jr., father and son, who were resigned directors and former officers of the debtor, and represented by and/or managed by lawyers Mark Dodge and Edward Lear, came into possession of a grant deed dated July 17, 2007, signed by Michael Witte, purporting to act as an officer of Angus, transferring Angus' facility to Blackstone. Additionally, Blackstone had caused to be recorded a trust deed to secure an

alleged promissory note also signed by Mr. Witte in the amount of $500,000 against the Angus facility in favor of Blackstone. Petitioning creditors challenged the *bona fides* of these instruments.

In the context of these challenged instruments and in response to an emergency motion on discovery issues and for a TRO brought by petitioning creditors, the court issued its order titled "Order: (1) On Emergency Motion of Petitioning Creditors For Issuance of a Temporary Restraining Order…" which was entered November 7, 2007 ("TRO"). Under the TRO, among other things, Wittes Sr. and Jr., Daniel To, a purported CEO of Debtor and Blackstone, as well as "their successors, assigns, officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control or under common control with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device…" are enjoined from recording the deed or further encumbering the Angus assets, in whole or in part, transferring any interest in the note, trust or deed to third parties or making any further advances under the purported note. At paragraph 4 of the TRO it is further provided:

> Absent further order of this Court on notice to the Petitioning Creditors, Respondents are precluded and restrained from under taking any action which has, or foreseeably may have, a material adverse effect on the assets and property of the South Coast Oil Corporation bankruptcy estate, which includes it shares in Angus…

It is for alleged violation of this ¶4 of the TRO that the OSC was issued.

C. Competition for the Co-interest in the Springfield Unit

In the late autumn of 2008 Angus' luck changed. The California Court of Appeal on December 17, 2008 issued its opinion reversing the DOGGR cap and abandon order [Exhibit "30"]. The matter was remanded to the Superior Court for further determination. It was a few months before this in September 2008 that XTO acquired the interest of Hunt in the Springfield Unit. XTO, unlike Hunt, was interested in unloading the Springfield Unit interest and settling the litigation with Angus, which represented a distinct change from earlier efforts at acquisition or settlement by the trustee which were unsuccessful. [*See e.g.* Exhibit "21" letter of August 21, 2008 to James Joseph]. One of the problems had been, of course, that neither the bankruptcy estate nor Angus had any money. Among other concerns, Hunt had wanted to cap the wells, dismantle the facility and/or obtain meaningful indemnification from ongoing liability on the Springfield Unit. In the background, Blackstone also was seeking to acquire the Hunt interest in the Springfield Unit. [*See e.g.* Exhibits "217" and "21 August 29, 2008 email from Mark Dodge to David Ossentjuk]. In or about September, 2008, a new player entered the fray, E & B Natural Resources Management Corporation ("E&B"), whose major shareholder, either directly or indirectly, was Francesco Galesi and whose president was Stephen Layton. E&B is reportedly an established and well-financed owner of energy properties primarily in Bakersfield, California. Blackstone made E&B aware of the XTO opportunity and on November 9, 2008 E&B entered into a joint venture with Blackstone to acquire the XTO interest in the Springfield Unit [Exhibits "7" and "8"]. Mark Dodge made known to XTO through David Ossentjuk the continued interest of Blackstone in acquiring the Springfield Unit interest and the superior financial capacity of E&B; to his fellow owners of Blackstone, Mr. Dodge urged caution in keeping from Mr. Mahaffey, the petitioning creditors' counsel and prior suitor

for the Hunt interest, Blackstone's continuing interest or involvement with E&B, lest counter-moves be incited. [Exhibit "316" November 20, 2008 email from Mark Dodge].

On or about January 7, 2009 XTO, E&B and an E&B nominee, Elysium West, LLC ("Elysium") drew up a Purchase, Sale and Indemnity Agreement of that date ("Purchase Agreement") which called for an acquisition of the XTO interest by Elysium. On January 8, 2009 XTO's lawyer, David Ossentjuk, received a copy of the Purchase Agreement executed by Elysium and E&B together with a $50,000 deposit. [Exhibits "FF" and "OO"] On the next day, January 9, Mr. Ossentjuk received a telephone call from Mr. Mahaffey pointing out a provision in the 1989 Agreement [Exhibit "HH"¶16); this provision gave Angus a first opportunity to acquire the other 50% interest in the Springfield Unit which would be triggered by receipt by Angus of notice of an intent to sell by the co-owner, XTO. The right to tender an offer would be perfected by a reply from Angus indicating intent to acquire the interest within 10 days of the initial notice. The opportunity to make an offer would then last 90 days measured from Angus' receipt of the initial notice of intent to sell. On January 15, 2009 Mr. Ossentjuk received a letter dated January 12 signed by Mr. Mahaffey acting for Angus indicating "Angus does want to acquire all leasehold interest in the Springfield Unit, if any, that XTO owns…**After Angus receives the requisite notice under paragraph 16**, Angus would like to present its offer to purchase and its claim for past joint interest billings, and claim for lost profits to XTO in person to the decision makers of XTO." (Emphasis added) [Exhibit "PP"] While Mr. Ossentjuk did not necessarily concede that his client was required to do so, in response on January 16, 2009 he sent a letter to James Joseph, cc to Mr. Mahaffey, pursuant to the Agreement [Exhibit "SS"] wherein notice was given of XTO's intent to sell (and presumably invoking a ten-day opportunity of Angus to give its reciprocal notice of intent to purchase). On January 20, 2009

Mr. Ossentjuk received XTO's signature on the Purchase Agreement between XTO and Elysium ["TT"]. Mr. Ossentjuk held the now fully-executed Elysium/XTO Purchase Agreement but did not immediately inform Elysium of his receipt of same, waiting through the ten-day period for Angus to give notice of intent to make an offer. According to Mr. Ossentjuk no response verbal or written was received with the ten-day period (or at all) in response to his January 16 letter. Of course, this presumes that the January 12 letter, which actually preceded XTO's initial notice, was of no effect in this regard. Mr. Ossentjuk apparently concluded so since the January 12 letter does reference an offer to be presented ***after*** the ten-day notice was given. While no evidence was presented on this point, the court infers Mr. Ossentjuk and XTO may have also been somewhat discouraged by the January 12 letter's additional reference to Angus' "past joint interest billings and claim for lost profits…" suggesting an intent to exact a setoff of some sort. Mr. Dodge finally picked up the fully executed Purchase Agreement on January 30, 2009, after Mr. Ossentjuk concluded that Angus had elected not to further pursue the purchase [Exhibit "FF" at ¶¶ 13-22].

There is no evidence that at anytime between January 9 and April 1, 2009 when the sale to Elysium under the Purchase Agreement closed,[2] that either Messrs. Mahaffey or Joseph, or anyone else acting on behalf of the estate or the petitioning creditors, made known orally or in writing to any of Mr. Ossentjuk, E&B or Elysium of the existence of the TRO. Moreover, Mr. Joseph actually met with whom he knew to be Blackstone and E&B's agents, Steven Sogard and Stephen Layton on January 21 and 28, 2009, respectively, regarding Elysium's "due diligence" efforts and non-disclosure agreement preliminary to its purchase of XTO's interest [See Exhibit ""VV"; James Joseph letter of February 4, 2009 to E&B cc to Mr.

[2] The Purchase Agreement had actually expired of its own terms on March 15, yet XTO allowed a late closing notwithstanding.

Mahaffey]. So the pendency of an attempted purchase by Elysium, and involvement by Blackstone therein, was clearly no secret to the parties throughout the period of January-March, 2009, yet the topic of the TRO *never came up*. Petitioning creditors attempt to make something sinister of the fact that the actual close of the transaction by E&B's transfer of funds occurred on the eve of a continued settlement conference ("MSC") April 1, 2009 in the Angus/Hunt litigation, which was scheduled to be attended by the trustee. But the court sees no particular import to this sequence of events since the trustee had been aware for at least two months before that Elysium was attempting to close a purchase of the XTO interest and that Blackstone (a party to the TRO) was involved. Certainly Elysium might have been concerned in practical terms that they faced a danger of losing the purchase at the MSC in favor of the trustee and so wired the funds at the last moment, but how this has any particular connection to the TRO is never adequately explained. Presumably, the petitioning creditors rely instead upon imputed notice of the TRO through Mr. Dodge who acted as attorney for E&B and Elysium (and one presumes the Blackstone/E&B joint venture) in initially negotiating and documenting the Purchase Agreement.

D. Events Following the Close

The Elysium/ E&B/Blackstone joint venture has apparently owned the other 50% of the Springfield Unit since April 1, 2009. Operations are being run by Bob Grayson's company under the direction of Mr. Lou Zylstra, apparently with permission of the Chapter 11 trustee of the parent debtor, James Joseph. The relationship between Angus and Elysium/E&B/Blackstone has apparently not been cordial. Petitioning creditors complain that as 50% owner Elysium/E&B/Blackstone should have by now made substantial capital

contributions to the running of the Springfield Unit, but have not done so as part of some deliberate effort to drive down the price of Angus' 50% interest, preliminary to some inevitable buy-out by Elysium. The evidence of this is conjectural but this lack of contribution has apparently prevented Angus from accumulating any significant cash. Petitioning creditors also complain in the same theme that a Blackstone member, Joyce Fahey, has engaged in a deliberate campaign to contact various government agencies in an effort to dig up dirt on Angus and cause a shut-down. As discussed below, this is similarly conjectural and, even if true, is probably privileged. The good news is that DOGGR has since rescinded its cap and fill order and the Springfield Unit has been in production for several months.

E. The Oil Spill

On the night of January 21, 2010, during very heavy rains, some 600-700 gallons of oil were mysteriously discharged from (or from near) the Springfield Unit site into the Huntington Beach storm channel leading to the Pacific Ocean. This incident is the subject of an ongoing investigation by the Coast Guard, EPA, Fish & Game and other authorities. If Angus is determined to be culpable, this may result in imposition of millions in clean-up cost reimbursement. The petitioning creditors, echoing the same theme as before, almost immediately alleged that this was an act of sabotage and accused Elysium/E&B/Blackstone and Messrs. Harris and Woolsey, as employed agents, of complicity in the spill; this belatedly was made part of the OSC. At the conclusion of the petitioning creditors' case the court was not persuaded that any clear explanation of the cause of the spill was given, much less as to who was responsible, and so dismissed this portion of the OSC as not proved.

II. The OSC re Contempt

A. Standard of Proof

"Although the availability of civil contempt sanctions under § 105(a) has a checkered past in our circuit, the recent precedent makes clear that this remedy is available." *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1189-1190 (9th Cir. 2003) *citing Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir.2002); *Walls v. Wells Fargo Bank*, 276 F.3d 502, 507 (9th Cir.2002). "The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *Knupfer*, 322 F. 3d at 1190-1191. So, the question becomes whether it has been shown by clear and convincing evidence that any of the alleged contemnors knowingly and willfully violated the TRO. Civil contempt consists of a party's disobedience to a specific and definite court order by failure to take all reasonable steps with the party's power to comply. *Go-Video, Inc. v. The Motion Picture Ass'n. of America (In re Dual-Deck Video Cassette Recorder Antitrust Litig*.), 10 F. 3d 693, 695 (9th Cir. 1993). This may involve the subsidiary question of whether the alleged contemnor operated under a good faith and reasonable interpretation of the order. *Id.*

B. Was the TRO Vague?

The E&B parties and the Blackstone parties both argue that they should not be held liable because one must interpret the TRO narrowly, based on the doctrine *ejusdem generis.* [3] They argue that since the first three paragraphs of the TRO appear to focus only on the grant deed, the promissory note and trust deed, it is at least a fair interpretation under this canon of

[3] Translated from Latin as "of the same kind or class." A canon of construction that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed. Blacks Law Dictionary, Thomson West, 8th Ed. (2004).

construction that the far more general prohibition found in paragraph 4 of the TRO should be narrowly construed to mean only acts of a similar nature involving recording of a deed, trust deed, promissory note, etc. *See e.g. California State Legislative Bd. United Transp. Union v. Dept of Transportation*, 400 F. 3d 760, 763-64 (9th Cir. 2005); *Sperling v. White*, 30 F. Supp. 2d 1246, 1253 (C.D. Cal. 1998). The alleged contemnors point out that purchase of a third party's interest in the Springfield Unit is far afield of these narrow issues. There is much to say for this argument that the TRO should be construed in the context in which it was issued. It has the added benefit of avoiding a related argument of the alleged contemnors i.e. that absent such a limiting construction, the TRO at paragraph 4 becomes so very wide in its reach as to also become vague and ambiguous. The court agrees. The specificity requirement found at FED. R. CIV. PROC. 65(d) exists in part because of traditional notions of due process. In the United States of America our courts do not punish citizens unless they be given first a fair opportunity to comport themselves with the dictates of law. This means they must have fair notice of what the order requires them to do or not to do; they cannot be left to scratch their heads as to whether any particular conduct is enjoined or not. *See e.g Reno Air Racing Ass'n v. McCord*, 452 F. 3d 1126, 1132 (9th Cir. 2006).

The court agrees that paragraph 4, if not limited by the context in which the TRO was issued, is an extremely broad prohibition against anything "which has, or *foreseeably may have*, a material adverse effect on the assets and property of the South Coast Oil Corporation bankruptcy estate, which includes its shares in Angus." (Emphasis added). If not reasonably limited, for example, this could be read as meaning that the alleged contemnors could not file a plan, or even vote on a plan if someone is prepared to argue this "may have" an "adverse effect." Or, in the context of buying property, a wide interpretation taken to absurd levels could

be read to mean that Blackstone was effectively out of the oil business entirely in that it could not compete any time, anywhere for a production interest if Angus might be thought to have some interest in acquisition of the same property. Certainly the court agrees with the petitioning creditors' argument that the better course in such cases is to seek clarification from the court rather than blunder ahead and risk contempt. *See e.g. McComb v. Jacksonville Paper Co*., 336 U.S. 187, 192-93 (1949); *Goya Foods, Inc. v. Wallack Management*, 290 F. 3d 63, 75-76 (1st Cir. 2002). But we do not have that set of facts. Instead, the court must evaluate whether in retrospect the alleged contemnors had adequate notice of what specifically was prohibited under the TRO and whether their conduct crossed the line. The court believes the TRO was too vague at its paragraph 4.

C. Was Even a Narrower TRO violated?

The court concludes not only did the alleged contemnors not have due process advance notice because of the vagueness of the TRO's paragraph 4, it is not clear that the conduct even crossed the line assuming any reasonable narrower construction of the language. One must remember what interest we are considering here. We do not speak of the shares of Angus because the estate already owns 100% and this did not change nor could it, nor of any alleged injury to the Springfield Unit production facility as that has remained the same before and after.[4] At most we speak of some rather vague expectancy of purchase by Angus of the other 50% owners' interest in the Springfield Unit. However, as to how real that is/was varies considerably upon one's perspective.

[4] Actually, one school of thought is that the Elysium/E&B/Blackstone purchase of the XTO interest benefitted Angus considerably since unlike Hunt the current owners appear to be interested in resuming full production and not in capping the wells.

The only expectancy that could be regarded as more than ethereal would have been the "first opportunity" rights arising under paragraph 16 of the 1989 Angus/Columbia Gas Agreement. But there are real problems with this as well. First, there is no evidence that any of the alleged contemnors had any prior knowledge of the existence of this provision. It seemed to have taken Mr. Ossentjuk by surprise and so it is a fair conclusion that none of E&B, Elysium or Blackstone had any prior reason to know of its existence either. So it cannot serve as an act of contempt to take action that arguably interfered with a completely unknown contractual right. Second, given the sequence of events as they unfolded in January, 2009, it is at best unclear to the court that Angus had any further rights under that paragraph 16 once Angus failed to respond after Mr. Ossentjuk's January 16, 2009 letter [Exhibit "SS"] within ten days or at all. Reliance on the January 12, 2009 letter from Angus signed by Mr. Mahaffey [Exhibit "PP"] to fulfill the contractual formula is problematic given his own reference therein to a response *after the initial 10-day notice is given*. Third, remember, the most that Angus had was a right to make an offer; the 90-day period was not an option to purchase, as is made objectively clear in the further text of paragraph 16. Therefore, XTO retained the absolute right to reject any such offer from Angus at any time, whether during the 90-day period or after, in favor of a better one. Given E&B's undoubted financial power, and the cash-starved position of Angus in January-March 2009, it is hard for the court to see how Angus had a legitimate expectation of anything on account of paragraph 16 of the 1989 Agreement at the April 1 MSC or otherwise. Even if one could argue that some kind of expectancy did exist, this is simply too ephemeral and doubtful to provide a basis for contempt. Clearly, the Chapter 11 trustee, James Joseph, thought so little of the interplay, if any, between the TRO and Angus' hope in gaining the XTO interest that the subject of the TRO was never brought up at all during the

January-March, 2009 time period even though he was in contact with both Elysium and Blackstone personnel.

D. Did E&B Parties Receive Notice?

In addition to the above, there is a profound question of whether as to the E&B/Elysium parties there is any basis whatsoever to find that notice of the TRO was given. The only possible basis appearing in the evidence is imputed notice by reason of the fact that Mr. Mark Dodge acted briefly as counsel for the joint venture. But this is unsatisfactory as a basis for a finding of contempt. Contempt is a serious matter and so the law requires that an alleged contemnor have *actual knowledge* of the order, not one imputed in law. *In re Franks*, 363 B.R. 839, 843 (Bankr. N.D. Ohio 2006); *Flip Side Productions, Inc. v. Jam Productions, Ltd.*, 125 F.R.D. 144, 147 (N.D. Ill. 1989); *Slaiby v. Rassman (In re Slaiby)*, 73 B.R. 442, 444 (Bankr. D.N.H.1987).

E. Joyce Fahey and the *Noerr-Pennington* Doctrine

In the period after the sale of the XTO interest to the joint venture, petitioning creditors argue that Joyce Fahey at the behest of Blackstone undertook a campaign to dig up dirt on Angus with the purpose of convincing various government agencies and officials (some of whom she may have had prior relationships with) to close Angus down. Presumably, according to the petitioning creditors' theory, this was for the purpose of driving down the price of Angus so as to allow the joint venture to scoop up these valuable assets at a bargain. The problem here is there is little or no evidence that this is what happened. While Ms. Fahey freely admitted contacting some officials, the evidence did not show that she attempted to persuade

them to take action against Angus. It is equally plausible that her purpose was as she testified, to keep informed on behalf of the joint venture as to what was going on with the various government regulators who might have influence on the profitability of the Springfield Unit. But even if it were otherwise, the court very much doubts it could be a basis for a finding of contempt. Alleged contemnors correctly cite the *Noerr-Pennington*[5] doctrine which, even outside the anti-trust context, has been held to make petitioners of government or administrative agencies immune from civil liability for making those petitions. *See e.g. Oregon Natural Resources Council v. Mohla*, 944 F. 2d 531, 533-34 (9th Cir. 1991); *Sosa v. DIRECTV, Inc.*, 437 F. 3d 923, 942 (9th Cir. 2006). So, not only is it unclear that Ms. Fahey did anything that could reasonably be anticipated to have harmed the property interests of the estate, including Angus, within any reasonable meaning of the TRO, even if she had done so, it is likely such activity would have been privileged.

II. The Motion for Terminating Sanctions

The court saw no further points and authorities from petitioning creditors on this subject. The court has reviewed the latest papers filed by the E&B parties including the transcript of Scott Hunter's February 17, 2011 deposition. The court accepts the explanation offered that documents E&B 2463-2464 and Exhibit 367 as produced did not represent some deliberate effort to obscure evidence by cut and paste, but rather was purely inadvertent. The position as stated by the E&B parties concerning their withholding Mr. Newhouse's emails to his clients was fully consistent with the court's July 16, 2010 order. On the somewhat more subtle

[5] This doctrine derives its name from two Supreme Court anti-trust cases *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and *United Mine Workers of America v. Pennington*, 381 U.S. 657 (1965). It holds that on First Amendment grounds those who petition the government for redress of grievances cannot by reason thereof be held civilly liable.

question of whether the privilege might extend to communications that were part of a larger string of client emails, reportedly these were turned over in any case to petitioning creditors so it is unnecessary to further address this question. In sum, the court sees no basis upon which to impose any sanctions, let alone terminating sanctions.

III. Conclusion

The court finds no violation of the TRO and no basis for a civil contempt; therefore, the OSC is discharged. Similarly, no basis is shown for imposition of discovery sanctions and so the motion for terminating sanction is denied. This statement shall serve as findings under Rule 52(a)(1). Respondents are to submit an order consistent with this statement.

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DATED: May 16, 2011

Theodor C. Albert
United States Bankruptcy Judge

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NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) STATEMENT OF DECISION ON OSC RE CONTEMPT AND ON MOTION FOR TERMINATING SANCTIONS was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

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