IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 810 of 2011

OCEANA IN BELIZE	**1st CLAIMANT**
CITIZENS ORGANIZED FOR LIBERTY THROUGH ACTION (COLA)	**2nd CLAIMANT**
BELIZE COALIATION TO SAVE OUR NATURAL HERITAGE	**3rd CLAIMANT**
AND	
MINISTER OF NATURAL RESOURCES AND THE ENVIRONMENT	**DEFENDANT**

Trial Dates
2013
5th February
16th April

Mr. Godfrey Smith SC for the claimants.
Mr. Denys Barrow SC, Mr. Nigel Hawke Deputy Solicitor General, Ms. Naima Barrow and Mr. Herbert Panton for the defendant.

LEGALL J.

JUDGMENT

The Claim

1. This is a claim against the defendant mainly for declarations that

agreements for offshore oil exploration and drilling for petroleum, as defined in the agreements, made between the Government and six companies, whose objects include exploration and drilling for petroleum, are unlawful on the grounds that the agreements were not made in accordance with the provisions of several statutes, namely, the Environmental Protection Act, Chapter 328; the Petroleum Act, Chapter 225; the Fisheries Act, Chapter 210; and the National Parks Systems Act, Chapter 215. The claimants also claim an order for certiorari to quash the agreements, and an order directing the defendant to terminate or not to renew the agreements, and also for an injunction.

2. The government made six agreements, called Production Sharing Agreements (PSAs) with six companies, duly incorporated under the laws of Belize, namely, Island Oil Belize Limited with an agreement made on 25th May, 2004; Miles Tropical Energy Limited; Petrol Belize Company Limited; Princess Petroleum Belize Limited, Providence Energy Belize Limited; and Soil Oil Belize Limited, all five companies with agreements made on 12th October, 2007. The claimants, in a fixed date claim form for administrative orders, claim against the defendant that all the PSAs with the above companies are unlawful and contrary to provisions of the above statutes. The reliefs claimed are drafted as follows:

> "(1) A Declaration that the six Production Sharing Agreements, dated May 25th 2004 or October 12th 2007 and signed

respectively, between the Government of Belize and Island Oil Belize Ltd, Miles Tropical Energy Ltd, Petro Belize Company Ltd, Princess Petroleum Ltd, Providence Energy Belize Ltd, and SOL Oil Belize Ltd. (the PSAs) are unlawful, null and void in that no environmental impact assessment was carried out before they were awarded, as required by section 20(1) of the Environmental Protection Act, Chapter 328 of the Laws of Belize (R.E. 2000).

(2) A Declaration that the PSAs are unlawful; null and void in that they were awarded without any public notice or competitive public bidding in breach of section 13 of the Petroleum Act, Chapter 225 of the Laws of Belize (R.E. 2000).

(3) A Declaration that the PSAs are unlawful, null and void in that they were awarded to companies that are unqualified, in breach of section 11 of the Petroleum Act.

(4) A Declaration that the PSAs are unlawful, null and void in that they include protected marine reserves, in breach of section 14 of the Fisheries Act, Chapter 210 of the Laws of Belize (R.E. 2000).

(5) A Declaration that the SOL Oil Belize Ltd, and Princess Petroleum Ltd PSAs are unlawful, null and void in that they include a national park and natural monument, respectively, in breach of section 6 of the National Parks System Act, Chapter 215 of the Laws of Belize (R.E. 2000).

(6) A Declaration that the PSAs are unlawful, null and void in that they were renewed in spite of the companies' failure to comply with the PSAs.

(7) An order of certiorari to remove this Honourable Court and quash the six PSAs.

(8) An Order directing the defendant to terminate the the PSAs or not to renew the said PSAs when next they come up for renewal.
(9) An injunction restraining the defendant from renewing the said PSAs until the determination of this claim.
(10) Further or other relief.
(11) Costs."

Applications

3. By applications dated 14th and 15th May, 2012, the second and third claimants applied to be joined as claimants to the claim under Rules 19.3 (2) (b) and 56 (11) (1) (2) (c) of the Supreme Court (Civil procedure) Rules 2005. Rule 19(3) 2(b) sets out the procedure for adding parties to a claim, which was complied with by the applicants. According to Rule 56(11)(1)(2)(c), the court, at the first hearing, must give directives to ensure the expeditious and just trial of the claim, including allowing "any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim." Before exercising the jurisdiction of the court to add a party to a claim, the court ought to be satisfied, from the evidence, that the claim has a direct connection or effect on the rights or interest or property of the party, and therefore the party has a sufficient interest in the claim. The evidence in the affidavits is that the applicants are non governmental organizations, whose objectives include the protection of the environment and the natural heritage of Belize; to raise awareness about responsible oil exploration in Belize, and to ensure that oil exploration is carried out in accordance with the relevant legislation and with due regard for sound environmental

safeguards. This evidence shows that the applicants have sufficient interest in the claim entitling them to be added as claimant. The defendants objected to the application on the main ground that permission for judicial review had not been obtained before bringing the claim, and until that issue of whether permission is required is settled, the application to add parties to the claim is premature. I granted on 7th June, 2012 the application of the applicants to be added as claimants for the above reasons, and also on the ground, that I did not see merit on the permission ground, for the reasons given below.

4. The defendants further state that declarations claimed are out of time because they were not brought within the one year of the cause of action in the claim, as required by section 27 of the Limitation Act Cap. 170 which states:

> "Actions against public authorities
>
> 27.-(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued:
>
> Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.
>
> (2) This section shall not apply to any action to which the Public Authorities Protection Act does not apply, or to any criminal proceeding."

5. The limitation period in section 27(1) would only apply if the Public Authorities Act does not apply to the claim. In ***Froyland Gilharry v. Transport Board et all C.A. No. 32 of 2011*** the Court of Appeal considered among other authorities, its previous decision of ***Castillo v. Corozal Town Board and Another 1983 37 WIR 86*** and also considered whether section 3(1) of the Public Authorities Protection Act applied to applications for judicial review. Section 3(1) states:

> "3.-(1) No writ shall be sued out against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent."

6. It does not appear that the Court of Appeal agreed, on applications for judicial review, with general dictum in ***Castillo*** "that section 3(1)" provided for "a mandatory condition precedent to the institution of a suit against a Public Authority (as defined) namely the delivery of the notice in writing in the terms stipulated;" but cited and followed, several other authorities, that held that "certiorari is not an action within the Public Authorities Act 1893": see ***R v. Port of London authority 1919 1 KB 176***; and ***Roberts v. Metropolitan Borough of Ballersed 1914 LT 566***. The Court of Appeal concluded that the

Public Authorities Protection Act did "not apply either on principle or on authority to applications for judicial review." In other words, applications for judicial review are not required to conform to the one month stipulation in section 3(1) above. The Court of Appeal also gave a description of judicial review at paragraph 66 of the judgment. "Judicial review" says the court "describes the process by which the courts exercise a supervisory jurisdiction over the activities of Public Authorities in the field of public law: Clive Lewis QC "Judicial Remedies in Public Law 4th edition paragraph 2-001." This description of judicial review, which is relevant and binding on me, applies to the claim before me for declarations and certiorari against the defendants. I therefore rule that the Public Authorities Protection Act Chapter 31 is not applicable to the claims in this case. By virtue of section 27(2) of the Limitation Act, the claims are therefore not limited to the one year stipulation in section 27(1) of that Act.

7. In terms of the claim for certiorari, no permission was obtained under Rule 56.3 (1) of the Supreme Court (Civil Procedure) Rules 2005, before bringing this claim. The relief of certiorari is not trivial or frivolous, but arguable. Considering the overriding objective of the Rules, and the case management powers of the court under Rules 26(1)(u) and 26 (9), I rule that the claim for certiorari would remain. In addition, I consider the views expressed in ***Watson v. Fernandes Caribbean Court of Justice Appeal No. 2 of 2006*** where the justices say that "courts exist to do justice .... in a judicial system that proceeds with speed and efficiency." The judges continue: "Justice is not served by depriving parties of the ability to have their cases

decided on the merits, because of a purely technical procedural breach ...." The application to strike out the claims is therefore refused.

8. We may now return to the reliefs claimed in the claim form. The main thrust of the claimants' case is that the PSAs were not made in accordance with the above legislation, and therefore they are unlawful. The duty of the court is to interpret the legislation and to decide whether or not the PSAs were made in accordance with the legislation.

The Legislation

(a) Fisheries Act

9. The claimants submit that the defendant entered into PSAs with the above mentioned companies or contractors for oil exploration in five marine reserves without obtaining a licence from the Fisheries Administrator as required by section 14(3) of the Fisheries Act Chapter 210. Section 14(3) is as follows:

> "14.-(3) No person shall, in a marine reserve-
> (a) engage in fishing;
> (b) damage, destroy or remove any species of flora or fauna from its place;
> (c) engage in any scientific study or research;
> (d) damage, destroy or disturb the natural beauty of such area;
> (e) do any other act which may be prohibited by any order

made by the Minister from time to time;

without a licence issued by the Fisheries Administrator."

Section 14(1) authorizes the Minister, where he considers that extra ordinary measures are necessary, by order declare an area within the fisheries limits of Belize, to be a marine reserve. No such order under section 14(1) with respect to the portion of sea covered by the PSAs was exhibited, but there is evidence in the affidavit of Matura-Shepherd that "to the best of my knowledge, no licence was issued by the Fisheries Administrator for entering into the PSAs that include marine reserves."

10. In the absence of a denial that marine reserves are within the area covered by PSAs, I accept the evidence that the PSAs include marine reserves. The case for the claimant is that oil exploration could damage, destroy or disturb, the natural beauty of the marine reserve, and since the PSAs authorize oil exploration in such reserve, a licence is a "condition precedent" to do any of the matters mentioned in section 14(3). It seems to me that section 14(3) does not absolutely prohibit any matter mentioned in (a) to (d) of the section, but these matters may be done, on receipt of a licence from the Fisheries Administrator. The section does not prescribe or imply that a licence is required prior to making an agreement which involves the matters in the section. What section 14(3) requires, in my view, is that a licence has to be obtained prior to undertaking tasks in the agreement involving the matters stated in the section 14(3). The companies

have, until the stage comes for the commencement of the matters stated in section 14(3), to apply for a licence under the Fisheries Act. I do not think that the intention of the legislature is that under section 14(3), a licence is required prior to or at the time of making of the PSAs. Certainly sometime between the making of the agreements or PSAs and the commencement of oil exploration or seismic surveys, a licence is required. Section 14(3) does not prohibit the inclusion of marine reserves in agreements or the PSAs, and there is nothing in the section, that either impliedly or specifically requires a licence prior to the making of the agreements.

(b) National Parks System Act

11. The submission of the claimants is that oil exploration, which is included in the PSAs, poses serious and substantial risks to the species, flora and fauna in National Parks; and therefore entering into PSAs, which allow oil exploration would result in acts prohibited by section 4 and 6 of the National Parks System Act; and therefore the PSA's in relation to the companies or contractors SOL Oil Belize Limited and Princess Petroleum Limited, are unlawful because the PSA's include a National Park and Natural Monument, namely Laughing Bird Caye National Park and Half Moon Caye Natural Monument in breach of section 4 and 6 of the Act. Sections 4 and 6 are as follows:

> "4. Save as hereinafter provided -
> (a) no person shall be entitled to enter any national park except for the purpose of observing the fauna and

flora therein and for the purpose of education, recreation and scientific research;

(b) no person shall be entitled to enter any nature reserve or in any way disturb the fauna and flora therein;

(c) no animal shall be hunted, killed or taken and no plant shall be damaged, collected or destroyed in a national park or nature reserve;

(d) no person shall hunt, shoot, kill or take any wild animal, or take or destroy any egg of any bird or reptile or any nest of any bird, in any wildlife sanctuary;

(e) no person shall disturb the natural features of a natural monument, but may use the unit for interpretation, education, appreciation and research.

6. No person shall, within any national park, nature reserve, wild life sanctuary or natural monument, except as provided under section 7, or with the written authorization of the Administrator-

(a) permanently or temporarily reside in or build any structure of whatever nature whether as a shelter or otherwise;

(b) damage, destroy or remove from its place therein any species of flora;

(c) hunt any species of wildlife;

(d) remove any antiquity, cave formation, coral or other object of cultural or natural value;

(f) quarry, dig or construct roads or trails;

(g) introduce organic or chemical pollutants into any water;
(h) clear land for cultivation;
(i) graze domestic livestock;
(j) Carry firearms, spears, traps or other means for hunting or fishing;
(k) introduce exotic species of flora or fauna;

(2) The contravention of any rule made under this section shall constitute an offence.

12. Audrey Shepherd, swore to an affidavit that "to the best of my knowledge, no such written authorization was issued by the relevant administrator for entering into the PSAs." There is no provision under the sections above requiring the written authorization "for entering into the PSA's" or for any agreement or contract. Oil exploration or seismic surveys may involve the use of a National Park; and prior to the commencement of the use of a National Park or Monument for the purpose or purposes under the section, an application can be made under the sections for the required authorization or permit. The sections do not impliedly or specifically require written authorization before entering into oil exploration or oil production agreements. Prior to the stage for the oil exploration or oil production in a National Park, an authorization under the section is required.

(c) Petroleum Act

13. The PSAs were made under section 9 of the Petroleum Act which authorizes the entering into contracts dealing with petroleum, but the

section states that such contracts shall not be contrary to, or inconsistent with, the provisions of the said Act. The PSAs are unlawful, say the claimants, because they were "awarded" without any public notice, competitive bidding contrary to section 13 of the Petroleum Act and also because the PSAs were "awarded" to companies that are unqualified, contrary to section 11 of the said Act. Sections 11 and 13 are as follows:

> "11.-(1) A Contract shall only be entered into with persons who demonstrate a proven ability to contribute the necessary funds, assets, machinery, equipment, tools and technical expertise necessary for the effective performance of the terms and conditions of the proposed contract.
>
> 13.-(1) Except as otherwise provided in subsection (3), the selection of contractors shall be carried out through public competitive bidding or such other competitive procedures as may be determined by the Minister."

14. In relation to public notice and competitive bidding, the claimants, on whom the burden lies to prove no such notice or bidding, rely, first of all, on the affidavit of Mrs. Matura- Shepherd, who was not called as a witness, but who swore in her affidavit that ""Oceana in Belize has found no notice published in the Government Gazette of the availability of blocks leased in the above referenced PSAs." Mrs. Matura- Shepherd states that Andre Cho, Inspector of Petroleum and a deponent for the defendant, and who was not called to give evidence in this matter, stated in a local newspaper that "there has been no

public bidding for oil leases since 1993." The writer of the article in the newspaper is not known; nor was called to give evidence. I cannot properly accept the statement in the newspaper as the truth of what is stated therein. The evidence that the claimant found no notice published in the Gazette does not necessarily mean that no notice was published. The burden is on the claimant to prove, on a balance of probabilities, that no notice was published, and that there was no public or competitive bidding. I am not satisfied that they have discharged this burden.

15. Further, under section 13(1), there is no mention in the subsection of public notice. Subsection (1) requires public competitive bidding; but subsection (3) of the section states that the Minister may, with the approval of cabinet select contractors other than through competitive bidding in certain cases as we saw above. There is evidence from the deponent Andre Cho "That the Minister of Natural Resources and the Environment, with the approval of cabinet, decided which companies would be awarded the PSAs in conformity with the Act." It is true, as was submitted, that Mr. Cho used the general word "companies" instead of the specific companies in this case, that were awarded the PSA's. But Mr. Cho's affidavit is in relation to the specific companies that were awarded the PSAs, and I am satisfied that from the above statement, he meant companies that were awarded PSAs in this matter. Mr. Cho, who was not called or cross-examined, swore that cabinet approved which companies were awarded PSAs and this was in conformity with the Petroleum Act, which would include the cases mentioned at section 13(3) (a) and (b). These subsections

authorize the Minister with the approval of cabinet to select contractors other than through competitive bidding where circumstances require or make it advisable.

16. Further objections to the PSAs are also on the ground that they were awarded to the companies or contractors which are not qualified in accordance with section 11 of the Petroleum Act and are therefore unlawful, null and void. Section 11(1) requires that a contract shall only be entered into with persons who demonstrate a proven ability to contribute assets, funds, machinery and other facilities for the effective performance of the contract. The claimants case is that there is no evidence that the companies demonstrated a proven ability necessary for the effective performance of the contract as required by section 11(1) above. In support of this submission, the claimants rely on a report in a local newspaper dated 2nd July, 2010 and a report on channel 5 television dated 9th February, 2011. In the newspaper report, the above mentioned Mr. Andre Cho is reported to have said that "Princess Petroleum ... does not meet the most important legal requirement ...having the technical expertise in the oil industry." In relation to the report on television it is reported that the Prime Minister said that "Nobody in this country had the expertise." The persons who wrote and presented or prepared these reports were not called as witnesses in this case, nor were they deponents. To the court, they are unknown. Mr. Cho who is a deponent in this case was not called to testify; and the Prime Minister is neither a deponent nor a witness in this case. I therefore cannot accept these reports as the truth of what is stated therein.

17. The preamble to the PSAs says that the companies represent that they have the financial resources, technical competence, and professional skills necessary to carry out the petroleum operations under the PSAs. But the requirements of section 11(1) is that the PSAs shall only be entered into with the companies who demonstrate a proven ability to provide the facilities, mentioned in the section, for the effective performance of the "proposed contract." It seems that this demonstration has to be proven prior to entering the contract or the PSAs. Moreover, the section requires demonstration of the ability by the companies, "not," as submitted by learned senior counsel for the claimants, "merely assert that they have it."

18. On behalf of the defendant, it is submitted that the companies themselves do not need to qualify, but need to demonstrate the proven ability which may be done by "showing access to and an indirect ability to contribute all of the resources by partnering or joint venturing with other companies. ..." Learned counsel for the defendant explained the submission by the following example:

> "To amplify just a bit, a limited liability company may be formed specifically to obtain a PSA and be the lead company in a group. That company may have only $50,000.00 in funds but may have an agreement with a Texas oil company that has capital of $500 million and a great desire to do oil exploration and production in Belize. Similarly, the company may have no oil drilling equipment or expertise but it may have arrangements with a drilling company and a group of investors or prospectors who can provide all machinery,

> equipment, tools and technical expertise to perform the exploration period of the contract. Recognizing this reality, the Act expressly provides for the situation where two or more companies are parties to the same contract thereby indicating, at a minimum, the acceptability and, presumably, desirability of companies combining resources, operating interdependently and sharing the distribution of responsibilities."

19. The problem with the above is lack of evidence that the other backup companies have financial or other suitable resources or facilities capable of showing the proven ability as required by section 11(1). No representative of such companies, nor anyone was called to give evidence in the matter in relation to the above or the required proven ability of the backup companies, nor is there any sworn affidavit in that regard. Moreover, there is no evidence that the said backup companies had the required ability prior to entering into the PSAs. Since no such person gave evidence and there is no such evidence of ability, the court is not satisfied that section 11(1) was complied with in making the PSAs or the contracts. There is no evidence showing that the contractors are able to demonstrate "access to and an indirect ability to contribute all of the resources by partnering with other companies having access to all of the resources." I am not satisfied that the Minister in entering into the PSAs has acted in accordance with section 11(1) of the Petroleum Act. The Minister therefore exceeded his jurisdiction in entering into the PSAs and acted ultra vires the section.

(e) Environmental Protection Act

20. There is no doubt that the Environmental Protection Act (EPA) is an Act to protect the environment, which according to the Act, is defined to mean "the protection of the water, coasts, sea, air, land, human beings, other living creatures, plants, micro organism and property in Belize." Under section 21 of the EPA, the Minister may make regulations prescribing the types of projects for which an environmental impact assessment (EIA) is required; and prescribing the procedures, contents, guidelines and other matters relevant to such an assessment. The Minister, acting under section 21 of the EPA, made the Environmental Impact Assessment Regulations 1995, No. 107 of 1995, (the 1995 Regulations) and the Environmental Impact Assessment (Amendment) Regulation 2007, No. 24 of 2007 (2007 Regulations) which amended the 1995 Regulations. Regulation 7 of the 1995 Regulation states:

> "The following shall be considered as schedule 1 projects
> Petroleum
> (a) Oil exploration
> (b) Oil Production
> (c) Oil Refining. . . ."

The 2007 Regulations define the meaning of the term Environmental Impact Assessment (EIA) as follows:

> "Environmental Impact Assessment (EIA)" means studies needed in identifying, predicting, evaluating, mitigating and managing the environmental, and key social

> and economic impacts of development projects, undertakings, programmes, policies or activities, the report of which is presented in a written document called the Environmental Impact Assessment report."

21. The 2007 Regulations amended the 1995 Regulations by, among other things, repealing Schedules 1 and 11 of the 1995 Regulations and substituting new Schedules 1 and 11. For our purposes, the New Schedule 1 says:

> "The following shall be considered as schedule 1 projects . . .
> An environmental Impact Assessment shall be completed for any project program undertaking or activity with the following purposes . ..
> Other Project
> 14(b) Lease or sale of more than five hundred acres national lands.
> (L) Any proposed development project, undertaking or activity within any projected area (terrestrial or marine)."

It is agreed that the PSAs do not amount to lease or sale of land. The new schedule 1 does not include, as was contained in the previous schedule 1, petroleum, oil exploration, oil production and oil refining. Under the previous schedule 1 an EIA was required for any project with the purposes of Petroleum. But the new schedule 11 under the 2007 Regulations and to which Petroleum is transferred and included, states:

> "The following projects may require an environmental impact assessment or limited level

environmental study depending on the location, and size of the project ...
16 Petroleum
(a) Petroleum exploration activities such as seismic survey."

22. It can be immediately seen that in the new Schedule 11 projects, which include Petroleum exploration, an EIA is discretionary for projects under the new Schedule 11, whereas under the previous Schedule 1 the EIA was mandatory for the projects mentioned in that schedule including oil exploration and production,

23. The EPA seems to make mandatory an EIA for persons intending to undertake any project which may significantly affect the environment. Section 20(1) of the EPA states:

> 20.-(1) Any person intending to undertake any project, programme or activity which may significantly affect the environment shall cause an environmental impact assessment to be carried out by a suitably qualified person, and shall submit the same to the Department for evaluation and recommendations."

Subsection 2 of section 20 states:

> "(2) An environmental impact assessment shall identify and evaluate the effects of specified developments on –
> (a) human beings;
> (b) flora and fauna;

(c) soil;
(d) water;
(e) air and climatic factors;
(f) material assets, including the cultural heritage and the landscape;
(g) natural resources;

24. The claimants submit that the above legislation requires that an EIA be conducted before entering into, or "awarding" the PSAs; and since this was not done the PSAs are unlawful null and void. Reliance for this submission was placed on the Supreme Court decision, namely ***Satim v. Forest Department of the Ministry of Natural Resources and the Environment No. 212 of 2006***. In that case,, the government had given, on 7th April, 2006, permission, stemming from a production sharing agreement made in 2001, to a company named Capital Energy Belize Limited to enter upon a National Park for the purpose of conducting seismic surveys. The seismic surveys began about three weeks before the permission was given. The court found that since no EIA had been carried out with respect to the seismic surveys, the permission for. and the commencement of, the seismic surveys were in breach of sections 20 and 21 of the EPA and was unlawful. The implication of this finding is that an EIA is required before the granting of permission to conduct seismic surveys in a National Park. Therefore, say the claimants in this case before me, an EIA was required before entering into the PSAs. It is, on the other hand, to be also noted that the learned judge in **Satim** has also found that the EPA provides that the EIA "is to be evaluated, recommended and approved before the project is undertaken," and reference is made

in the judgment to subsection (7) meaning as I see it section 20(7) of the EPA: see paragraph 19 of the judgment. The learned judge also considered, in arriving at his decision, an admission made by counsel in the case "that environmental impact assessment was necessary and had not been carried out": paragraph 19 of the judgment.

25. Whether or not an EIA is required prior to the entering into the PSAs, which authorize activities that may significantly affect the environment, depends on a proper interpretation of the EPA and regulations made thereunder to determine the intention of the framers of the legislation, and the purpose for which the legislation was made. The objective is to also determine the meaning of the words "project, program, undertaking, activity as appear in the Regulations and section 20(1) of the EPA. A good starting point in our journey to interpret the legislation is to consider section 65(a) and (b) of the Interpretation Act Chapter 1 as follows:

> "65. The following shall be included among the principles to be applied in the interpretation of Acts where more than one construction of the provisions in question is reasonably possible, namely-
>
> (a) that a construction which would promote the general legislative purpose underlying the provision is to be preferred to a construction which would not; ..."

26. The second step in our journey, is the question: Is there an implication from the words of the above environmental protection legislation that a prior EIA is required before entering into the PSAs?. ***Bennion*** says that "The question whether an implication shall be found within the express words of an enactment depends on whether it is proper, having regard to the accepted guides to legislative intention to find the implication, and not on whether the implication is "necessary or "obvious": see **Bennion** on Statutory Interpretation 5th Edition p 494. In relation to implying matters from the words of an Act, or legislation, the rule in ***AG v. Great Eastern Ry Co. 1880 5 AC 473*** "provides that an express statutory power carries implied ancillary power where needed": In that case Lord Blackburn at p 481 said that "those things which are incident to, and may reasonably and properly be done under the main purpose (of an enactment) though they may not be literally within it, would not be prohibited." Lord Selborne in the same case at p 478 ruled that "whatever may fairly regarded as incidental to, or consequential upon, those things which the legislature has authorized ought not, (unless expressly prohibited) to be held, by judicial construction, to be ultra vires."

27. Another step is to examine the legislation as a whole. As mentioned above, the EPA was enacted for the purpose and intention of protecting the environment which is defined in the EPA, as we saw above. The EPA establishes a department of the environment: section 3; with numerous duties, including responsibility for continuous and long term assessment of natural resources and pollution: section 4(a); to ensure the protection of natural resources:

section 4(b); to prevent and control pollution, 4(c); to provide information and education regarding the importance of protection and improvement of the environment: 4(k); to monitor environmental health 4(n); and to exercise any other function relating to the protection of the environment, 4(aa). The EPA provides for the prevention and control of environmental Pollution: Part III; the prohibition against dumping of garbage or toxic substances or hazardous waste that may damage or destroy flora or fauna or pollute water resources or the environment: section 13(1); an EIA shall identify effects of specified development on human beings, soil, water, natural resources: see 20(2); the prohibition of certain defined nutrients; section 25; damage to the environment is made an offence; section 29; and special powers are given to officers where there is imminent danger to the environment: section 30.

28. The 1995 Regulations, as amended by the 2007 Regulation, state that the word "undertaking" as it appears in the Regulations means, inter alia, any activity, project policy, proposal, plan or program that may have a significant environmental impact: Regulation 2. (emphasis mine) Regulation 3 states, inter alia "All persons shall, before embarking on a proposed project or activity apply to the Department of Environment for a determination whether such project or activity would require an EIA. (emphasis mine) An EIA shall include a description of the proposed project or activity and an assessment of the potential environmental impacts of the proposed activities; Regulation 5; all undertakings specified in Schedule 1 (1995 Regulations) require an EIA: Regulation 7; any person who proposes

to carry out an undertaking shall before proceeding on the final design of the undertaking notify the department in writing in a prescribed form concerning the proposed undertaking; Regulation 11; the department shall determine whether any undertaking requires an EIA: Regulation 8; after receiving the prescribed form, the department is to determine if an EIA is required: Regulation 14; a person who proposes to carry out an undertaking must provide terms of reference to the department for purposes of an EIA, and the department to examine them to determine if they are satisfactory: Regulation 15 and 16; during an EIA of a proposed undertaking, meeting with members of the public to get their comments on the undertaking: Regulation 18; the EIA to include a summary of the proposed project, a description of the environment, and a description of the likely effects or impact on flora, fauna, water soil etc; Regulation 19; on receipt of an EIA the department to examine it to see if it is satisfactory and the department has 60 days to notify the person who proposes the undertaking of its decision: Regulation 21; on the receipt of the decision by the person, he shall not commence or proceed with the undertaking: Regulation 22(2). Where an EIA is deficient in any respect, the person, on the recommendation of NEAC, a committee established by the EPA Regulation 25, maybe required to conduct further work, and amend the EIA: Regulation 23. The NEAC is to review all EIAs and consider the environmental effects of the project.

29. From the above provisions of the legislation, the intention of the above legislation is to put requirements and administrative structures in place for the protection of our water, air, climate, natural resources,

soil, flora, fauna and human beings. Oil exploration and seismic testing can have an adverse impact on the environment as we shall see below. It is therefore necessary to examine the contents of the PSAs to see if they authorize oil exploration and seismic testing, and to see if there is any evidence of any effects of them on the environment. One of the companies, Island Oil Belize Limited, made its PSA with the government in 2004 during the jurisdiction of the 1995 Regulations under which an EIA has to be completed for any project, programme or activity with the purpose of oil exploration. There is evidence that oil exploration, authorized by this PSA, can have adverse impacts on the environment. The Chief Environmental Officer swore in his first affidavit submitted by the defendants that the companies had not found oil and "are only in the exploration stage, and it is my considered view that such operation will not significantly impact the environment." This seems to imply that the oil exploratory stage would have some impact on the environment, but not significantly. Elmer Damen Berger, former Chief of Offshore Regulatory Programs in the Department of the interior USA, swore that the drilling of exploratory wells clearly has the potential to cause significant harm to the environment if not carried out with proper safeguards.

30. Andre Cho, the Director of the Geology and Petroleum Department in Belize and the Inspector of Petroleum swore that the PSAs were for "Petroleum operations" which included "operations related to exploration ..." and that the PSAs were for an initial period of two years and three successive two year renewal periods." He swore that

the "initial phrase of petroleum operation is geophysical surveys which include aeromagnetic, gravity and seismic testing" and that "all the companies have been granted renewals and are still in the exploratory phase." He also swore in the affidavit that he was informed by the Chief Environmental officer, Mr. Alegria and verily believe that "seismic testing is part of exploration operations. ..." Damen Berger swore that "Preliminary geological and geophysical activities including seismic testing have the potential to significantly impact the environment." Mr. Cho also attached a letter to his affidavit from one of the companies, Island Oil Belize Limited which is in the oil exploration stage, declaring that a force majeure, an unanticipated event, had occurred, namely the "capsizing of the jack up Maggie" on the 16th July, 2007. The letter continues: "Due to this disaster island Oil has incurred substantial loss of property. The drilling rig needs to be sent to the US for a complete overhaul and the jack up Maggie will undergo inspection to determine the damage which is extensive." It seems from this letter that there was some drilling in operation when the force majeure occurred.

31. In ***Satim*** it is said that seismic surveys are part of "oil exploration project." The PSAs have provisions dealing with oil exploration. Under Article 11 of the PSAs the companies, referred to therein as the contractors, "shall conduct all petroleum operations ... at its ----- risks, cost and expense" and petroleum operations, according to the PSAs include exploration of petroleum. The companies are authorized by the PSAs to conduct exploration operations, that is to say, operations for or in connection with exploration for petroleum.

The PSAs have a date to commence petroleum operations and amounts of money to be expended for various exploration periods, as described in Article III of the PSAs. The contractors are authorized under the PSAs to carry out, and comply with, certain minimum work commitments. For instance, in the first two years of the PSAs, referred to therein as the "Initial Exploration Period," the contractors are authorized to "Review existing geological and geophysical data and to "Repossess and interpret existing seismic data." Under the PSAs, provision is made for first, second and third renewal periods. It is stated in the PSAs that in the second renewal period, if requested by the contractor, the contractor undertakes to "Drill first exploration well" and "Evaluate result of First Exploration Well." And there are other provisions of the PSAs authorizing the contractors to drill a second exploration well if warranted and evaluate the results. Where in the course of petroleum operations, a discovery of petroleum is made, the PSAs state that the Government must be notified by the contractor in writing of the discovery. If the discovery of petroleum is not of potential commercial interest, the government may, according to the PSAs require the contractor to relinquish the area corresponding to the discovery.

32. Melanie McField, in relation to Belize Barrier Reef which is covered or included in all the PSAs swore in her third affidavit that "oil exploration activities pose a significant risk to the reef. ... Oil exploration involves increased ship traffic, seismic testing that can disturb marine, fish and mammals, disturbance of the reef and sea floor ... chemical pollution, siltation and the potential for spills from

exploratory wells." This deponent was not called as a witness. Her evidence stands uncontradicted. Miss McField also proceeded to depose on matters which may be considered as well known facts or within her personal knowledge, such as that the" BP Deep Water Horizon well that caused the massive oil spill in the Gulf of Mexico in 2010 was an exploratory well. ... The IXTOC1 well that blew out in June 1979 in the Gulf of Mexico, off of Mexico, was an exploratory well ... that ... spilled oil at the rate of 10,000 to 30,000 barrels per day until it was finally capped on March 23, 1980." This evidence stands unshaken and uncontradicted.

33. The PSAs authorize the contractors or companies to engage in oil exploration which includes the drilling of wells and seismic surveys and which, as shown above, can have an adverse impact on the environment. Therefore the PSAs which authorize oil exploration and seismic surveys, ought to be preceded by an EIA considering that the manifest intention of the EPA and Regulations is to protect the environment. There is no provision in the EPA Legislation requiring a licence or authorization prior to oil exploration or seismic surveys. It seems clear to me that the intention and implication of the EPA and regulations made thereunder are that the PSAs are required to be preceded by an EIA. It could not be the intention of the framers of the EPA and the Regulations to allow the making of PSAs containing clauses that authorize seismic surveys and oil exploration which can adversely impact on the environment without first obtaining an EIA or an assessment of those activities. It would be inconsistent with the intention and implication of the legislation to allow for PSAs

containing provisions, which permit contractors to take action which are capable of adversely affecting the environment without a prior assessment of that proposed action. It must be noted that there is no licensing or statutory authorization requirement under the EPA legislation before engaging in matters that include oil exploration, as required under the Fisheries Act and National Park System Act, as we saw above.

34. For the defendants, it was submitted, if I understand it correctly, that section 20(1) above is inapplicable to the PSAs "since the section can only apply at the stage when a person is intending to carry out certain activities. … Since the PSAs are now about six years old, they do not fall under "intending" as used in the section," and it is impractical to now say that they are unlawful." The Oxford English Dictionary defines "intend" as "design or plan something for a particular purpose. Having something as your aim or plan." Bearing in mind this definition, and the fact that the projects under the PSAs are in the initial stages, the contractors, under the PSAs, would seem to fall within the clause "any person intending to undertake a project." It therefore does not seem to me to be relevant when the PSAs were made.

35. The defendant also says, that section 20(1) above does not speak of contracts, which are what the PSAs are, but speaks of conduct. In every contract there is involved some conduct. Moreover, a person can intend to undertake a project, activity or programme by means of contract. In my judgment, a contract which authorizes a project or

activity such as oil exploration which can harm the environment, it is implied by section 20(1) that prior to that contract, an EIA is to be carried out. The defendant also says that as a matter of law, the "activities contemplated by the PSAs do not require an EIA," and it is unknown at what stage in the life of the PSA an EIA is required. The PSAs as shown above authorizes activities such as oil exploration, which involves drilling of wells and seismic surveys, and we have seen above the impact of these matters on the environment. Since the EPA is intended to protect the environment an assessment of those activities prior to the PSAs seems to be consistent with the intention of the EPA. It is said further by the defendant, that since the EPA provides, not a civil remedy but a criminal sanction for failure to submit an EIA, "that is the end of the matter." The absence of a civil remedy in the EPA, does not prevent the Supreme Court, possessed of common law powers and unlimited original jurisdiction, from pronouncing a civil remedy for such failure to submit an EIA prior to making the PSAs, unless there are expressed words in the legislation to this effect, which I have not found.

36. It is further submitted for the defendant that the PSAs do not fall within the EPA legislation because they are neither program, project or activity as stated in the Regulations. As we saw above, one of the PSAs was between the government and Island Oil Belize Limited in 2004. The PSA was made at a time when the 1995 Regulations were in force. Schedule 1 of the 1995 Regulations may, for convenience, be repeated: "A full Environmental Impact Assessment shall be

completed for any project, program or activity with the following purposes .....

"Petroleum

(a) Oil Exploration

(b) Oil Production

(c) Oil Refining"

37. Is the Island Oil Belize Limited PSA a project, programme or activity for purposes Schedule 1 above? The PSA authorizes oil exploration, and under Schedule 1 a project, program or activity for the purposes of oil exploration requires an EIA. The PSA therefore authorizes a project, programme or activity for purposes of oil exploration according to Schedule 1. Since the PSA authorizes oil exploration, which could, as shown above, have negative impacts on the environment, and bearing in mind there is no requirement of a licence or authorization in the EPA legislation prior to oil exploration, I have difficulty in agreeing with the submission that under the legislation, which is intended to protect the environment, the PSA which authorizes oil exploration and seismic surveys does not fall within Schedule 1 above. For all the above reasons, I am of the view that the PSA in relation to Island Oil Belize Limited had to be preceded by an EIA under the 1995 Regulations.

38. The other PSAs were made after the coming into operation of the 2007 Regulations which, as we saw above, amended Schedule 1 of the 1995 Regulations, by removing therefrom oil exploration, oil production and oil refining and substituting the following:

"Schedule 1

An Environmental Impact Assessment shall be completed for any project program, undertaking or activity with the following purposes:

14. Other Projects

(L) Any proposed development project, undertaking or activity with any protected area celestial or marine. ...

Schedule 11

The following projects may require an environmental impact assessment or limited level environmental study depending on the location and size of the project.

16. Petroleum

(a) Petroleum exploration activities such as seismic surveys."

39. The question is whether all the PSAs amount to a "proposed development project, undertaking or activity under Schedule 1 above. The word "undertaking" is defined in the 1995 Regulations to include proposal, plan or programme that may, in the opinion of the Department of the Environment have a significant environmental impact. Therefore a proposal maybe an undertaking which requires an EIA under Schedule 1. Though the PSAs may be considered within the definition of proposal and by extension an undertaking, the PSAs authorize activities, I have to repeat, which can have an adverse environmental impact; and therefore the intention of the legislation could not be that the instrument which directly authorizes those activities can be allowed prior to an environmental assessment

of the activities. In addition, the PSAs clearly, to my mind, fall within 14(L) of Schedule 1 of the 2007 Regulations above as being a proposed development project. For these reasons, and the reasons advanced above, the PSAs ought to have been preceded by an EIA under the 2007 Regulations.

40. Schedule 11 above states that petroleum exploration activities such as seismic survey may require an EIA. Section 58 of the Interpretation Act, Chapter 1 states that in an enactment the expression "may" shall be construed as permissive and empowering. It seems that under Schedule 11, an EIA is discretionary.

41. The discretion has to be exercised reasonably, and not arbitrarily, taking into consideration the facts of the particular case and the promotion of the policy and objects and intention of the legislation conferring the discretion. To determine the policy, objects and intention of the Act in question, the Act has to be construed as a whole. Lord Reid makes the point in the well known ***Padfield and Others v. Minister of Agriculture Fisheries and Food and Others 1969 1 AER, 694 at page 699*** that: "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole." In the exercise of the discretion, consideration has to be given to the purpose objects and intention of the EPA and the 1995 and 2007 Regulations. Oil or petroleum exploration can be harmful to the environment. Is it therefore a reasonable exercise of the statutory discretion to enter into

the PSAs without an assessment of the activities authorized by the PSA on the environment? As I see it, it is unreasonable to so do when it is considered that the EPA and Regulations were enacted to protect the environment.

42. The defendant further submits that the PSAs are governed by the law of contract, and not by statute, and they are not unlawful, do not violate any law and are not subject to the Public Law remedy of certiorari. The point is put by learned counsel for the defendant that: "there existed in this case (A) a decision and (B) a contract that followed the decision. ... But the contracts are not extensions of the decisions. Each contract is a distinctly separate thing. Each is a private law, commercial transaction. Each PSA is governed by the law of contract. It is not governed by statute. It is clear that a contract cannot be quashed, though it can be declared invalid." It must be noted that section 9 of the Petroleum Act, (PA) states: Subject to the provisions of this Act, the Minister may conduct negotiations and enter into contracts." The word contract is defined in the PA to mean: "Any agreement between the government and a contractor entered into pursuant to this Act for the conduct of petroleum operations in Belize." Petroleum operations is defined the PA as including "operations related to the exploration of petroleum." The PA states the qualification of persons to enter into the contracts: section 11; the selection of contractors to be carried out by public competitive biddings section 13(1); the right of a contractor during the contract to carry out petroleum operations in a contract area; section 16(1); the contents of the contract and extensive obligations of the contractor

section 17 and 18; and the contract to be divided into exploration, development and production periods: section 19. The PSAs, all of which contain terms stipulating the above matters were made by the Minister acting in the exercise of powers conferred upon him by statute – the Petroleum Act. All the PSAs state that: "whereas, no petroleum operations shall be conducted in Belize by any person other than the government, unless such person has entered under a contract in accordance with the Petroleum Act No. 8 of 1991. The Minister, entered the PSAs in the exercise of statutory powers, not common law powers.

43. There is no doubt that public authorities, like private individuals, can at common law make contracts and acquire rights under those contracts. Where that is done the ordinary law of contract provides adequate remedies for breach of such contracts. But public authorities may also exercise contractual power conferred on them by statute; and in such cases where the contractual powers are exercised by a public authority acting on the basis of a statutory provision or legislation, the rules of Public Law apply: see ***Jones v. Swansed City Council 1990 1 W.L.R. 54***. The Minister entered into the PSAs not in the exercise of private common law contractual powers, but in the exercise of the statutory powers conferred upon him by virtue of the above provisions of the Petroleum Act. That exercise of statutory power by the Minister brought into action the principles and remedies of Public Law. It brought into being the Public Law jurisdiction of the Supreme Court to determine whether the Minister acted in accordance with the Petroleum Act when he entered into the PSAs. The Minister, it

seems, has to act reasonably in the exercise of the statutory power to enter into the PSAs; and must take into consideration relevant matters. The question is this: Did the Minister act reasonably when he exercised the statutory power to enter into the PSAs which permitted oil exploration and seismic testing without there being a prior assessment of the effect of those things on the environment, bearing in mind the adverse impact on the environment of oil exploration and seismic testing? I cannot on the evidence answer that question in the affirmative.

44. Where the Minister, in the exercise of the statutory power, to enter the contract, acted unreasonably or failed to consider relevant matters, certainly the rules of Public law apply and the court could declare the contract as unlawful and void. In ***Jones v. Swansea City Council 1990*** above in relation to a submission that the power of a local council to lease its land was not a power having a statutory or public origin, but was merely a private power, because it arose out of a written contract between itself as landlord and the plaintiff as tenant, Slade LJ replied:

> "True it is that immediate origin of the power in question was a contract, consisting of the agreement for a lease. But the agreement itself would appear clearly to have been entered into in exercise of powers having a "statutory or public" origin, viz. the grant of an agreement for a lease by a council would constitute the exercise of a power having a "statutory or public" origin while the exercise of a right reserved by that

> agreement to the lessor council would constitute the exercise of a power having a "private" origin, in my view comes near to playing with words; the ultimate origin of each power is surely the statute."

For the above reasons, I do not accept that the PSAs "are not governed by statute" as was submitted.

45. It is further said that the size of the areas called "contract areas, specified in the PSAs are so large that the legislation could not have contemplated an EIA for such a large area prior to the making of the PSAs." What is required, says the defendant, is firstly the PSAs, after which a specific area, usually smaller in size, can be identified for possible petroleum deposits by virtue of seismic testing. It is after the smaller size is identified, says the defendant, that an EIA is needed. The contract areas for the companies, Tropical Energy Limited and Petro Belize Company Limited, Energy Belize Limited, Princess Petroleum Limited, Island Oil Belize and Sol Oil Belize are 321 237.04, 271,815.94, 340,511.24, 2,013.909.02, 489,268.69 and 201,885.12 acres respectively. The legislation could not have intended, according to the defendant, an EIA for such large areas.

46. I think, with respect, this submission fails to fully consider the reasons for, and purposes, of an EIA. Learned authors on environmental law have given the reasons for and purposes of an EIA. They write that" The purpose of the assessment is to ensure that the effects on the environment of these important projects are taken into account as

early as possible in the decision making process": see Environmental Law, Oxford University Press December 1999 at page 674, paragraph 1602. Bell and McGillivray in their Environmental Law 5th Edition, Blackstone Press at page 347 states that an "EIA is merely an information gathering exercise carried out by a developer and other bodies which enables a local planning board to understand the environmental effects of a development before deciding whether or not to grant planning permission for the proposal. The ideal EIA would involve a totally bias free collection of information produced on a form which would be coherent sound and complete." (emphasis mine) The 2007 Regulations above include in the definition of an EIA "studies needed in evaluating the impacts of developmental projects." Conteh CJ in ***Department of the Environment v. Bacongo Belize Supreme Court No. 61 of 2000 at p 17*** says that an "EIA is an information gathering exercise." Regulation 5 of the 1995 Regulation sets out the minimum requirements that must be included on an EIA as follows:

> "5. An environmental impact assessment shall include at least the following minimum requirements-
>
> (a) a description of the proposed activities;
> (b) a description of the potentially affected environment, including specific information necessary to identify and assess the environmental effect of the proposed activities;
> (c) a description of the practical alternatives, as appropriate;
> (d) an assessment of the likely or potential environmental impacts of the proposes

activities and the alternatives, including the direct and indirect, cumulative, short-term and long-term effects;

(e) an identification and description of measures available to mitigate the adverse environmental impacts or proposed activity or activities and assessment of those mitigative measures;

(f) an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;"

47. Considering the purposes, reasons and definition of the EIA, and the requirements to be included therein, it seems to me, that the size of the contract areas in the PSAs should not make the preparation of the EIA prior to the entering into the PSAs unachievable, because the EIA involves studies and information gathering, and it seems to me that several locations or areas within the larger contract area can be identified for such studies and information gathering. Moreover, the size of the contract area in the PSAs cannot remove the intention and requirement of the EPA and the Regulations for an EIA prior to oil exploration and seismic which on the evidence can impact adversely on the environment. It does not make sense to me that legislation made to protect the environment would authorize the making of agreements like the PSAs that involve activities such as seismic testing, oil exploration and petroleum operations that could harm the environment without a prior assessment of these activities. I hold therefore that an EIA was required prior to the making of the PSAs.

Conclusion

48. There is no doubt that oil exploration properly authorized and carried out would have positive effects on the economy of Belize and improve the standard of living of the Belizean people. But oil exploration should be undertaken in accordance with the intention of the Environmental Protection Act and Regulations made thereunder, which are made to protect the environment, because if the environment suffers from an oil exploration disaster no one benefits. That is why it is necessary, and the Environmental Protection Act and Regulations, in my view, make it necessary, for the Department of the Environment to have information before them showing an assessment of the positives and negatives of oil exploration, and to weigh them in the balance before the making of contracts authorizing companies to engage in oil exploration and seismic surveys, which, on the evidence, can harm the environment. Allowing oil exploration before any assessment of its effects on the environment is not only irresponsible, but reckless, especially in a situation where Belize may not be fully capable of handling effectively an oil spill. It is said that "Belize currently has no oil spill response mechanism in place to effectively deal with a spill at sea. Belize currently has nothing in place to meet the immediate cost of oil spills and lacks technical expertise .... and funding the spill response mechanism is perhaps the single greatest challenge": see ***Building an Effective Oil Spill Response Mechanism for Belize:*** **Obligations Threats and Challenges** by Lloyd Jones, dated October 2010.

49. The Minister, when he entered into the Production Sharing Agreements with the companies, that authorized oil exploration, acted in the exercise of power conferred upon him by statute. Since the agreements authorized oil exploration which can adversely impact on the environment, the Minister exceeded his jurisdiction when he entered into the agreements without first having or considering an environmental impact assessment of oil exploration on the environment, bearing in mind that the purpose of the Environmental Protection Act and Regulations is to protect the environment. Moreover, the Environmental Protection Act and Regulations made thereunder intend, and imply, that prior to entering into agreements for oil exploration and seismic testing, an assessment of their effects on the environment is required. The evidence shows that oil exploration and seismic testing can adversely affect the environment, and since the legislation above is intended to protect the environment, and since the agreements authorize oil exploration and seismic testing, an assessment of these activities, in my view, is required by the legislation before entering into the agreements. This was not done in this case, and therefore the PSA's are unlawful and void. In the light of this finding, and the orders I make, it is not necessary to make the orders requested at clauses 6, 7, and 8 in the claim form.

50. For all the above reasons, I make the following orders:

(1) A declaration is granted that the Production Sharing Agreements dated 25th May, 2004, and the other five Production Sharing Agreements dated 12th October, 2007, made

by the Government of Belize acting through the defendant, on the one part, and the individual companies, namely Island Oil Belize Limited, Miles Tropical Energy Limited, Petro Belize Company Limited, Princess Petroleum Limited, Providence Energy Belize Limited and Sol Oil Belize Limited, of the other part, are unlawful null and void because (1) no environmental impact assessment was carried out before making the agreements; and (2) the agreements were entered into with the companies who did not demonstrate a proven ability to contribute the necessary funds, assets, machinery equipment tools and technical expertise necessary for the effective performance of the terms and conditions of the agreements.

(2) A declaration is granted that before entering into agreements or contracts which authorize oil exploration and seismic surveys, an environmental impact assessment is required under the provisions of the Environmental Protection Act, Chapter 328 and the Environmental Impact Assessment Regulations 1995 as amended.

(3) An injunction is granted restraining the defendant, servants and agents from carrying out the provisions of the Production Sharing Agreements dated 25th May, 2004 and 17th October, 2007 referred to at (1) above.

(4) Declarations claimed at paragraphs 2, 4, 5, 6, 7 and 8 of the claim form are refused.

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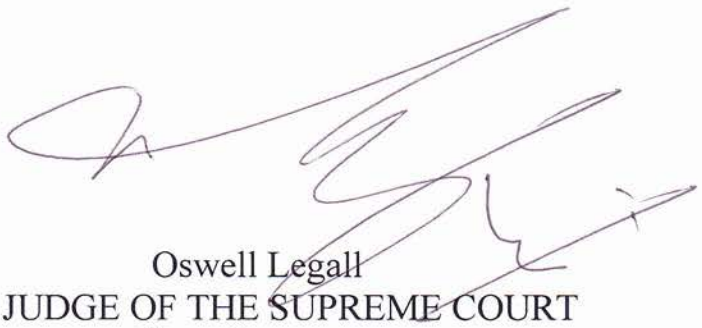
(4) Declarations claimed at paragraphs 2, 4, 5, 6, 7 and 8 of the claim form are refused.

(5) The defendant shall pay costs to the claimants to be assessed, if not agreed



Oswell Legall
JUDGE OF THE SUPREME COURT
16th April, 2013