

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
HIGH COURT MISCELLANEOUS PROCEEDINGS
NO. 2696 of 2006

IN THE MATTER OF the High Court Ordinance

and

IN THE MATTER OF an application for a
Norwich Pharmacal Order

BETWEEN

KENSINGTON INTERNATIONAL LIMITED Applicant

and

ICS SECRETARIES LIMITED Respondent

and

LONG BEACH LIMITED 1st Intervener

COTRADE ASIA LIMITED 2nd Intervener

HEMISPHERE VENTURES LIMITED 3rd Intervener

E. INVESTMENTS LIMITED 4th Intervener
(formerly known as Elenga Investments Limited)

PAN AFRICA CONSULTANCY LIMITED 5th Intervener

JEAN-YVES OLLIVIER 6th Intervener

2nd AFFIDAVIT OF JEAN-YVES OLLIVIER

I, JEAN-YVES OLLIVIER of 2 Streulistrasse, ZURICH, 8032, Switzerland, a
citizen of the Republic of France, make oath and say as follows:-

1. I am the 6th Intervener herein and swore an affidavit in these proceedings on 16 May 2007 ("**First Affidavit**"). I swear this affidavit in my personal capacity and on behalf of the 5th Intervener, Pan Africa Consultancy Limited ("**Pan Africa**"), in opposition to the Applicant's application for a Norwich Pharmacal Order against the Respondent, Pan Africa and myself.
2. The contents of this affidavit are true and based on my own personal knowledge and the documents in my possession or, if not based on my personal knowledge, are true to the best of my information and belief. Where true to the best of my information and belief, I identify the source of my information in this affidavit.

2nd Affidavit of Donald Steven Schwarzkopf

3. I have been provided with a copy of Mr Schwarzkopf's Second Affidavit sworn on 23 May 2007 and a copy of the Skeleton Argument of the Applicant ("**Skeleton**").
4. In paragraph 3 of his Second Affidavit, Mr. Schwarzkopf has it that a statement made in paragraph 22 of my First Affidavit is "*demonstrably false*". In paragraph 4, Mr Schwarzkopf sets out payments (the "**Payments**") made by Pan Africa to E. Investments Limited ("**EIL**"). The Skeleton also opines that the payments to EIL demonstrate that the statements made in paragraph 22 of my First Affidavit are false. Indeed at paragraphs 30 and 31 of the Skeleton, not only am I accused of making demonstrably false statements, it is declared that I lied about matters. This is not the case and would never be so. I will explain below the circumstances of the Payments.
5. I apologise to the Honourable Court I do not have access to my files concerning the Payments, as I am currently in South Africa. As such, my comments on the Payments are to the best of my recollection, without the associated documents. When I return to my office I will review my files. In the remote circumstance that anything contained in those files should

vary with that to which I depose herein, I will file a further affidavit in the matter. However, I do trust that is not likely to be necessary.

6. As I have set out in my First Affidavit, I have been living and visiting, and involved in business, in Africa for many years. During that time, I have made a number of personal friends, some of whom are listed in paragraph 30 of my First Affidavit. That list is, of course, not exhaustive. I also have a long-standing personal friendship with Mr Blaise Elenga, outside of my business association with SNPC, (being a business association which I described in paragraph 4 of my First Affidavit).
7. At some time during 2002, Mr Elenga told me that he wanted to build a house in Brazzaville. Mr Elenga asked me if I would lend him some of the construction costs. The amount that Mr. Elenga estimated that he needed was US\$185,000. I loaned this sum to Mr Elenga. Subsequent to the initial request, Mr Elenga asked for further funds during the course of 2002 and 2003. I believe that most of these loan payments by me to Mr. Elenga would have preceded the interests and 'involvement' of the Applicant in matters to do with the Congo.
8. Each of the above mentioned loans were supported by documentation and recorded in Pan Africa's balance sheet as such. The loans have since been repaid in full. On making the final payment, a receipt was issued to Mr Elenga to confirm full repayment.
9. I wish to stress that the loan was to Mr Elenga personally and not to any company, as the loan documentation can show.
10. The Payments were made in accordance with Mr Elenga's instructions. I regret that I cannot recall the precise instructions given. As a result, I have no recollection of the bank account number or the name of the bank account holder in and to which the Payments were made. In fact, I am not even sure whether I was provided with the name of the bank account holder, although I presume it would have had to have been provided to my staff. It has been explained to me by my solicitors that, at the time when the loans were deposited, to the account of EIL in Hong Kong, EIL

was then using its former name of Elenga Investments Limited. If Mr Elenga had requested that I make the Payments into an account in that name, it certainly would not have raised any questions on my behalf.

11. If it is the case that I had heard of Elenga Investments Limited in 2002 (and it is certainly not clear to me that I had), then I certainly do not recall that now, (nor did I recall that at the time of swearing my First Affidavit). If paragraph 22 of my First Affidavit is technically incorrect – and I cannot be sure that it is incorrect - then perhaps the proper position is that I do not *recall* having heard of EIL prior to this application. In regard to Long Beach, paragraph 22 of my First Affidavit remains correct to the best of my knowledge.
12. I also deny the “*logical inference*” which is so unfortunately drawn by Mr. Schwarzkopf at paragraph 5 of his Second Affidavit. It appears that relying upon the erroneous conclusions which Mr. Schwarzkopf has made in paragraphs 3, 4 and 5 of his Second Affidavit, that he then makes an entirely unwarranted accusation in paragraph 6 of his Affidavit. That is that I am involved in what he describes as ‘cross-border manipulation through which Congo’s assets have been concealed and dissipated’. I object to this unsupportable broadside of invective. As for Mr. Schwarzkopf’s further statement, made under oath, that I have attempted to deceive the Courts in Hong Kong, to this I take the gravest exception and offence. I unreservedly deny this grievous slur made against me.
13. Whilst the remainder of Mr. Schwarzkopf’s Second Affidavit ventures further into the grounds of unsupported speculation and hypothesis, (drawn in part *inter alia* from what appears to be convenient and censored extracts of evidence, such as a transcript per Exhibit DSS-4 at page 88 to 90), I note Mr Schwarzkopf’s assertion at paragraphs 7 and 8 of his Second Affidavit that “Bakchich” (the Arabic word for “kickback”), is “operated by credible and experienced journalists” – information that he claims to be within his own knowledge. Bakchich is not a “publication”; it is a website produced by the political opposition within the Congo. One only needs to consider the writing style to see that this is not an objective piece of journalism. It is akin to a ‘blog’. By contrast “Politique

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Internationale" is a long-standing publication enjoying a wide international circulation and reputation. At the time of publishing my interview, *Politique Internationale* was granted interviews on the very same issue with prominent international figures, including the (then) US Vice President Al Gore, Fernando Enrique Cardoso, Joseph Estrada, Paul Kennedy, Alexandre Lebel and Andres Pastrana.

14. I do not believe that Mr. Schwarzkopf has sufficient "knowledge" of Africa to be in a position to depose to evidence as to which of Africa's publications and/or journalists are to be considered credible and those which should not.
15. I note Mr. Schwarzkopf's concerns for the "impoverished citizens of the Congo" expressed in paragraph 17 of his Second Affidavit. I understand that the Applicant is now seeking US\$300M to be paid by the Congo for an original debt of \$US80M, that the Applicant purchased for under US\$10M. As recently as last Tuesday, 22 May 2007, the US House of Representatives Sub Committee on Africa and Global Health was meeting to discuss "Vulture Funds and the threat to Debt Relief in Africa: A call to Action at the G8 and Beyond". For Kensington to introduce the parlous plight of the People of the Congo to support their goal of full repayment, against the background of those extraordinary dollar figures which I cite above, is not only grossly hypocritical, but would appear to have the inevitable consequence of being the cause of further significant hardship for the population of that country.
16. Now shown to me and marked "JYO-1" are 4 recent articles detailing the "morally reprehensible and exploitive" conduct of the "Vulture Funds".

Sworn at JOHANNESBURG

SOUTH AFRICA

the 26 day of May 2007

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Before me,

HCMP 2696 of 2006

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Filed on May 2007.

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(Ref: RCS/TMB/P27-3900)

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This is the exhibit marked "**JYO-1**" referred to in the affidavit of Jean-Yves Ollivier sworn on the day of May 2007.

<u>Description</u>	<u>Date</u>	<u>No of Pages</u>
Articles regarding the conduct of "Vulture Funds"	various	6

Before me,

Vulture funds under fire for 'feeding upon' African nations

Print

By Guy Dinmore in Washington

Published: May 25 2007 03:00 | Last updated: May 25 2007 03:00

Members of Congress and international campaigners are turning the spotlight on what they call the immoral behaviour of "vulture funds" ahead of next month's Group of Eight summit of industrialised nations in Germany, warning that the funds threaten to undermine debt relief for Africa's poorest.

The funds were "feeding upon financially distressed nations" and court cases against developing countries were "morally reprehensible and exploitative", Donald Payne, Democratic chairman of the House subcommittee on Africa and Global Health, told a hearing this week.

Vulture funds, so-called because they are perceived to prey on the weakest countries, usually operate through shell companies based in the Caribbean, buying cheap debt obligations at a fraction of their face value on secondary markets and then taking court action with the aim of getting full repayment plus interest.

Several African countries are mounting expensive defences against funds in the French, UK and US courts.

Mr Payne, together with representatives of several non-governmental organisations, singled out Donegal International, run by US businessman Michael Sheehan from his Debt Advisory International company in Washington. The fund has taken Zambia to court in the UK, seeking more than \$55m in payments for sovereign debt that the fund had bought from Romania in 1999 for \$3.2m.

Last month the high court rejected the fund's claim for full payment but awarded it \$15.5m, in line with a settlement the fund had reached with Zambia in 2003.

This represents about a third of Zambia's total debt relief savings for this year under international relief mechanisms.

Mr Sheehan was out of the US and not available for comment, a colleague said.

Gary Kleinman, an independent analyst who has been called by Mr Sheehan's fund as an expert witness in the court case, said litigation had been a last resort after failed attempts to negotiate a settlement.

He said he did not want to comment on the morality of vulture funds but noted that the court cases showed the need for more extensive reform of debt systems in emerging markets. He said money was pouring back into Zambia from distressed debt investors. More than 40 funds are reported to be pursuing claims against about 12 heavily indebted poor countries for a total of about \$1bn.

Testifying before Congress, Danny Glover, Hollywood actor and chairman of TransAfrica Forum, a social justice advocacy group, urged President George W. Bush to tackle the funds.

A White House official said Mr Bush had no plans to raise vulture funds at the summit. The US Treasury was working with the Paris Club of creditor governments on the issue, he said.

Gordon Brown, UK chancellor and prime minister-designate, promised moves against the funds several years ago but the UK has resisted changes to its contract law to make it harder to sue sovereign debtors.

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Time to clip the wings of vulture funds

(<http://www.suntimes.com/news/jackson/263601.CST-EDT-jesse20.article>)

February 20, 2007

BY JESSE JACKSON

They prey upon the poorest nations, taking resources from the most desperate peoples – billionaire scavengers pocketing the funds that might go to feed children whose families live on less than \$1 a day. They are called the vulture funds. They protect their scavengings with fat checks to politicians and lobbyists. One of the leading vulture firms is led by major donors to President Bush. Now it is time to put an end to this disgrace.

Consider impoverished Zambia, a small, poor country where the vast majority of people survive on little more than \$1 a day. In 1979, the Romanian government lent Zambia money to buy Romanian tractors. The tractors didn't work well, and U.S. and European agricultural subsidies basically hijack Zambia's potential export markets. Zambia was unable to earn the foreign exchange needed to pay for this and other debts.

In 1999, Romania and Zambia negotiated to liquidate the debt for \$3 million. The Paris Club of rich donors -- under great pressure from the global human rights movement -- has finally been moving to write off significant portions of unpayable debts, if the debt relief is used for investment in health, education and other vital needs in the debtor country.

Even as the deal was being signed, the vultures arrived. One of Debt Advisory International's vulture funds bought the debt from Romania for less than \$4 million. They then renegotiated with Zambian officials and -- amid charges of bribery and abuse -- cut a new deal on the debt. They are now suing the Zambian government for the original debt plus interest, which they calculate at over \$40 million, and they expect to win.

For the United States, with our \$2 trillion budget, \$40 million is peanuts. In Zambia, it represents vital medicine and textbooks. Martin Kalunga-Banda, Zambian presidential adviser and a consultant to Oxfam, told the BBC's Newsnight, "That \$40 million is equal to the value of all the debt relief we received last year."

Investigative reporting by Greg Palast, broadcast on the BBC and Democracy Now, has exposed the vulture funds, defined by the International Monetary Fund as companies that buy up the debt of poor nations on the cheap when it is about to be written off and then sue for the full debt plus interest, often pocketing 10 times what they paid for it.

"Profiteering doesn't get any more cynical than this," reported Caroline Pearce of the global Jubilee debt forgiveness campaign.

Paul Singer, a reclusive billionaire, is said to have essentially invented vulture funds. In 1996, his company paid \$11 million for some discounted Peruvian debt and then threatened to bankrupt the country unless it was repaid \$58 million. They got their pound of flesh. Now, according to the BBC, they're suing Congo Brazzaville for \$400 million for a debt they bought for \$10 million.

U.S. courts serve to enforce the vulture funds' contracts. The president or Congress could bring an end to the practice. So naturally, the vulture funds lavish attention and contributions on key politicians. Debt Advisory International, for example, was paying \$240,000 a year to the lobby firm Greenberg Traurig -- before lead lobbyist Jack Abramoff was jailed.

Singer has more direct political connections. He is among the biggest donors to Bush and the Republican cause in New York -- giving a reported \$1.7 million since Bush started his first presidential campaign.

Last week, Rep. John Conyers, the chair of the House Judiciary Committee, raised the matter directly with Bush himself, asking him if he knew what his leading backers like Singer and Michael Sheehan were doing, and whether he would crack down on the practice. Conyers reports that the president said, "I don't know anything about this," and vowed to put an aide on it right away. Conyers has promised to pursue the matter.

This is the new global order: the wealthy -- armed with lawyers, lobbyists, courts and retainers -- making fortunes by preying on the vulnerable. Our government says that we want to be a source of hope to the poorest peoples of the world. The vulture firms make us a source of despair -- and an object of hate.



Congressman Donald M. Payne

10th District New Jersey Essex County | Hudson County | Union County



Press Releases



**Congressman
Payne has paid
special attention to a
number of issues
including the welfare
of children, the state
of our environment,
and the health of our
nation.**

For Immediate Release
May 23, 2007

Contact: Kerry McKenney
(202) 225-3436

Payne Calls for Stronger US Action against Vulture Funds

Yesterday, Congressman Donald M. Payne, Chairman of the Subcommittee on Africa and Global Health, held a hearing on the topic "Vulture Funds and the Threat to Debt Relief in Africa: A Call to Action at the G-8 and Beyond." During the hearing, Payne urged the US government to take action against the predatory practices of a class of commercial creditors appropriately known as "vulture funds".

These companies try to use the sanguine term "distressed-debt investors" to mask the fact that they buy debt of highly-indebted poor African countries for pennies on the dollar only to turn around and demand through litigation the full value of the initial debt plus interest and fees. Many times, these odious debts were acquired by authoritarian regimes and were not used in the legitimate interests of their people.

When creditor nations and multinational institutions like the International Monetary Fund (IMF) and the World Bank decided to offer debt relief and cancellation, the intent was to give these nations the opportunity to reallocate newly freed financial resources towards achieving the UN Millennium Development Goals. Vulture funds threaten to derail progress made on debt relief in Africa. During the hearing, Representative Payne stated, "Instead of servicing millions of dollars in debt annually, these nations could finally begin to service their own people. Schools could be built, teachers and nurses could be hired, life-saving medication could be distributed. Yet, with the threat of vulture funds waiting in the wings to swoop down and prey on struggling, impoverished African nations, poverty reduction programs and plans for economic development could come to a grinding halt. Thus, a few Americans are begetting fortunes at the expense of the misfortune and further impoverishment of millions of Africans. This is morally reprehensible and exploitative."

Congressman Payne was joined at the hearing by Mr. Danny Glover, Actor/Activist and Chairman of the Board of TransAfrica Forum, Ms. Emira Woods, Co-Director of Foreign Policy in Focus at the Institute of Policy Studies, and Mr. Neil Watkins, National Director at JubileeUSA Network who all testified to the detrimental effects that vulture funds, if left unchecked, could have on African nations. "The morally bankrupt actions of vulture funds render the commitments to debt relief made by the US and other wealthy nations meaningless. We urge the international community to come up with effective means to protect countries pursued by vulture funds in the future," Mr. Glover declared.

As the industrial nations meet in Germany at the G-8 Summit on June 6-8,

2007, the United States must play an active role in the vulture funds discussion. Given that the United States is a prime destination for litigation by these funds and is a leading nation on debt relief, it has the ability to generate policy proposals and garner support among other nations. Congressman Payne vowed, "I, along with other Members of Congress, will be sending a letter to President Bush calling upon him to take a stronger stand against vulture funds by assisting nations that have or could potentially under come attack. We must encourage G-8 nations to close the legal loopholes that allow these vulture funds to prosper."

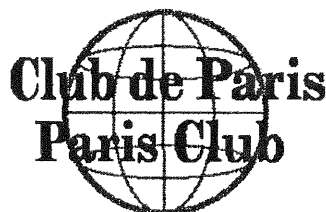
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Press Release List



22 May 2007



**PRESS RELEASE OF THE PARIS CLUB
ON THE THREATS POSED BY SOME LITIGATING CREDITORS
TO HEAVILY INDEBTED POOR COUNTRIES**

Public attention has recently focused on the **behaviour** of creditors resorting to aggressive litigation tactics against heavily indebted poor **countries** (HIPC). These actions freeride on the debt cancellation granted by other creditors **and** thus divert resources from poverty reduction expenditures in the debtor country.

Paris Club creditors recall that they are committed **to** the full implementation of the HIPC initiative. They urge all official and commercial **creditors** and debtor countries to take the necessary steps to implement this initiative.

In particular, consistent with the Paris Club **principle** of comparability of treatment and taking stock of the harmful consequences **of litigation** for HIPC countries, Paris Club creditors confirm that they are committed to **avoid selling** their claims on HIPC countries to other creditors who do not intend to provide **debt relief** under the HIPC initiative, and urge other creditors to follow suit.

In cooperation with relevant international institutions, Paris Club creditors have agreed to intensify their work on this issue with a view **to identify** concrete measures to tackle this problem.

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Background notes

1. The Paris Club was formed in 1956. It is an informal group of creditor governments from major industrialized countries. It meets on a monthly basis in Paris with debtor countries in order to agree with them on restructuring their debts.

2. The members of the Paris Club are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, the Russian Federation, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.

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