

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Anajai Calcano Pallano, Maximiliano)
Calcano, Maribel Mercedes, Baby Mercedes,)
Maribel Andujar Medina, Isael Altagracia)
Andujar, Rosa Maria Andujar, Baby Olmos,)
Maria Virgen Deogracia, Estanlyn Garcia)
Deogracia, Amparo Andujar,)

Plaintiffs,)

v.)

C.A. No. 09C-11-021-JRJ

A E S Corp., A E S Atlantis, Inc., A E S)
Puerto Rico, LP, A E S Puerto Rico, Inc.,)
A E S Puerto Rico Services,)

Defendants.)

ORDER

AND NOW TO WIT, this 24th day of January, 2011, after consultation with the parties, **IT IS HEREBY ORDERED THAT** pursuant to Delaware Uniform Rule of Evidence 706, Professor Keith S. Rosenn is appointed as an independent expert to assist the Court on issues of Dominican law;

IT IS HEREBY FURTHER ORDERED as follows:

Document Review

1. Professor Rosenn will review the following documents:
 - A. First Amended Complaint. (Trans. ID. 34461206)
 - B. Defendants' Partial Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief can be Granted, and Opening Brief of Defendants in Support thereof. (Trans ID. 29455400)

- C. Plaintiffs' Answering Brief in Opposition to Defendants' Partial Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief can be Granted.
(Trans. ID. 30118427)
- D. Reply Brief in Support of Defendants' Partial Motion to Dismiss the Complaint for Failure to State a Claim. (Trans. ID. 30441638)
- E. Transcript of Hearing on Motion to Dismiss, dated September 17, 2010.
- F. Defendants' Partial Motion to Dismiss the Amended Complaint for Failure to State a Claim Upon Which Relief can be Granted, and Opening Brief of Defendants in Support thereof. (Trans. ID. 35340238)

Research and Opinions

- 2. Professor Rosenn will research and offer opinions on the following issues:
 - A. Under Dominican law, do plaintiffs have only two causes of action: (1) a negligence-based claim under Article 1383 of the Code, and (2) an intentional wrongdoing claim under Article 1382, i.e., are none of the plaintiffs' other claims separately cognizable as a private right of action under the Dominican Civil Code and, in particular, under Dominican Environmental Law 64-00?
 - B. Under Dominican Law, are there circumstances in which the statute of limitations in a personal injury case is longer than six (6) months for a claim under Article 1383 of the Code, and longer than one (1) year for a claim under Article 1382 of the Code? For example, may plaintiffs suing under the Civil Code avail themselves of the longer limitations period under criminal statutes? If so, (1) under what circumstances may plaintiffs avail themselves of criminal statutes of limitations; and (2) what would those longer limitations periods be?

- C. Under Dominican Law, when do statutes of limitations in tort actions begin to accrue? Is it at the time of a plaintiff's injury, or only when a plaintiff has actual knowledge of the cause of his injury and the person(s) responsible for the injury?
- D. Is there tolling of a statute of limitations for fraudulent concealment, and if so, under what circumstances?
- E. Under Dominican Law, are punitive damages recoverable in personal injury actions?

Expert Reports/Deposition Hearings/Trial

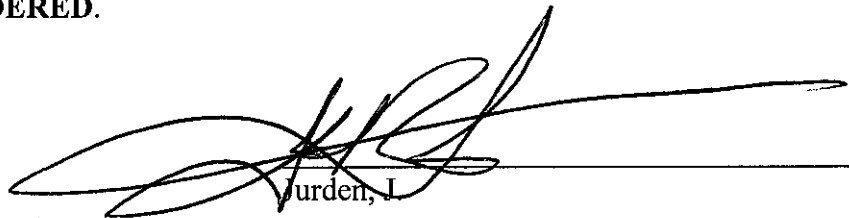
3. Professor Rosenn will provide the Court and counsel with a report setting forth his expert opinions, in a format consistent with Superior Court Civil Rule 26(b)(4)(A)(i), stating the substance of the facts and opinions to which he is expected to testify and a summary of the grounds for each. Professor Rosenn will provide his report to the Court and counsel on or before April 15, 2011. Pursuant to DRE 706, Professor Rosenn will be available at a time and place convenient to him and the parties for a discovery deposition shortly thereafter, if any of the parties decide it necessary to depose him after reviewing his report. Professor Rosenn will be available for cross-examination at a hearing on a date to be determined, if the parties request such a hearing.

4. Professor Rosenn's fee per hour for research, analysis, preparation of an expert report, and attendance at deposition, hearing and/or trial is \$450.00 per hour. Separate charges apply for out of pocket disbursements. Professor Rosenn will submit itemized statements on a monthly basis to the Court and counsel including an accounting of time charges and disbursements. Professor Rosenn's compensation shall be paid in equal shares by the parties within 30 days of each monthly statement.

Communication with Expert

5. No party, and no expert identified by a party, shall have contact with Professor Rosenn directly or indirectly regarding the merits or substance of any of the claims or defenses at issue in this case. To the extent the parties find it necessary to contact Professor Rosenn regarding documents that he requires or requests to address the issues set forth in paragraph 2 above, there shall be no *ex parte* contact, and the contact shall be by local counsel only.
6. The parties agree that the Court may have *ex parte* contact with Professor Rosenn.
7. The Court anticipates it will amend this Order to include additional documents for Professor Rosenn's review (when received by the Court), and additional issues for Professor Rosenn to research if and as they arise.

IT IS SO ORDERED.



Jurden, J

cc: Prothonotary