



## **II. DISCUSSION**

### **A. Jurisdiction**

Because KBC has already appealed the stay order, the court must first determine whether it retains jurisdiction to entertain KBC's request. The court concludes that it does.

It is well established that the filing of a notice of appeal divests the district court of jurisdiction to rule on the merits of the issues underlying the appeal. *See Venen v. Sweet*, 758 F.2d 117, 120 (3d Cir. 1985). However, this principle is not absolute. In appropriate circumstances, district courts retain jurisdiction to protect and enforce previously issued orders and to rule on matters left open by those rulings, so long as the court does not disturb the issues on appeal. *See Georgine v. Amchem Products, Inc.*, 1995 WL 561297, at \*7 (E.D. Pa. Sept. 18, 1995) (citing *Venen*, 758 F.2d at 120); *see also Evans v. Buchanan*, 455 F. Supp. 692, 695 (D. Del. 1978).

In the present case, it is clear that KBC's motion will not require the court to render judgment on the merits of any of the issues in the pending appeal, nor will consideration of the motion affect the scope of the court's stay order. Accordingly, the court concludes that it retains jurisdiction to entertain this motion and the narrow relief the motion requests.<sup>1</sup>

### **B. Applicable Law**

KBC argues that the court should apply Delaware law to the question of whether either Pertamina or the Garnishees must post a bond pending the removal of the stay order. The court

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<sup>1</sup>Notwithstanding this conclusion, the court notes that it does not retain jurisdiction to grant the relief requested by ChevronTexaco and Amoseas in their opposition to the present motion. Specifically, ChevronTexaco and Amoseas maintain that they should not be required to post a bond because they have been discharged completely from this action by operation of law. However, the court will not address this issue because the result may impermissibly affect the number of parties currently subject to the court's stay order.

agrees.

Title 28 of the United States Code, Section 1963 affords the court the power to register the foreign judgment in question. Once the judgment is so registered, Section 1963 provides that it “shall have the same effect as a judgment of the district where registered and may be enforced in a like manner.” 28 U.S.C. § 1963. The execution proceedings themselves are controlled by Rule 69 of the Federal Rules of Civil Procedure. This Rule provides that:

The procedure on execution, and proceedings supplementary to and in aid of the judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held . . . .

FED. R. CIV. P. 69(a).

In arguing that Rule 69 does not apply to the present situation, Pertamina contends that the court’s decision to stay proceedings pending resolution of factual issues by another federal court is not a “procedure on execution.” However, for Pertamina’s argument to prevail, the court would have to narrowly construe Rule 69’s facially broad language. The court declines to do this. Instead, the court is persuaded that “procedure on execution” includes procedures regarding and related to the execution. Thus, as the court’s order stayed proceedings in furtherance of the execution of a judgment, its actions can fairly be said to be a “procedure on execution.” Accordingly, once KBC’s judgment was registered in Delaware pursuant to 28 U.S.C. § 1963, the execution proceedings are governed by Delaware law.

Delaware law in turn provides that:

If the judgment debtor shows the court any ground upon which enforcement of a judgment of the Superior Court of this State would be stayed, the court shall stay enforcement of the judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this State.

DEL. CODE ANN. tit. 10, § 4784(b).

Pertamina is clearly a judgment debtor to whom Section 4748's mandatory security provision applies. The court concludes that the Garnishees, however, are not judgment debtors. Indeed, the Garnishees are merely third-party entities who are alleged to be holding Pertamina's monetary assets. They themselves, however, cannot be said to be judgment debtors. Accordingly, Section 4748 does not apply to the Garnishees, nor have the parties pointed to any other law applicable to the present situation which would require the Garnishees to post a bond. For this reason, the court will require only Pertamina, the actual judgment debtor, to bear the burden of posting a bond in the amount of the judgment.

**C. Attorney's Fees**

In their opposition to KBC's present motion, the Garnishees request that the court order KBC to reimburse them for the costs and attorney's fees associated with defending the present motion. The court will deny this request.

A district court has the power to sanction a party who has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *See Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-46 (1991). In the present case, however, there is no evidence that KBC has acted wantonly or in bad faith, or filed the present motion for a vexatious or oppressive purpose. Accordingly, the court finds no basis on which to grant attorney's fees.

**III. CONCLUSION**

In accordance with Delaware state law, Pertamina must post a bond, or otherwise provide

security, satisfying the judgment in full pending the removal of the court's stay order. Because the court has found no such law applicable to the Garnishees, the court will not require them to assist Pertamina in posting the required bond.

For these reasons, IT IS HEREBY ORDERED that:

1. KBC's expedited motion to require the posting of a bond (D.I. 136) is GRANTED with respect to Pertamina and DENIED with respect to the Delaware Garnishees.
2. The Delaware Garnishees' request for attorney's fees is DENIED.

Date: June 27, 2002

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE