UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

IEYOUB

RICHARD P. IEYOUB, ATTORNEY GENERAL ex rel., STATE OF LOUISIANA	:	DOCKET NO. 97-1174 (Consolidated with CVA 97-1241)
VS.	:	JUDGE JAMES T. TRIMBLE, JR.
THE AMERICAN TOBACCO COMPANY, ET AL	:	MAGISTRATE JUDGE WILSON

ACE (Bermuda)

MEMORANDUM RULING

This action was originally brought in Louisiana state court by the Attorney General of the State of Louisiana (hereinafter, the "Attorney General" and "Louisiana," respectively) against numerous tobacco manufacturers, tobacco distributors, and their associates (the "Tobacco Defendants"). The Attorney General's action seeks to recover costs allegedly incurred by Louisiana in providing health care to individuals allegedly suffering from tobacco-related illnesses. In March 1997, pursuant to Louisiana's "Direct Action Statute," La. Rev. Stat. Ann. 22:655 (1997), the Attorney General amended his state-court petition to include over one hundred insurance companies that have allegedly insured the Tobacco Defendants at various times, past and present (the "Insurers," when referred to collectively). Among the Insurers that the Attorney General named in his amended petition were A.C.E. Insurance Company, Ltd. ("A.C.E.") and an unspecified number of "certain" underwriters belonging to the Institute of Lloyd's of London.

Subsequently, a majority of the Insurers and ICAROM, which was not expressly named in the Attorney General's amended petition but which is a member of the Institute of Lloyd's of London and which at one time subscribed to a percentage share in several of the policies covering the Tobacco Defendants, filed answers in Louisiana state court. Thereafter, A.C.E. and ICAROM filed separate notices of removal in this Court. A.C.E. based its removal on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §205 (the "Convention"). ICAROM based its removal on the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1330(a) (hereinafter the "FSIA").

The Attorney General then filed Motions to Remand in this Court contesting separately A.C.E. and ICAROM's respective bases for removal. The Attorney General followed his Motions to Remand with memoranda in support of the motions, a request for sanctions against the Insurers pursuant to Fed. R. Civ. P. 11, and a request, in the alternative, to sever the Tobacco Defendants and/or certain of the Insurers from this suit and remand them to Louisiana state court. In turn, A.C.E., ICAROM, and numerous other Insurers filed briefs in opposition to the Attorney General's motions and memoranda.

This Court hereby DENIES the Attorney General's Motion to Remand against A.C.E. Additionally, the Court finds that exercise of the Court's original jurisdiction is proper as to this entire case. Therefore, the Court DENIES the Attorney General's Motion to Remand the Tobacco Defendants and/or certain of the Insurers. The Court, however, also finds that ICAROM is not currently a proper, named defendant to this suit. Finally, the Court DENIES the Attorney General's Motion for Sanctions.

I. A.C.E. Removal

Defendant A.C.E. avers that among the Tobacco Defendants there are three policyholders that

have policies with A.C.E. containing clauses providing for arbitration in the United Kingdom. Such policies, A.C.E. claims, fall under the Convention, thereby providing A.C.E. with the right to invoke this Court's original jurisdiction. The Attorney General, however, claims that A.C.E. has not properly invoked the Convention and that, therefore, the Court lacks jurisdiction over this action.

As an initial matter, an agreement falls under the Convention when: (1) the agreement is in writing, (2) it is an agreement to arbitrate a dispute, (3) the agreement provides that such arbitration will take place in the territory of a signatory to the Convention; and (4) the agreement is not entirely between citizens of the United States. *Sedco, Inc. v. Petroleos Mexican National Oil, Co.*, 767 F.2d 1140 (5th Cir. 1985). Federal courts have original jurisdiction over cases in which the subject matter "relates to an agreement or an award falling under the Convention." 9 U.S.C. §203. Defendants in particular may remove from state court to federal court when an action's subject matter "relates to" an agreement covered by the Convention. 9 U.S.C. §205.

In the case at bar, it is uncontested that: (1) there exists a written arbitration agreement between three of the Tobacco Defendants, each of which is a citizen of the United States, and A.C.E., a citizen of Bermuda, for arbitration to take place in the United Kingdom, a signatory to the Convention. It is therefore apparent that the arbitration agreement between A.C.E. and its policyholders is an agreement "falling under the Convention." The Attorney General, however, urges that: (1) there is no actual "dispute" or "difference" regarding liability on the policies between A.C.E. and its policyholders; and (2) in light of the Fifth Circuit's recently enunciated test for jurisdiction under the Convention, the Attorney General's suit implicates no "relevant" agreement covered by the Convention..

A. The Dispute Between A.C.E. and Its Policyholders

The Convention requires that an action "relate to" an arbitration agreement about which the signatories to the agreement have "differences" among themselves. The Attorney General interprets the Convention's requirement of a "difference" to require that parties to an arbitration agreement be "genuinely concerned with arbitration" and that there be more than a "phantom dispute" at issue. The Attorney General subsequently alleges that A.C.E. and its policyholders do not meet these standards because they have "colluded" to "fabricate" a "difference" among themselves regarding matters of coverage in the policyholders' insurance contracts.[1]

A.C.E. and its policyholders, however, contend that they do indeed have a "difference" or "dispute" regarding whether A.C.E.'s insurance policies cover the sorts of damages that the Attorney General sets out in his petition. As evidence of this alleged "dispute," A.C.E. and its policyholders indicate that: (1) they are currently involved in active arbitration in the United Kingdom; and (2) they have invited the Attorney General to participate in these arbitration proceedings.

The Attorney General's sole example of case law supporting his argument is cited only for the proposition that "the Convention only applies where there is an agreement in writing to arbitrate a *dispute*." *Sedco, Inc. v. Petroleos Mexican National Oil, Co.*, 767 F.2d 1140 (5th Cir. 1985) (emphasis added in Attorney General's second memorandum, not in original case). From this language, the Attorney General expounds on his interpretation of "dispute." Nonetheless, the Court does not find that the language of *Sedco* is adequate legal support to impose the Attorney General's standards of "genuinely concerned with arbitration" or "phantom dispute" on the Convention. The Court therefore finds that A.C.E., in its memoranda opposing remand, has sufficiently alleged a

[1] In particular, the Attorney General argues that there is no evidence that any policyholder has made a claim against A.C.E. or demanded that A.C.E. defend the policyholder in this action.

spute" or "difference" regarding an agreement falling under the Convention.

Alternatively, even if, *arguendo*, this Court were to utilize the standards that the Attorney neral urges, A.C.E.'s ongoing arbitration proceedings with its policyholders in the United Kingdom arly suggest to the Court that there exists more than a "phantom dispute" under the insurance reements at issue. Employing the Attorney General's standard, the Court also finds that A.C.E. l its policyholders are "genuinely concerned with arbitration." In turn, to the extent that the nvention requires a current, viable "difference" or "dispute" regarding a written arbitration reement falling under the Convention, it is clear to this Court that there exists such a dispute ween parties in this case.[2]

B. Subject Matter "Relating to" Arbitration Agreement

The Convention requires that an action "relate to" an arbitration agreement which itself is ject to the Convention. In *Marathon Oil Co. v. Ruhrgas*, the Fifth Circuit set out a test for ther an agreement under the Convention was "related to" a plaintiff's action for the purposes of oval. *Marathon Oil Co. v. Ruhrgas*, 115 F.3d 315, 320 (5th Cir. 1997). Both the Attorney neral and A.C.E. claim that the *Marathon* decision supports their opposing positions.

In *Marathon*, three plaintiffs--Marathon, one of Marathon's subsidiaries, and a third company iated with Marathon--sued Ruhrgas, a German gas producer. *Id.* at 315-317. The plaintiffs in

[2] With regard to the Attorney General's proffered evidence that there exists no "dispute" use none of A.C.E.'s policyholders have "sued" A.C.E. for legal defense and/or payment on policies, the Court notes that this argument begs the obvious. There is no need for the yholders to ever "demand" that A.C.E. enter the case on their behalf. A.C.E. has already brought into the case by the Attorney General himself. Nor is there any need for the yholders to "sue" A.C.E. for payment of any claims to which the Attorney General may iately be entitled; A.C.E. is now a party to this action and may be subject to liability for any e award.

Marathon claimed that the defendant had fraudulently convinced them to invest in a second subsidiary owned by Marathon, which subsidiary was not named as a party to the suit. *Id.* The arbitration clause at issue in *Marathon* was contained in a contract between the defendant and the second, unnamed subsidiary of the plaintiff Marathon. *Id.*

At the outset in *Marathon*, the court found that the "necessary predicate" for jurisdiction under the Convention was "whether any relevant arbitration agreement exists between the parties to [the] suit." *Id.* The Attorney General contends that: (1) this language constitutes the dispositive test under *Marathon*; and, (2) such language clearly requires that parties on either side of a dispute be signatories to a relevant arbitration agreement under the Convention. In particular, the Attorney General writes that "Marathon Oil Company expressly holds that neither the Convention nor §205 applies to parties, such as the State of Louisiana in this case, who have not voluntarily entered into arbitration agreements."

As in the case at bar, *Marathon* involved non-removing plaintiffs that were not themselves signatories to an arbitration agreement. Contrary to the Attorney General's argument, however, the Fifth Circuit did not summarily deny original jurisdiction under the Convention based on the plaintiffs' status as non-signatories. *Id.* at 320. Rather, in addition to the question of whether the plaintiffs were signatories to an arbitration agreement, the *Marathon* court explicitly considered three other factors in determining whether there was any "*relevant*" arbitration Convention agreement involved in the parties' dispute. *Id.* at 321. Likewise, this Court will now evaluate whether any "relevant" arbitration agreement falling under the Convention exists in the case at bar.[3]

[3] Additionally, under this Court's interpretation of the phrase "relevant agreement between the parties," there may be parties on the *same side* of a controversy "between" whom there is a sufficiently "relevant" agreement to confer jurisdiction under the Convention. Had the Fifth

In examining whether there was any "relevant" agreement between the non-signatory plaintiffs and the defendant, the Fifth Circuit in *Marathon* concentrated on four factors: (1) whether the plaintiffs themselves were signatories to the arbitration agreement; (2) whether the plaintiffs were seeking damages under the contract containing the allegedly relevant arbitration agreement; (3) whether there was any contractual relationship at all between the plaintiffs and the defendant; and (4) whether the plaintiffs were seeking redress for wrongs done to the second, unnamed subsidiary (*i.e.* one of the actual signatories to the agreement). *Id.* Therefore, on its face, the analysis in *Marathon* considers the plaintiff's status as a signatory to an arbitration agreement to be only one of four elements in determining whether there is a relevant agreement under the Convention.

Ultimately, the court in *Marathon* concluded that there was no "relevant" arbitration agreement in the case. *Id.* In doing so, the court expressly addressed each of the factors in its analysis, finding that: (1) the plaintiffs were not signatories to the agreement at issue; (2) since the plaintiffs' claim was entirely for tortious damages to themselves, the plaintiffs were not seeking damages under the contract between the unnamed subsidiary and the defendant; (3) there was no contractual relationship otherwise between the plaintiffs and the defendant; and (4) finally, the plaintiffs were specifically seeking redress for wrongs committed against themselves, not necessarily the unnamed signatory to the arbitration agreement. *Id.*

In the case at bar, the Court, in applying the four-factor analysis set out in *Marathon*, concludes that with regard to the first *Marathon* factor, it is uncontested that neither Louisiana nor

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Circuit intended to rule that only agreements to which at least one plaintiff and one defendant are signatories are "relevant" for removal purposes under the Convention, the court could have written that there was no removal unless there was a "relevant agreement between the *opposing* parties."

the Attorney General is a signatory to the arbitration agreement at issue. Likewise, with regard to the fourth *Marathon* element, the Attorney General does not claim to be seeking redress from A.C.E. on behalf of the other signatories to the arbitration agreement, the policyholders.

However, regarding the second and third *Marathon* considerations of (1) whether a plaintiff is seeking to recover based on a contract subject to an arbitration agreement, and (2) whether there otherwise exists a contractual relationship between the plaintiff and defendant, the Attorney General effectively concedes both elements when he alleges that, as against the Insurers in general: (1) Louisiana is a "beneficiary of the policies, entitled to the same rights and privileges under the policies as the assured"; (2) Louisiana has the ability to enforce those contractual rights running in an insured's favor;[4] and (3) Louisiana's Direct Action Statute "directly makes injured parties beneficiaries of [an] insurance contract."[5]

Despite these admissions, the Attorney General analogizes his action to the plaintiffs' action in *Marathon* by arguing that his claim against A.C.E. is more tortious than contractual since the "only reason that any of the defendants are presently party to the suit is because of the underlying claims against the tobacco defendants, which do not rest purely in contract." To the contrary, in the absence of the contracts between A.C.E. and its policyholders, Louisiana would have no rights whatsoever

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[4] In particular, the Attorney General claims that, because Louisiana is an alleged third party beneficiary of the insurance contracts in this case, it may enforce a Service of Suit Clause against ICAROM in place of the actual Insured. *See* § III of this Memorandum Ruling

[5] The Attorney General's admissions are consistent with Fifth Circuit's interpretation of Louisiana law, which holds that the Direct Action Statute "creates a contractual relationship which inures to the benefit of any and every person who might be negligently injured by the insured". *Shockley v. Saltires*, 615 F.2d 233, 238 (5th Cir.), *cert. denied*, 101 S.Ct. 113 (1980). See also *Humble Oil & Refining M/V John E. Coon*, 207 F.Supp. 45 (1962).

against A.C.E.[4] Indeed, were it not for the insurance contracts at issue in this case, any one of the Insurers that the Attorney General has brought into this action would be legal strangers to this conflict. Having sued the insurance companies based on their contracts with their insureds, it is contradictory for the Attorney General to now argue that his suit does not implicate A.C.E.'s contracts with its policyholders.

Accordingly, the Court finds that under the Fifth Circuit standard set out in *Marathon*: (1) the Attorney General's action directly seeks damages under the insurance contracts between A.C.E. and its insureds; and (2) further, there otherwise exists a contractual relationship between the Attorney General and A.C.E. inasmuch as Louisiana's Direct Action Statute "creates a contractual relationship which inures to the benefit of any and every person who might be negligently injured by the insured." *Shockley v. Sullows*, 615 F.2d 233, 238 (5th Cir.), *cert. denied*, 101 S.Ct. 113 (1980). Because of the strength of these two findings, and in light of the Fifth Circuit's holding that Congress intended §205 to "channel[ ] Convention Act cases into federal courts,"[5] the Court further finds that there is a "relevant" agreement under the Convention between A.C.E. and its policyholders so as to sustain this court's original jurisdiction. As a result, A.C.E.'s removal was permissible.

III. Failure To Obtain Proper Consent For Removal from All Parties

The Attorney General alleges that A.C.E. has failed to obtain consent for removal from all ***defendants properly joined and served***, in contravention of established case law. See *Farias v. Bexar County Bd. of Trustees for Mental Health Mental Retardation Servs.*, 925 F.2d 866, 871 (5th

[4] See *Shockley v. Sullows*, 615 F.2d 233, 238 (5th Cir.), *cert. denied*, 101 S.Ct. 113 (1980). See also *Humble Oil & Refining M/V John E. Coon*, 207 F.Supp. 45 (1962).

[5] *McDermott Int'l Inc. v. Lloyd's Underwriters*, 944 F.2d 1199, 1208 (5th Cir. 1991).

Cir.), *cert denied*, 502 U.S. 866 (1991). In particular, the Attorney General alleges that there is no consent from the named defendants Mission National Insurance Company and a related company, Mission Insurance Company (the "Mission Companies").

The law is well established that no plaintiff may defeat the right of a defendant to remove to federal court by joining nominal, unnecessary, or dispensable parties against whom the plaintiff would not be able to establish a legitimate cause of action. *Farias*, 925 F.2d at 871. With regard to whether the Mission Companies are properly joined and served defendants, as opposed to defendants against which the Attorney General would not be able to establish a legitimate cause of action, the Court notes that: (1) the Mission Companies were both placed into liquidation by order of the Superior Court of California in and for the County of Los Angeles on February 24, 1987; (2) the Superior Court of California in and for the County of Los Angeles issued an injunction at the same time barring the commencement of any suit against the two Mission companies; and (3) a Louisiana court, the 19th Judicial District Court, Parish of East Baton Rouge, has itself issued an injunction enjoining the commencement of any suit against the Mission Companies. See *Sherman A. Bernard, Commissioner of Insurance v. Mission Insurance Co.*, No. 314,094 (May 1, 1987).

Furthermore, the Court notes that: (1) the Mission Companies are currently unable to consent to removal as they have been in liquidation for over a decade; (2) the Attorney General's suit appears to be in open violation of both a standing injunction issued in Louisiana and a California injunction properly given effect in Louisiana under the Full Faith and Credit Clauses of the United States and Louisiana Constitutions, see U.S. Const. Art. IV, §1, cl. 2 and La. Rev. Stat. Ann. 22:757, et seq.; and (3) the Supreme Courts of both the United States and Louisiana have held that this Court is bound by the prior insolvency holdings of another state's courts. *Underwriters National Assurance*

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Co. v. North Carolina Life and Accident & Health Insurance Guaranty Association, 455 U.S. 691, 705 (1982); *Davis v. Poolman*, 353 So.2d 331, 333 (La. 1975).

In light of these facts, the Court finds the Mission Companies to be dispensable and/or nominal parties against which the Attorney General would not be able to establish a legitimate cause of action. As a result, A.C.E. was under no obligation to obtain consent for removal from either of the two Mission Companies.

IV. Severance of the Tobacco Defendants and/or Other Insurers

In the alternative to his Motions to Remand this action, the Attorney General asks this Court to exercise its discretion under 28 U.S.C. §1367 to refuse jurisdiction over what the Attorney General characterizes as supplemental claims against the Tobacco Defendants and/or all Insurers other than A.C.E. (hereinafter, the "Other Insurers"). The Attorney General urges that the Court remand his allegedly separate claims against the Tobacco Defendants and/or the Other Insurers to state court because, the Attorney General contends, there is no common nucleus of operative fact among the claims against the Tobacco Defendants, the Other Insurers, and A.C.E.[8] In the Court's view, the Attorney General's request implicates questions of (1) the general nature of federal jurisdiction, and (2) the particular nature of the Attorney General's action and Louisiana's Direct Action Statute.

A. Original Jurisdiction

Section 1367 of Title 28 entitles this Court to exercise jurisdiction over supplemental claims

[8] In support of this argument, the Attorney General alleges that against the Insurers there are only "coverage issues," whereas against the Tobacco Defendants there are "liability and damages" questions. Additionally, the Attorney General claims that the Tobacco Defendants and the Insurers, which Insurers the Attorney General would hold directly liable for the tobacco defendants' alleged torts, are "not sufficiently intertwined" to justify the exercise of supplemental jurisdiction over the Tobacco Defendants.

that are "so related" to another claim within this Court's original jurisdiction "that they form part of the same case or controversy." 28 U.S.C. §1367. Unlike the exercise of supplemental jurisdiction under §1367, however, under 9 U.S.C. §203, this Court retains original jurisdiction over an "action or proceeding falling under the Convention." Decisions addressing removal actions brought under 28 U.S.C. § 1441(d), a source of original jurisdiction similar to that of 9 U.S.C. §§203, hold that federal courts (1) gain jurisdiction over an "entire action" that is properly removed[9] and (2) lack discretion to refuse such original jurisdiction, once properly invoked.[10] In accordance with these decisions, the Court, having held that A.C.E. properly removed this action under 9 U.S.C. §205, finds that it retains original jurisdiction over the "entire case" at bar, including the Attorney General's allegedly supplemental claims against the Tobacco Defendants and the Other Insurers.

B. Nature of the Direct Action Statute and the Case

Alternatively, even if, *arguendo*, there were no means by which the Court could exercise original jurisdiction over this "entire action," the plain language of §1367 only applies to "*other* claims," *i.e.* discrete, individual claims/causes of action that are *separate* from the claim affording original federal jurisdiction, yet not so separate as to no longer form part of the same case or controversy. In his original petition and in his amended petitions, the Attorney General does not allege any such discrete, individual claims against the Tobacco Defendants, the original defendants to this action. Rather, the Attorney General broadly alleges that each of the Tobacco Defendants has engaged in what is essentially a single, ongoing tort against Louisiana citizens, proximately resulting

[9] *Nolan v. Boeing Co.*, 919 F.2d 1058, 1064 (5th Cir. 1990).

[10] *In re Surinam Airways Holding Co.*, 974 F.2d 1255, 1260 (11th Cir. 1992).

in Louisiana having incurred medical costs.[11]

With regard to the Insurers (including A.C.E.), under well-established Louisiana law, the Direct Action Statute does not afford a plaintiff an *independent* cause of action against an insurer.[12] Therefore, under Louisiana law, the Attorney General may only hold the Insurers liable by way of contract for what he alleges is the Tobacco Defendants' single, ongoing tort. Moreover, apart from the Attorney General's very request to sever the Tobacco Defendants and/or the Other Insurers from this action, there is no indication in the Attorney General's numerous motions and memoranda that he intends to pursue what would inevitably be hundreds of determinable, finite claims against particular tobacco companies, particular tobacco distributors, particular tobacco affiliates, and particular tobacco insurers.[13]

As a result, there do not appear to be any "supplemental" claims against the Tobacco Defendants and/or the Other Insurers which the Court could evaluate regarding whether they arise from a common nucleus of fact. Accordingly, even if there were no original jurisdiction over this

[11] Specifically, the Attorney General alleges that the Tobacco Defendants, including various manufacturers, distributors, advertising agencies and other tobacco company affiliates are *together* "a cartel who promote and distribute tobacco products, or materially assist others in so doing, to citizens in Calcasieu Parish and elsewhere throughout the state, and have done so for many years." The Attorney General further alleges that, *as a group*, the "defendants have intentionally engaged in these activities knowing that when Louisiana citizens use these products as they are intended to be used, the citizens are substantially certain to suffer injury and illness."

[12] Under Louisiana law, the Direct Action Statute does not create an independent cause of action against an insurer but only a procedural remedy. *Dumont v. Administrators of Tulane Educational Fund*, 639 So.2d 246 (La. 1994); *Graham v. American Employers' Ins. Co. Of Boston, Mass.*, 171 So.2d 471 (La. Ct. App.–2nd Dist. 1937).

[13] To the contrary, the Attorney General asserts basically identical theories of recovery against each of the insurers and alleges that the insurers are "jointly and solidarily" liable for Louisiana's alleged injuries.

entire action under 9 U.S.C. §203, but only the discretion to exercise supplemental jurisdiction under §1367, the Court does not recognize the existence of any supplemental claims in the Attorney General's petition over which to exercise or refuse jurisdiction.

III. ICAROM's Removal

The Attorney General argues first that ICAROM is, currently, not a proper, named party to this suit and, therefore, ICAROM has only injected itself into the suit in order to secure removal on behalf of the other defendants. The Attorney General then contends that, in the event that ICAROM is actually a named defendant to the suit, ICAROM is not the instrumentality of a foreign sovereign so as to properly invoke the FSIA. Finally, if ICAROM is determined to be a sovereign instrumentality under the FSIA, the Attorney General alleges that ICAROM has waived its right to remove because: (1) ICAROM voluntarily appeared in state court by filing an answer there before removing to this Court; (2) there is a Service of Suit Clause contained in the policy between ICAROM and its insured; and (3) ICAROM's notice of removal was untimely.

A. ICAROM as a Named Defendant

The Attorney General avers that: (1) ICAROM is not a named defendant to this suit; (2) the Attorney General is presently unwilling to make ICAROM a named defendant to this suit; and (3) therefore, ICAROM has no standing to remove to federal court. ICAROM, in turn, alleges that after receiving notice of the Attorney General's petition, which named only the "Institute of Certain Lloyd's of London Underwriters," ICAROM requested that the Attorney General specify whether his suit involved certain of the contracts in which ICAROM owned a percentage share. However, ICAROM claims, the Attorney General refused to specify which insurance contracts and which Lloyd's underwriters the Attorney General purported to include within Louisiana's suit. As a result,

ICAROM argues that: (1) it had no other manner in which to secure its rights besides to answer in state court, then remove to federal court; (2) this is a case of misnomer by the Attorney General; and/or, (3) given that ICAROM is, in fact, one of the "certain" underwriters of Lloyds of London, ICAROM is already a named defendant.

Section 1446(a) of Title 28, which governs removal procedure, requires that a party be a "*defendant or defendants*" in order to remove. 28 U.S.C. §1446(a). It is clear that the addition of a party to a petition by supplement or impleader may provide a basis for removal. See e.g. *Caterell v. Great Republic Ins. Co.*, 873 F.2d 1249, 1254 (9th Cir. 1989). Similarly, the intervention of a party may provide a basis for removal. See e.g. *Federal Deposit Ins. Corp. V. Otero*, 598 F.2d 627, 629 (1st Cir. 1979). However, nowhere is it apparent that a party that has neither been added to a plaintiff's petition or has voluntarily intervened by correct procedure has any basis for removal of an action. See *Aluminum Co. of America v. Admiral Ins. Co.*, No. 93-32C (W.D. Wash. 1993)(rejecting ICAROM's allegation that, although it was not a named defendant to a suit, it nonetheless had standing to remove). Therefore, in light of the clear requirement of §1446(a) and the Attorney General's unwillingness to name ICAROM as a defendant at the current time, the Court finds that ICAROM lacks standing to bring its petition for removal.[14]

B. Other Issues

Having found that ICAROM is not currently a proper defendant in this action, it is not incumbent on the Court to address the matters of (1) ICAROM's alleged status as an instrumentality of a foreign sovereign, (2) ICAROM's alleged waiver of its right to remove; (3) ICAROM's alleged

[14] The Court notes that ICAROM's prior activity in this case does not serve as a bar to ICAROM later asserting status as an intervenor to the present action pursuant to Federal Rule of Civil Procedure 24.

untimely removal; or (4) the Attorney General's enforcement of the Service of Suit Clause

V. Motion for Sanctions Pursuant to Rule 11

Federal Rule of Civil Procedure 11 requires that a Motion for Sanctions be made separately from other motions and that the opposing parties be given 21 days to withdraw or correct their challenged allegations before the movant files the Motion for Sanctions with this Court. From the face of the record, it is apparent that the Attorney General has complied with neither of these procedural requirements. Therefore, the Attorney General's Motion for Sanctions is denied for failure to comply with the procedural requirements of Rule 11. Alternatively, the Court finds no factual or legal basis for the imposition of sanctions on any defendants in this action.

Therefore, the Court will DENY both of the Attorney General's Motions to Remand. The Court then RULES that ICAROM is not currently a proper named defendant to this action. Finally, the Court will DENY the Attorney General's request for sanctions under Federal Rule of Civil Procedure 11. The Court will certify its order for immediate appeal pursuant to 28 U.S.C. §1292.

THUS DONE AND SIGNED, at chambers, in Lake Charles, Louisiana, on this the 11th day of September, 1997.

JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP 11 1997
ROBERT H. SHEMWELL, CLERK
BY _____ DEPUTY

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	:	(Consolidated with CVA 97-1241)
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THE AMERICAN TOBACCO COMPANY, ET AL	:	MAGISTRATE JUDGE WILSON

ORDER

For the reasons stated in the Court's Memorandum Ruling this date, it is:

ORDERED that the Attorney General's two Motions to Remand are denied. It is al ordered that ICAROM not be considered a party to this action, but that ICAROM's rights to ass status as an intervenor under Federal Rule of Civil Procedure 24 are reserved. Further, it is orde that the Attorney General's request for sanctions be denied.

Finally, because the Court is of the opinion that its order involves a controlling question law as to which there is substantial ground for difference of opinion and that an immediate appe from the Court's order may materially advance the ultimate termination of the litigation, the Co hereby certifies this order for appeal under 28 U.S.C. §1292(b). If any party appealing from t order makes its application for appeal to the Fifth Circuit Court of Appeals within 10 days after t entry of this order, the appellate court has discretion to permit such appeal. In the event that a party makes such an appeal based on this order, this Court rules that, pursuant to 28 U.S. §1292(b), all proceedings in this action shall be stayed.

Judgment rendered and signed in chambers at Lake Charles, Louisiana, on the 11th day of September, 1997.

JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE