SEP 1 4 2001

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Jae Won Jeong, Plaintiff, vs. Onoda Cement Co. Ltd, et al., Defendants	**Case No. BC217805** **Assigned: Hon. Peter D. Lichtman** **Court's Ruling Re: Defendants' Motion for Judgment on the Pleadings** **Hearing Held: August 30, 2001** **Submitted: August 30, 2001**

On August 30, 2001, this Court heard the arguments of counsel with respect to Defendants' Motion for Judgment on the Pleadings. The moving defendants are identified as follows: Taiheiyo Cement U.S.A., Inc.; Taiheiyo Cement Corporation; Glacier Northwest, Inc. (fka Lone Star Northwest, Inc.) and the California Portland Cement Company.

The instant motion is based on two grounds. First, that this Court has no jurisdiction over the subject of the causes of action alleged in the complaint; and

[D.O.7] [Check condition of remote Fax.] [14159561008]
P.1
** Transmit Conf. Report **
Fleishman & Fisner Fax:13105570770 Sep 15 2001 13:21 P.03

second, that the complaint fails to state facts sufficient to constitute causes of action against the defendants or any of them.

Having read and considered all moving and opposing points and authorities this Court now proceeds with its ruling.

Facts Pled

The starting point for the analysis of the instant motion is the complaint and the facts that have been pled. For purposes of a Motion for Judgment on the Pleadings (sometimes hereinafter referred to as a JOP), the plaintiff's factual allegations -- but not his legal conclusions -- ***are treated as true. Baughman v. California*** (1995) 38 Cal. App. 4th 182, 187.

Plaintiff Jeong, now a United States citizen, was a Korean student in 1943, during World War II, attending Hosei University in Tokyo (Complaint ¶¶ 56, 57). When Jeong refused the Japanese government's order that he and other students report to the Japanese military for service, he was detained by the Japanese police and later sent to Korea. (Complaint ¶¶ 59-60). Once in Korea, Jeong was imprisoned by the Japanese **"colonial" government authorities**, and sent to a prison camp for "volunteer soldier training." (Complaint ¶¶ 60-61). In January, 1944, Jeong was transferred by such government authorities to another camp in Korea, which was operated "by and for the benefit of the Japanese Onoda Cement Manufacturing Company under the color of Japanese authority." (Complaint ¶¶ 62-63). Since "World War II imposed great demands on the Japanese industry, which suffered from an acute shortage of workers," in order to meet such war-related demands Jeong alleges that the Japanese government set up programs whereby "Korean nationals and Allied prisoners" were used to perform forced

Fleishman & Fisher Fax:13105570770 Sep 15 2001 13:20 P.02

labor. (Complaint ¶¶ 68-69). This was to "benefit the Japanese war effort." (Complaint ¶ 69). While at the camp, Jeong and other workers were forced to perform "hard physical" labor, for which they were not paid. (Complaint ¶¶ 64-65). Jeong alleges that he suffered injuries during this period as a result of this labor. (Complaint ¶66).[1]

In accordance with the facts alleged above, Jeong has now brought suit on his own behalf and as a representative of a putative class of "[e]ach United States citizen and resident of the United States (or legal representative of his estate) who, [sic] was forced to perform labor for the benefit of Onoda and its affiliates at any time between 1929 and 1945," asserting California state law against the defendants per § 354.6 of the Code of Civil Procedure for compensation for labor performed and injuries sustained, as well as for "unjust enrichment, injuries in tort, and unlawful, unfair and fraudulent business practices."

The Contentions of the Defendants

The defendants assert a number of arguments to support their motion for judgment on the pleadings. First and perhaps foremost the defendants contend that the Treaty of Peace with Japan (1951) operates as a bar to the instant complaint.

Second, the defendants assert that The 1965 Japan-Korea Agreement likewise bars the claims asserted here. In accordance with this contention the defendants proffer that the Japanese Government's formal position is that the agreement by and between itself and Korea preclude the claims contained in the class complaint.

---

[1]None of these facts are disputed. Moreover, as set forth above, a JOP concedes the truth of the allegations recited.

Fax:13105570770 Sep 15 2001 13:21 P.04 Fleischman & Fisher

Third, the defendants assert that federal law preempts the instant action since the federal government has occupied the entire field of resolution of war related crimes and claims. In conjunction with this argument the defendants likewise assert that the controversy presented by the Jeong complaint involves a political question and therefore constitutes a non-justiciable issue. Finally, along with this argument the defendants contend that the claims presented before this Court impermissibly challenge the authority behind the various branches of government and pose a threat to U. S. foreign relations.

Court's Ruling

At the outset, it is important to note the following: (1) At the time of the events in question Mr. Jeong was a Korean citizen. (2) Mr. Jeong later became a U.S. citizen.[2] (3) The instant action is brought pursuant to CCP § 354.6. (4) The defendants do not dispute that plaintiff has properly pled the claims per § 354.6; and that § 354.6 permits the claims sought. [3]

The 1951 Treaty Of Peace

The Constitution unequivocally establishes that treaties made "under the authority of the United States, shall be the supreme law of the land . . . any thing in the Constitution or ***Laws of any State*** to the Contrary notwithstanding." U.S. Const., art. VI; see ***Missouri v. Holland*** (1920) 252 U.S. 416, 432-34. The 1951 Treaty, defendants contend, is thus part of the ***"supreme law"*** of the United States and if enforced by this Court operates to bar the Jeong action.

---

[2] Mr. Jeong became a U. S. Citizen in 1997.

[3] However, the defendants do assert that the California statute in question is unconstitutional. This is not at issue in the instant motion although defendants indicated that they may raise the issue at a later time.

Fleishman & Fisher Fax:13105570770 Sep 15 2001 13:21 P.05

In analyzing the Treaty the Court must first look to the plain language of the Treaty. See ***Chan v. Korean Air Lines, Ltd.*** (1989) 490 U.S. 122, 134("where the text is clear, as here, we have no power to insert an amendment"); ***The Amiable Isabelle*** (1821) 19 U.S. 1, 71 ("this Court does not possess any treaty-making power. That power belongs by the Constitution to another department of the Government; and to alter, amend, or add to any treaty, by inserting any clause, whether small or grand, important or trivial, would be on our part a usurpation of power, and not an exercise of judicial function"); ***Victoria Sales Corp. v. Emery Air Freight, Inc.*** (2nd Cir. 1990) 917 F.2d 705, 707 ("when the text of a treaty is clear, a court shall not, through interpretation, alter or amend the treaty").

In light of the above, it must also follow that a treaty entered into by the United States ***only affects United States nationals at the time the treaty is signed.*** See ***Haven v. Polska*** (7th Cir. 2000) 215 F. 3d 727, 733. Here, it is undisputed that Mr. Jeong was not a United States national **at the time** the United States entered into the treaty. Hence, the defendants cannot claim that Mr. Jeong waived his claims by virtue of his United States citizenship. Additionally, the system of reparation payments and a waiver under Article 14(b) of the 1951 Treaty ***applied to allied POWs only.***

Defendants cite article 4(a) of the ***1951 U.S. - Japan Treaty*** as support for their theory that the claims asserted in the complaint have been waived. During the course of oral argument on this point the defendants took the position that the 1951 Treaty of Peace with Japan was a fully integrated document that likewise covered all claims of Korean nationals including the subsequent 1965 Japan-Korea Agreement. This position, simply put, makes no sense and is contrary to the express language of article 4(a) which states that disputed issues by and between Japan and Korea ***"shall be the subject of special arrangements"***. This

Fax:13105570770 Sep 15 2001 13:21 P.06 Fleishman & Fisher

language does nothing more than allow Japan and Korea to resolve their disputes through separate agreements. Article 4(a) does not mandate any *substantive* terms for such agreements or, as Defendants suggest, "remove war-related claims ... from U.S. judicial review and/or intervention." ***Even the U.S. State Department has conceded that the 1951 Treaty "did not extinguish claims of nationals of countries not party to the Treaty."*** Statement of Interest of the United States of America, filed in ***In re World War II Era Japanese Forced Labor Litigation***, MDL NO. 1347 regarding non-allied prisoner of war claims. (December 13, 2001) at page 9 (hereinafter Statement of Interest.) In short, article 4(a) does nothing at all to regulate the claims of Korean nationals. Clearly claims such as the ones set forth in the Jeong complaint are not barred by the very language of the treaty itself.

Specifically, Korea was not a signatory to the 1951 treaty. Therefore, even if article 4(a) had mandated certain types of remedies , it would have obligated only Japan, not Korea, to accept those terms. Indeed, article 4(a) can only be read as intending to benefit Korea (and other territories formerly occupied by Japan) by ensuring that Japan entered into negotiations to resolve outstanding disputes with those countries if those countries so sought. See ***Sale v. Haitian Ctrs. Council, Inc.*** (1993) 509 U.S. 177, 179-80 (reasonably construing text of treaty to avoid anomalous results). Even the obligation of Japan (per article 26) to provide the "same or substantially the same terms" to non-signatory countries as to the Allied Forces ***expired after three years.***

As the State Department noted, the waiver of all "Allied claims" in the 1951 treaty ***"does not cover the PRC, Taiwan, or North or South Korea,"*** Statement of Interest at 6; (nor does the State Department claim that the Korea-Japan agreement waives these claims. See *id.* at 8-9.) See also ***In re World War II Era Japanese Forced Labor Lit.*** (N.D. 2000) 114 F. Supp. 2d 939, 942. ("Since

Fleishman & Fisher Fax:13105570770 Sep 15 2001 13:22 P.07

plaintiffs are not citizens of countries that are signatories of the 1951 Treaty, their claims raise a host of issues not presented by the Allied POW cases and, therefore, require further consideration in further proceedings").

Although the State Department's position on the Treaty is entitled to some deference, it is the courts, not the executive branch, that ultimately determine a treaty's meaning. See ***Sullivan v. Kidd*** (1921) 254 U.S. 433, 442; ***Kolovrat v. Oregon*** (1961) 366 U.S. 187, 194. Moreover, even the State Department, while describing in great detail the "purposes and objectives" of the 1951 Treaty, was forced to concede that the treaty "did not extinguish claims of nationals of countries not party to the Treaty." See Statement of Interest at 6. Although it states that the U.S. "facilitated and encouraged Japan's efforts to enter into . . . agreements with non-signatory nations," (see *id.)*, it never states that the 1951 Treaty created **direct obligations** on non-signatories.

In light of the above, this Court must conclude that the 1951 Treaty did not and does not bar the claims set forth in the Jeong complaint.

The 1965 Japan-Korea Agreement

The Japan-Korea Agreement is an accord that has been concluded by and between two foreign nationals. The United States is not and was not a party to or signatory to that document. ***Accordingly, this document is a provision of foreign law only.*** It is not a "treaty made . . . under the Authority of the United States," U.S. Const. art. VI, cl. 2, it cannot preempt state law under the Supremacy Clause. ***United States Olympic Committee v. Interlicense Corp., S.A.***(2nd Cir. 1984) 737 F.2d 263, 268 (rejecting argument that an international treaty which the United States had not signed and constitutionally ratified can create preemption;

Fax:13105570770 Sep 15 2001 12:22 P.08 Fleishman & Fisher

absent such ratification, the "clear and unambiguous congressional statutory command" required for preemption cannot be found).

Hence, the issue for this Court to decide, with respect to the 1965 Japan-Korea Agreement, is whether there has been a waiver or bar to the claims rather than preemption per the U.S. Supremacy Clause.

When both parties to a treaty agree on an interpretation, a court can defer to that interpretation, absent strong contrary evidence. See ***Hunt Inc. v. Shipwrecked Vessel*** (4th Cir. 2000) 221 F.3d. 634, 642. However, that is not the situation here. In fact, this Court is faced with the exact opposite situation. The declarations submitted by each side reveal polarity in interpretation. In this situation, the Court can ascertain foreign law by the taking of judicial notice. See Evid. Code § 452(f). The Court can consider "any source of pertinent information, including the advice of persons learned in the subject matter." Evid. Code § 454; see also ***Volkswagenwerk A.G. v. Superior Court (Thomsen)*** (1982) 123 Cal. App. 3d 840, 852 (ascertaining German law and treaties to determine country's discovery procedures). [4]

This Court has before it competing declarations that each achieve opposite conclusions. For example, in one attached declaration, Pltf's Exh. C, Professor Chang Rok Kim, a professor of international law at Pusan University in Pusan, Korea, concludes as follows:

---

[4]The defendants assert that this Court should not look to outside sources to determine foreign law. Rather the defendants vigorously argue that the 1965 Agreement requires this Court to find a bar to the instant claims on the grounds that said Accord is and was fully integrated by reference into the 1951 Treaty of Peace. **This Court finds absolutely no support for such a contention and finds such an argument disingenuous at best.**

Fleishman & Fisner Fax:13105570770 Sep 15 2001 13:22 P.09

a. The negotiating history of the treaty, as well as explanatory materials published by the Japanese government immediately following the conclusion of the treaty, make clear that the parties did not settle individual claims; in fact, the Japanese delegate to the treaty negotiations explicitly acknowledged that if claims for damages arose in the future, Japan would pay for them. (Prof. Kim Decl. ¶¶ 11-15).

b. Any waiver in the 1965 Agreement extended only to government to government claims and did not affect individual claims or the rights of individuals to bring lawsuits. (Id. ¶¶ 15-22). This restricted the rights of Japan and Korea to make claims on behalf of their nationals (called "diplomatic protection") but not the rights of those nationals to make claims on their behalf in court. Id. at ¶¶ 16-22; 30- 31.

Furthermore, the plaintiff submits an additional declaration to bolster the contention that the Japan-Korea Agreement did not create a waiver of the claims as asserted herein. According to the declaration submitted by Professor Kohki Abe, professor of international law at Kanagawa University in Yokohama, Japan, whose declaration was submitted to the federal district court in the Multi-District Litigation proceedings in Northern California: "The fifth to the 'eight items' [of the Agreement] – 'compensation to Korean conscripts' – is a specific reference to amounts of withheld wages that Japan then held in the Bank of Japan; it refers to a claim for specific, then-existing property, not all claims for damages that Korean forced laborers may have had against their Japanese 'employers.'"[5] *Id.* ¶ 3(6).

Naturally, the defendants submit a counter declaration which takes an opposite view of the Agreement. In this regard, the Court notes that Professor

[5] During the negotiations of the Japan-Korea Agreement, Korea submitted the so-called "eight items" to Japan. The Eight Items enumerated Korea's claims against Japan.

Fax:13105570770 Sep 15 2001 13:25 P.10 Fleisman & Fisher

Iwasawa, an expert on Japanese law and Japanese war compensation issues, unequivocally states that the 1965 Japan-Korea Agreement has extinguished claims of Korean nationals against Japan and Japanese nationals. Professor Iwasawa supports this conclusion as follows:

c. The 1951 Peace Treaty sets out the framework for resolution of issues between Japan and Korea, which was achieved in the Japan-Korea Agreement. (Iwasawa Decl., ¶3).

d. The Japan-Korea Agreement implemented Article 4(a) of the 1951 Peace Treaty, settling "completely and finally" all problems concerning property, rights, and interests of the two countries and their nationals and all "claims" between the two countries and their nationals. (Iwasawa Decl., ¶4)

e. The Korean government's position that the Agreement permanently extinguished claims by individuals such as Mr. Jeong was confirmed by its 1965 official publication, The Explanation of the Treaty and Agreements Between the Republic of Korea and Japan, which states "all kinds of claims of Koreans against the Japanese Government and Japanese nationals, such as ...receivables, compensation, and pensions of conscripted Koreans, have all been completely and finally extinguished.[...] [A]ll property and claims of the two countries which existed prior to the termination of the war are nullified." (Iwasawa Decl., ¶ 7(d)).[6]

In light of the above, there is no question that the parties to the Agreement do not agree on the correct interpretation of the Agreement itself. Professor Kim discusses both Korea's and Japan's position on the Agreement, offers evidence

[6]The government of Korea takes no such position as to the instant case. In fact, the government of Korea has been silent in this regard as to this action.

Fax:13105570773 Sep 15 2001 13:23 P.11 Fleishman & Fisher

and opines that the Agreement was not intended to cover claims for damages such as Mr. Jeong's but rather only claims for diplomatic protection. He also notes that the term "claims" was never settled by the two countries.

Defendants' expert takes the view that under Japanese law, plaintiff's claims are barred because the minutes of the Agreement and the negotiations leading up to the Agreement reflect that claims of conscripted Koreans were fully resolved by the agreement itself.[7]

However, as pointed out by plaintiff's counsel during oral argument, even defendants' own exhibits confirm that claims such as Mr. Jeong's were not provided for in the 1965 Agreement.

For example, the article submitted by Professor In Sup Chung entitled *A Study on the Scope of the Agreement on the Settlement of Problem Concerning Property and Claims and the Economic Cooperation between the Republic of Korea and Japan*, 1965 25 Sung Kok Ronchong (1994) (Dfts ex. 2 to the declaration of Professor Yuji Iwasawa) provides at pages 6-7 that "laws regarding civil claims against Japan limited the scope of compensation to the deceased and only if the deceased was confirmed by the Japanese record, many of the deceased as well as wounded Korean nationals were left without any

---

[7]The plaintiff rebuts these assertions with further references to other commentators who have noted that *because Korea and Japan were never at war with each other*, the 1965 Agreement could not have been an agreement regarding war reparations to cover claims like Plaintiff's. Concluded 20 years after the end of World War II, the Agreement involved the resolution of property-related disputes left over from Japan's colonization of Korea "so that the two countries could normalize their economic relations." Tong Yu, *Reparations for Former Comfort Women of World War II*, 36 Harv. Int'l L.J. 528, 535 (1995) (citing Won-Soon Park, *A Study of the Nature of the Issue of Military Sexual Slavery by Japan and Its Solutions* 10-11 (Apr. 1994))

Fax:13105570770 Sep 15 2001 15:25 P.12
Fleishman & Fisher

compensation." At page 9 of the article the author recognizes in accordance with principles of international law, that the 1951 treaty imposes no obligation on Korea as a non-signatory to the 1951 treaty.

The article concludes with the premise that both the Korean and Japanese governments agreed that the claims referenced in the eight items (of the 1965 Agreement) did not include claims of a punitive nature such as **reparations.** *Id.* at pp. 10-11.

Importantly, the article also discusses Japan's position on the issue of waiver of claims at pages 16-18 and acknowledges that Japan's position has always been that the only waiver that occurred in the 1965 agreement was the waiver of diplomatic protection. This position was expressed by the Minister of Foreign affairs to the Japanese Diet in November of 1965.

Accordingly, in light of the above, the Court is unable to determine what is the correct interpretation. When a court is unable to determine what is the law of a foreign nation, the court may either apply California law or dismiss the action without prejudice. Evid. Code §311. This Court declines to dismiss the action. The law in California per CCP § 354.6 is that plaintiff's claims may proceed. Hence, in light of the above, this Court concludes that there has been no waiver or bar to the claims presented.

Federal Preemption
(Express and Implied)

Analysis of federal preemption "starts with the basic assumption that Congress did not intend to displace state law." ***Building & Constr. Trades***

Fax:13105570770 Fleisman & Fisher
Sep 15 2001 15:24 P.13

Council v. Associated Builders & Contractors (1993) 507 U.S. 218, 224. State law is not preempted "unless that was the clear and manifest purpose of Congress." ***Medtronic Inc. v. Lohr*** (1996) 518 U.S. 470, 485. "Congress may impose its will on the States" but "[it] is a power we must assume Congress does not exercise lightly." ***County of Los Angeles v. Smith*** (1999) 74 Cal.App.4th 500, 506 . There is no "federal policy against States imposing liability in addition to that imposed by federal law. Ordinarily state causes of action are not preempted solely because they impose liability over and above that authorized by federal law. . . ." ***California v. ARC America Corp.*** (1989) 490 U.S. 93, 105. "[B]ecause the states are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly preempt state-law causes of action." ***Medtronic***, 518 U.S. at 485.

Preemption may either be express or implied. ***Metropolitan Life Ins. Co. v. Massachusetts*** (1985) 471 U.S. 724, 738. Express preemption analysis is appropriate where "Congress has considered the issue of preemption and has included in the enacted legislation a provision explicitly addressing that issue" Express preemption requires an express and unambiguous declaration that Congress is prohibiting state legislatures, regulation or court action in a specified field. ***Cipollone v. Liggett Group*** (1992) 505 U.S. 504, 517. Implied preemption, on the other hand, occurs where the legislation does not expressly supercede state law, but 1) "Congress intended federal law to occupy the field exclusively"; or 2) "state law is in actual conflict with federal law." ***Freightliner Corp. v. Myrick*** (1995) 514 U.S. 280, 287

In the instant case this Court finds that there has been no declaration by Congress precluding such claims by foreign nationals. The 1951 Treaty by and between the U.S. and Japan makes very clear that it does not cover claims by

Fax:13105570770 Sep 15 2001 13:24 P.14 Fleisman & Fisher

foreign nationals and that Korea and Japan ***should make "special arrangements" to resolve their disputes***. There is no language expressing an intent to preempt state law in this area.[8]

Additionally, this Court must likewise conclude that there does not exist any basis for implied preemption to preclude plaintiff's claims. With respect to implied preemption the defendants once again take the position that the 1951 Peace Treaty demonstrates an intent on the part of the U.S. government to occupy the entire field of war claims against Japan and its nationals. As has already been set forth above, the ***Treaty*** only applies to U.S. nationals (who were nationals at the time that the ***Treaty*** was made.) ***Mr. Jeong does not fit into the category specified in the Treaty .***

At the time of negotiating and signing the 1951 Treaty, Congress was well aware that it did not and could not regulate claims of foreign nationals against the companies that had forced them to work without wages, nor did Congress prospectively prevent claims of future United States citizens. Any assertion or contention to the contrary has no support. Rather, the opposite notion is expressly supported since Congress left room for supplementation of the reparations scheme vis a vis the references contained in the 1951 Treaty that Japan and Korea make ***special arrangements*** by and between themselves. ***For that reason, the Court***

---

[8]Defendants dispute this conclusion and cite to a Statement of Interest issued by the U.S. State Department and filed in August of 2000 which discusses a full resolution of claims by and between the U.S. and Japan. However, the Statement of Interest referenced by the defendants is relevant only to Allied Prisoner of War claims. Defendants do not cite from the December 6, 2000 Statement of Interest which addressed claims of non-Allied Prisoners of War and unequivocally states that claims such as Mr. Jeong's (a Korean national at the time the 1951 Treaty was signed)were not extinguished by the 1951 Treaty. See Statement of Interest at 9.

Fax:13105570770 Sep 15 2001 13:24 P.15

here cannot find that Congress' manifested intent was to completely occupy the entire field of war claims against Japan and its nationals.

Notwithstanding the arguments proffered above, the defendants argue as a further contention that even though there is no specific federal treaty or statute preempting the California statute (CCP § 354.6), said statute is nevertheless preempted because it ***"disturbs foreign relations"*** under ***Zschernig v. Miller*** (1968) 389 U.S. 429 and ***National Foreign Trade Council v. Natsois*** (1st Cir. 1999) 181 F.3d 38. However, the defendants neglect the opinion issued by the Ninth Circuit in ***Gerling Global Insurance Corp. of America v. Low*** (9th Cir. 2001) 240 F. 3rd 739. The court in ***Gerling Global*** recognized that the implied preemption theory first utilized by the Supreme Court in ***Zschernig*** "is rarely invoked by the courts [and] the Supreme Court has not applied it in more than 30 years." *Id.* Moreover, to the extent that ***Zschernig*** retained any validity, a point which is open to question, it should be applied *sparingly* ***and with hesitation***. See *id.* at 753. In any event, ***Zschering*** itself recognized that more is required to invalidate a state law than the mere fact that the statute might have "some incidental or indirect effect in foreign countries." *Id.* at 752 (citing ***Zschering and Clark v. Allen*** (1947) 331 U.S. 503, 517).

The ***Gerling Global*** court rejected the argument relied upon by Defendants that courts should find statutes preempted which were likely to "provoke retaliatory action by foreign governments." The court noted that these arguments were "directed to the wrong forum." 240 F.3d at 747 (quoting ***Barclays Bank PLC v. Franchise Tax Br. of California*** (1994) 512 U.S. 298, 327 (upholding California's unitary tax reporting system against similar challenge). As in ***Gerling Global***, no party to the civilian internee forced labor compensation cases before this Court is a foreign government or is owned, in whole or in part, by a foreign government.

Fax:13105570770 Sep 15 2001 13:25 P.16 Fleisnman & Fisher

Rather, as in ***Gerling Global***, the objecting parties "are, simply, businesses." *Id.* at 753. The statute is not directed at a particular foreign country. *Id.* At most, like the HVIRA (Holocaust Victims Insurance Relief Act) at issue in ***Gerling Global***, California CCP § 354.6 targets past (World War II era) conduct that was clearly illegal prior to World War II. As in ***Gerling Global***, "***Zschering*** does not govern." *Id.*

Moreover, the focus of the HVIRA at issue in ***Gerling Global*** is described as "Nazi Germany, its allies or sympathizers." See Ins. Code §13802. This language is virtually identical to the language of CCP § 354.6 which affords a cause of action to civilians who were forced to work without pay for "the Nazi regime, its allies and sympathizers or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies or sympathizers." As the court found in ***Gerling Global***, CCP §354.6 "is not, on its face, directed at any particular foreign country." 240 F. 3d at 753.

The defendants also assert that if this Court were to deny the instant motion there would be an inappropriate disturbance of foreign relations between Japan and the United States. However, this argument can and should be summarily dismissed with reference to Justice Kozinski's opinion in ***Patrickson v. Dole Food Co., Inc***. (9th Cir. 2001) 251 F.3d 795; there Justice Kozinski noted that "Federal judges, like state judges, are bound to decide cases before them according to the rule of law. If a foreign government finds the litigation offensive, it may lodge a protest with our government; our political branches can then respond in whatever way they deem appropriate – up to and including passing legislation . . . But it is quite a different matter to suggest that courts – state or federal – will tailor their rulings to accommodate the expressed interests of a foreign nation that is not even a party." *Id.* at 803.

Fleishman & Fisher Fax:13105570770 Sep 15 2001 13:25 P.17

The case before this Court involves claims by private individuals against private companies doing business in or having contacts with California. These claims are authorized under California law, and no treaty has waived them.

The Political Question Doctrine Does Not Preclude the Jeong Claims

Notwithstanding the arguments set forth above the defendants make a final assertion that the Political Question Doctrine precludes this Court from proceeding with the instant case. The defendants forcefully contend that ***in every published decision*** where courts have considered the issue of WWII forced labor claims, these cases have been dismissed as non-justiciable political questions. See ***Iwanowa v. Ford Motor Company*** (D.N.J. 1999) 67 F. Supp. 2d 424,; ***Burger-Fischer v. Degussa AG*** (D.N.J. 1999) 65 F. Supp. 2d 248; ***Belk v. U.S.*** (Fed. Cir. 1988) 858 F. 2d 706; ***Frumkin v. Jones*** (D.N.J. 2001) 129 F. Supp. 2d 370; and ***In re Nazi Era Cases Against German Defendants Litigation*** (D.N.J. 2001) 129 F. Supp. 2d 370, 378.

However, it should be noted that in ***each*** of the cases cited by the defendants, compensation or reparations had been provided for in the Treaties or Agreements at issue and the courts were asked to review the adequacy of the payment or otherwise interfere with the payment of the compensation. This is not the situation in the case at bar.

Indeed, in certain of the above cases, diplomatic negotiations for reparations covering claims asserted in the respective litigation were ongoing between the German government, certain German companies and international negotiators during the pendency of the litigation. See generally Foos, Diane Richard, *Righting Past Wrongs or Interfering in International Relations? World War II-Era Slave*

Fax:13105570770 Sep 15 2001 13:25 P.18 Fleisnman & Fisher

Labor Victims Receive State Legal Standing After Fifty Years, 31 McGeorge L. Rev. 221 (Winter 2000); Christopher, Darcie L., *Jus Cogens, Reparation Agreements, and Holocaust Slave Labor Litigation*, 31 Law & Policy in International Business (2000)

In the case at bar no prior decision of any political branch has approved of Defendants' actions, nor has any treaty negotiated and ratified by the United States addressed the claims of the Plaintiff in this case. Moreover, this Court is unaware of any ongoing negotiations addressing claims such as Mr. Jeong's. A finding by this Court — that Plaintiff is entitled to be compensated under CCP § 354.6 due to the conduct of the Japanese companies during World War II — would not interfere with any ***legitimate*** United States governmental foreign policy interest.

Conclusion

CCP §354.6 is aimed at conduct that occurred 50 or more years ago. This Court believes that the California legislature and judiciary are not attempting to comment on the political system of any particular nation or affect U.S. relations with any particular country. The sole purpose of this Court is to enforce the law that the California legislators have placed on the books. Accordingly, the motion for judgment on the pleadings is denied. The plaintiff has properly pled the causes of action set forth in the complaint.

Dated: 9-14, 2001

PETER D. LICHTMAN

Peter D. Lichtman
Judge of the Superior Court

Fax:13105570770 Fleishman & Fisher
Sep 15 2001 13:26 P.13