

II. Verified Denials

2. Trustee denies that Plaintiff is entitled to recover in the capacity in which it sues because (1) the causes of action Plaintiff asserts against Pioneer Natural Resources Company, Pioneer Natural Resources USA, Inc., and Woodside Energy (USA), Inc. properly belong to the Trust, (2) Plaintiff may not recover individually for wrongs allegedly committed against the Trust, and (3) Plaintiff does not have authority to sue on behalf of the Trust in a representative capacity.

3. Plaintiff has failed to notice and/or join all of the necessary parties required by section 115.011(b)(3) of the Texas Trust Act ("Trust Act"), as set forth in the Texas Property Code, for some of the relief sought by Plaintiff.

4. Trustee denies that all conditions precedent were performed or have occurred that would enable Plaintiff to obtain the relief sought. Specifically, Plaintiff has failed to comply with section 6.05 of the Royalty Trust Indenture ("Trust Indenture"), dated December 1, 1982, with regard to Plaintiff's attempts to appoint, name or have named a successor or temporary trustee.

5. Plaintiff lacks standing in this case because it has not suffered an actual or threatened injury.

6. Trustee denies that it is a partner in the Mesa Offshore Royalty Partnership ("Partnership"). JPMorgan, as Trustee, is merely an agent of the Trust, the true partner in the Partnership. Therefore JPMorgan cannot be vicariously liable, in an individual capacity, for alleged improper conduct of any partner in the Partnership, particularly conduct outside the scope of the general partner's duties and authority under the Partnership.

III. Affirmative Defenses

7. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by the defense of limitation of liability pursuant to section 6.01 of the Trust Indenture:

6.01. *Liability of Trustee*

(a) Except as provided in paragraph (b) below, the Trustee, in carrying out its powers and performing its duties, may act in its discretion and shall be personally or individually liable only for fraud or acts or omissions in bad faith or which constitute gross negligence and shall not individually or personally be liable for any act or omission of any agent or employee of the Trustee unless the Trustee has acted in bad faith in the selection and retention of such agent or employee.

(b) If the Trustee incurs any liability of any kind by contract, tort or otherwise, without inserting such provision or taking such action as may be necessary to ensure that such liability shall be satisfiable only out of the Trust Estate and shall not in any event, including the exhaustion of the Trust Estate, be satisfiable out of any amounts at any time distributed to any Certificate Holder or out of any other assets owned by any Certificate Holder, then Trustee, vis-a-vis the Certificate Holders, shall be fully and exclusively liable for such liability, but shall have the right to be indemnified and reimbursed from the Trust Estate to the extent provided in Section 6.02.

8. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by the defense of reliance on experts in good faith as found in section 11.02 of the Trust Indenture:

11.02 *Trustee's Employment of Experts.* The Trustee may, but shall not be required to, consult with counsel, who may be its own counsel, accountants, geologists, engineers and other parties deemed by the Trustee to be qualified as experts on the matters submitted to them, and the opinion of any such parties on any matter submitted to them by the Trustee shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of any such party.

9. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's demand for an accounting is barred by section 113.151 of the Trust Act, which states that a trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every twelve months.

10. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by the applicable statute of limitations.

11. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by laches.

12. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by estoppel and/or quasi-estoppel.

13. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by waiver.

14. Subject to and without waiver of its general denial, Trustee alleges that Plaintiff's claims are barred by ratification.

IV. Counterclaim

15. Trustee files its counterclaim pursuant to section 115.001 of the Texas Trust Act and section 37.005 of the Texas Civil Practices and Remedies Code.

16. The claims in this case arise out of the rights and obligations in three instruments and agreements: (1) Royalty Trust Indenture ("Trust Indenture"), which created the Mesa Offshore Trust ("Trust") and governs the powers and obligations of the Trustee; (2) the First Amended and Restated Articles of General Partnership of Mesa Offshore Royalty Partnership (the "Partnership Agreement"), which establishes the duties owed by and between Defendant Pioneer Natural Resources Company ("Pioneer") and the Trust as partners in the Mesa Offshore Royalty Partnership ("Partnership"), and, (3) the Overriding Royalty Conveyance (the "ORRI

Conveyance”), which creates and governs the terms of the ORRI that Mesa Petroleum initially conveyed to the Partnership. Trustee requests that the Court construe these instruments and agreements and declare:

a. The Trust failed to satisfy the financial continuation condition in section 3.02 of the Trust Indenture when, in 2002, 2003, and 2004, the revenue from the Partnership’s ORRI did not result in sufficient total cash distributions to the Trust and Trustee. The Trust Indenture therefore requires the Trustee to terminate the Trust and sell the assets of the Trust a public action.

b. The Trustee has no duty under the Trust Indenture or Partnership Agreement to authorize Plaintiff to pursue claims against Pioneer and Woodside Energy (USA), Inc. on behalf of the Trust; rather the Trustee has the sole discretion whether to prosecute, defend, or settle claims on behalf of the Trust.

c. Section 6.01(a) of the Trust Indenture is a valid exculpatory clause limiting the Trustee’s liability to only fraud or acts or omissions in bad faith or which constitute gross negligence.

d. Section 6.02 of the Trust Indenture entitles the Trustee to indemnification for all costs and expenses incurred in this lawsuit.

e. Section 11.02 of the Trust Indenture is a valid exculpatory clause precluding the Trust’s liability for any action taken in good-faith reliance on experts.

f. Pioneer has no duty to develop any of the oil and gas leases that are subject to the ORRI Conveyance.

V. Attorneys’ Fees

17. Trustee is entitled to reimbursement of its reasonable attorneys’ fees pursuant to section 114.064(a) of the Texas Property Code and section 6.02 of the Trust Indenture.

Alternatively, Trustee is further entitled to recover its reasonable attorneys' fees from the Trust as it is defending itself reasonably and in good faith. *Grey v. First Nat'l Bank in Dallas*, 393 F.2d 371, 387 (5th Cir. 1968) (stating that a trustee may charge its trust for attorneys' fees incurred in the good faith and reasonable defense of litigation charging it with a breach of trust).

VI. Settle Final Accounts

18. Pursuant to section 115.001(a)(9) of the Trust Act, Trustee requests that this Court exercise its original and exclusive jurisdiction over all proceedings concerning trusts to settle final accounts of the Mesa Offshore Trust.

VII. Exoneration for Alleged Tort

19. Pursuant to section 114.062 of the Texas Trust Act, Trustee is entitled to exoneration or reimbursement.

VIII. Exemplary Damage Cap

20. The Exemplary Damages Act applies to restrict and limit Plaintiff's claim for exemplary damages, and Trustee hereby pleads the damage cap contained in section 41.008(b) of the Texas Civil Practices and Remedies Code.

IX. Prayer

WHEREFORE, Defendant JPMorgan Chase Bank, N.A., as Trustee of the Mesa Offshore Trust, respectfully prays that upon final hearing, the Court enter judgment that Plaintiff take nothing, settle the final accounts of the Mesa Offshore Trust, and grant Trustee:

1. The declaratory relief stated above and any other necessary declarations;
2. Exoneration or reimbursement for alleged tort;
3. Reimbursement of its reasonable costs and attorneys' fees; and
4. Such other relief to which it may show itself justly entitled.

Respectfully submitted,

ANDREWS KURTH LLP

By: 

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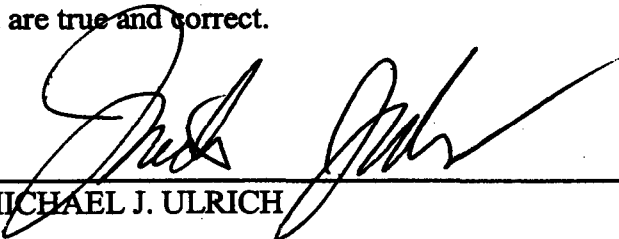
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ATTORNEYS FOR JPMORGAN CHASE BANK,
N.A., AS TRUSTEE OF THE MESA OFFSHORE
TRUST

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Michael J. Ulrich, a person whose identity is known to me. After I administered an oath to him, upon his oath he said he has read the First Amended Answer of JP Morgan Chase Bank, N.A., as Trustee of the Mesa Offshore Trust, and that the facts stated in the Verified Denial Section of the First Amended Answer are within his personal knowledge and are true and correct.



MICHAEL J. ULRICH

SUBSCRIBED AND SWORN TO before me on this the 8 day of January, 2007, to certify which witness my hand and seal of office.





NOTARY PUBLIC, STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of January 2007, a complete copy of the foregoing has been served by certified mail, return receipt requested, in compliance with the Texas Rules of Civil Procedure on the following parties or counsel:

Robert L. Ketchand
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2200 West Loop South, Suite 1050
Houston, Texas 77027



Patrick D. Sanders



CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

Direct Dial Line:
(713) 755-7301

February 9, 2007

Re: 200601984

Dear Sir or Madam:

The attached document is being returned to court because it was received by our office without the required filing fee attached. **Section 51.317, Government Code provides that: (a) The District Clerk shall collect at the time the suit or action is filed the fees provided by Subsection (b) of this section for services performed by the clerk. A filing fee in the amount of \$36.00 is required in order to file the Counterclaim**

If you would like to file this document with our office, please resubmit it along with the required filing fee of \$ 36.00. Our office accepts payments by attorney checks, cashier checks, money orders or major credit card.

Please make payments payable to Harris County District Clerk, and return to:

Charles Bacarisse, District Clerk
Harris County, Texas
Civil Intake
P. O. Box 4651
Houston, Texas 77210-4651

If you require additional information concerning this matter, please contact Civil Intake at (713) 755-8309.

CHARLES BACARISSE, District Clerk
Harris County, Texas

By: 

Deputy District Clerk

Enclosure

ANDREWS
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February 19, 2007

VIA MESSENGER

Mr. Charles Bacarisse, District Clerk
Harris County District Court
201 Caroline
Houston, Texas 77002

FILED
CHARLES BACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS
2007 FEB 19 PM 3:37
DEPUTY

Re: Cause No. 2006-01984; *MOSH Holdings, L.P. v. Pioneer Natural Resources Company, et al*; In the 334th Judicial District Court of Harris County, Texas

Dear Mr. Bacarisse:

Enclosed for refiling please find a duplicate original and one copy of the First Amended Answer and Original Counterclaim of JPMorgan Chase Bank, N.A., as Trustee of the Mesa Offshore Trust.

This pleading was originally submitted for filing on January 30, 2007 at 4:37 p.m. (see enclosed file-stamped copy) without the required \$36.00 filing fee for the counterclaim (see enclosed letter from Charles Bacarisse dated February 9, 2007). We are herein enclosing our firm's check No. 1066 in the amount of \$36.00 to cover the filing fee for the counterclaim referenced herein.

Please place your file stamp on the enclosed copy and return it in the enclosed self-addressed, stamped envelope. All counsel of record were duly served with a copy of the original document on January 30, 2007.

Charles Bacarisse
February 19, 2007
Page 2

Thank you for your courtesy and cooperation. Please contact me at 713.220.4058 if you have any question regarding this re-filing.

Very truly yours,



Patrick D. Sanders

PDS/wll
Enclosures