



CAUSE NO. 2011-CI-02000 ✓

CAROLYN J. CLARK, AS EXECUTRIX OF THE ESTATE OF PATRICIA BURNS CLARK, AND CAROLYN J. CLARK, MICHELE DAILEY CADWALLADER AND CHRISTOPHER CLARK, INDIVIDUALLY
Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A., INDIVIDUALLY AND IN ITS CAPACITY AS TRUSTEE FOR THE PATRICIA BURNS CLARK TESTAMENTARY TRUST AND THE PATRICIA BURNS CLARK IRREVOCABLE TRUST, AND PATRICIA SCHULTZ-ORMOND
Defendants

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IN THE DISTRICT COURT

438TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

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Debra E. S...
438TH JUDICIAL DISTRICT

CAUSE NO. 2011-CI-16542

CRAIG WILLIAM CLARK AND RICHARD BURNS CLARK
Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A., INDIVIDUALLY AND CORPORATELY AND AS TRUSTEE OF THE BURNS IRREVOCABLE TRUST AND THE BURNS TESTAMENTARY TRUST, AND PATRICIA SCHULTZ-ORMOND

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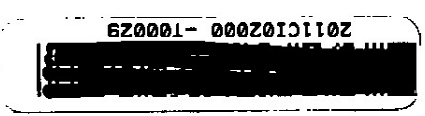
IN THE DISTRICT COURT

73RD JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

DEFENDANTS' MOTION TO CONSOLIDATE

Defendants JPMorgan Chase Bank, N.A., Individually, Corporately, and in its Capacity as Trustee of the Patricia Burns Clark Trust Under the Will of T.E. Burns, and The Patricia Burns Clark Irrevocable Trust, and Patricia Schultz-Ormond (collectively referred to herein as "Defendants"), move to consolidate Cause Number 2011-CI-16542, *Craig William Clark and Richard Burns Clark v. JP Morgan Chase Bank, N.A., Individually and Corporately and as*



Trustee of The Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond, which is now pending in the 73rd Judicial District Court of Bexar County, Texas (the “Clark Suit”) with Cause No. 2011-CI-02000, *Carolyn J. Clark, as Executrix of the Estate of Patricia Burns Clark, and Carolyn J. Clark, Michele Dailey Cadwallader and Christopher Clark, Individually v. JP Morgan Chase Bank, N.A. Individually and in its Capacity as Trustee for The Patricia Burns Clark Testamentary Trust and the Patricia Burns Clark Irrevocable Trust, and Patricia Schultz-Ormond*, which is now pending in the 438th Judicial District Court of Bexar County, Texas (the “Dailey Suit”) and for the merger of these cases into a single cause, and in support of this Motion would respectfully show the Court as follows:

I.

Defendant JPMorgan Chase Bank, N.A. (“J.P. Morgan”) served as sole trustee of two trusts for the primary benefit of Patricia Burns Clark Dailey (collectively referred to herein as the “Burns Trusts”). One trust was established by her father, T.E. Burns, as an irrevocable, *inter vivos* trust for her benefit and is referred to herein as the “Burns Irrevocable Trust.” The second trust was established by the Last Will and Testament of her father, T.E. Burns, dated July 25, 1962, and is referred to herein as the “Burns Testamentary Trust.” Patricia Schultz-Ormond was an employee of J.P. Morgan during some of the time that the facts giving rise to Clark Suit and the Dailey Suit occurred.

II.

Patricia Burns Clark Dailey was the sole income beneficiary of the Burns Trusts and the Dailey Suit was originally brought on her behalf by her attorney-in-fact at the time, Carolyn J. Clark. Ms. Dailey died on August 5, 2011, and Carolyn J. Clark was appointed as the Independent Executrix of Ms. Dailey’s estate. Carolyn J. Clark, as Independent Executrix of Ms.

Dailey's estate, then filed a Suggestion of Death in the Dailey Suit on October 7, 2011 and substituted as Plaintiff.

III.

Craig William Clark and Richard Burns Clark (collectively referred to herein as the "Clark Suit Plaintiffs") are two of Ms. Dailey's children and were contingent remainder beneficiaries of the Burns Trusts. They originally brought suit against Defendants in the Probate Courts of Bexar County, Texas, but subsequently filed the Clark Suit.

IV.

Carolyn J. Clark, Michele Dailey Cadwallader, and Christopher Clark are also Ms. Dailey's children, and likewise were contingent remainder beneficiaries of the Burns Trusts. After Ms. Dailey's death, they joined as plaintiffs in the Dailey Suit.

V.

The Defendants were sued in the same capacities by both Plaintiffs in the Clark Suit, and Plaintiffs in the Dailey Suit.

VI.

The Clark Suit and the Dailey Suit, as is evident from the pleadings, are both actions alleging (i) breach of fiduciary duty, (ii) breach of trust, and (iii) fraud by nondisclosure/failure to disclose, which allegations are hereby denied. Both suits involve the same basic allegations – that Defendants failed to properly manage mineral interests owned by the trusts.¹ See Second Amended Petition for Damages in the Dailey Suit (the "Dailey Petition"), and Plaintiffs' Original Petition in the Clark Suit (the "Clark Petition"), true and correct copies of which are attached hereto and incorporated herein as Exhibits "A" and "B", respectively. Further, both the Clark

¹ See Second Amended Petition for Damages in the Dailey Suit (the "Dailey Petition"), and Plaintiffs' Original Petition in the Clark Suit (the "Clark Petition"), true and correct copies of which are attached hereto and incorporated herein as Exhibits "A" and "B", respectively.

Suit and the Dailey Suit request the same basic relief: (i) an accounting; (ii) actual damages; (iii) exemplary damages; and (iv) recovery of attorney's fees. Because (i) the Clark Suit and the Dailey Suit relate to the same subject matter, (ii) the same evidence should be material, relevant, and admissible in both suits, (iii) consolidation would avoid unnecessary costs and prevent delay, and (iv) consolidation will not prejudice the parties or confuse the jury, these two cases should be consolidated.

VII.

The Court is granted broad discretion to consolidate lawsuits if the suits involve common questions of law or fact, and consolidation does not result in delay, jury confusion, or prejudice to the parties. See TEXAS RULES OF CIVIL PROCEDURE 41 and 174(a); *In re Ethyl Corp.*, 975 S.W.2d 606, 610 (Tex. 1998); *Owens-Corning Fiberglas Corp. v. Martin*, 942 S.W.2d 712, 716 (Tex. App.—Dallas 1997, no writ); *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734, 737 (Tex. App.—Houston [1st Dist.] 1992, writ denied). The Court should consolidate the Clark Suit and the Dailey Suit because: (i) the Defendants and the capacities in which they are named in both suits are identical; (ii) both suits relate to the same subject matter; (iii) the same evidence regarding Defendants' administration of the Burns Trusts shall be material, relevant, and admissible in both suits; (iv) consolidation would avoid unnecessary duplication of costs to the Defendants and prevent delay ; and (v) consolidation would not prejudice the parties or confuse the jury. Lastly, should the Clark Suit and the Dailey Suit not be consolidated, the separate trials of these cases could result in the inconsistent adjudication of the common factual and legal issues described above.

VIII.

To avoid a multiplicity of suits, duplication of testimony and unnecessary expense and delay and for the convenience of the parties and of the Court, the Clark Suit and the Dailey Suit should be consolidated into one suit for all purposes.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court order both the Clark Suit and the Dailey Suit consolidated into one suit for all purposes, and for their merger into this cause; and for any and all further relief at law or in equity to which Defendants may be justly entitled.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &
BEITER INCORPORATED**

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By: _____

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ATTORNEYS FOR DEFENDANTS

FIAT

The foregoing is set for hearing on November 15, 2011 at 8:30 a.m. in the Presiding District Court, Bexar County, Texas.

Signed on the _____ day of November, 2011.

JUDGE PRESIDING

RNTZ

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing DEFENDANTS' MOTION TO CONSOLIDATE was served on the following, as indicated, on this the 2nd day of November 2011:

Mr. Ricardo G. Cedillo

VIA FACSIMILE

Mr. Les J. Strieber

Davis, Cedillo & Mendoza, Inc.
755 E. Mulberry Ave., Suite 500
San Antonio, Texas 78212-3149

Mr. Richard Tinsman

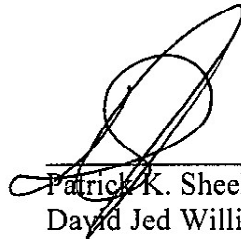
VIA FACSIMILE

Tinsman & Sciano, Inc.
10107 McAllister Freeway
San Antonio, Texas 78205

Mr. James L. Drought

VIA FACSIMILE

Drought Drought & Bobbitt, LLP
112 East Pecan Street, Suite 2900
San Antonio, Texas 78205



Patrick K. Sheehan
David Jed Williams

EXHIBIT "A"

NO. 2011-CI-02000

CAROLYN J. CLARK, AS EXECUTRIX OF	§	IN THE DISTRICT COURT
THE ESTATE OF PATRICIA BURNS CLARK,	§	
AND CAROLYN J. CLARK, MICHELE	§	
DAILEY CADWALLADER AND	§	
CHRISTOPHER CLARK, INDIVIDUALLY	§	
	§	
	§	
Plaintiffs,	§	438 th JUDICIAL DISTRICT
	§	
v.	§	
	§	
JPMORGAN CHASE BANK, N.A.,	§	
INDIVIDUALLY AND IN ITS CAPACITY	§	
AS TRUSTEE FOR THE PATRICIA BURNS	§	
CLARK TESTAMENTARY TRUST	§	
AND THE PATRICIA BURNS CLARK	§	
IRREVOCABLE TRUST, and	§	
PATRICIA SCHULTZ-ORMOND,	§	
	§	
Defendants.	§	BEXAR COUNTY, TEXAS

SECOND AMENDED PETITION FOR DAMAGES

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Estate of Patricia Burns Clark Dailey, by and through its Executrix, Carolyn J. Clark (the "Estate") and Carolyn J. Clark, Michele Cadwallader, and Christopher Clark, Individually (hereinafter collectively referred to as "Plaintiffs"), complaining of JPMorgan Chase Bank, N.A. ("JPMorgan"), individually and as trustee for the Burns Trusts, and Patricia Schultz-Ormond, individually, and for cause would respectfully show the Court the following:

I.
DISCOVERY PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiff intends that discovery be conducted under Level 3. Until such time as a discovery control plan is entered, discovery shall be conducted under Level 2.

II.
PARTIES

2. Plaintiff Carolyn J. Clark is the named and duly appointed Executrix of the Estate of Patricia Burns Clark Dailey, Deceased. Carolyn J. Clark is the daughter of Patricia Burns Clark Dailey. Mrs. Dailey died on August 5, 2011, and Carolyn J. Clark became Executrix by Will probated on August 29, 2011. As Executrix, Carolyn J. Clark brings this lawsuit on behalf of her mother’s estate. Carolyn J. Clark is also a plaintiff in her individual capacity, along with her siblings Michele Cadwallader and Christopher Clark, all of whom reside in San Antonio, Bexar County, Texas. Prior to her mother’s death, Carolyn J. Clark had brought this lawsuit on behalf of and as attorney-in-fact for Mrs. Dailey pursuant to the Durable Power of Attorney, seeking damages against JPMorgan in Mrs. Dailey’s individual and derivative capacity as the Sole Income and Only Primary Beneficiary of the Testamentary Trust¹ and the Irrevocable Trust² (the “Burns Trusts”). In this Lawsuit and prior to her death, Mrs. Dailey, both in her individual and derivative/representative capacity, adequately represented the Burns Trusts and all interested

¹ Pursuant to the terms of the Testamentary Trust (Section VI), each year Mrs. Dailey is entitled to individually receive all trust income. However, to the extent there is income from royalties, rents or bonuses on account of oil, gas or other minerals, all such mineral income shall be distributed as follows: (a) One hundred percent (100%) of mineral income up to \$15,000 to Mrs. Dailey individually, (b) fifty percent (50%) of mineral income in excess of \$15,000.00 to Mrs. Dailey, individually, and fifty percent (50%) of mineral income in excess of \$15,000.00 shall remain in Trust.

² Pursuant to the terms of the Irrevocable Trust (Section 2), Mrs. Dailey, individually, is entitled to receive all of the net income of the trust up to \$20,000.00 and seventy five percent (75%) of all net income in excess of \$20,000.00. Twenty five percent (25%) of all net income in excess of \$20,000.00 shall remain in Trust. All bonuses, royalties and other payments on account of oil, gas and other minerals shall be considered to be income (Section 4).

persons, as defined under the Texas Trust Code, Section 114.004(7). After her death, the Estate continues to bring all claims for damages due Mrs. Dailey prior to her death and which have now become the property of her Estate. At all times relevant to this suit, Patricia Burns Clark Dailey or her Estate have been represented by Carolyn J. Clark acting under appropriate authority as an attorney in fact or as an Executrix. The individual Plaintiffs Carolyn J. Clark, Michele Cadwallader and Christopher Clark are children of Mrs. Dailey and they bring their claims as remaindermen to recover damages to their remainder interests in the Burns Trusts which vested upon their mother's death and which was caused by JPMorgan's malfeasance as Trustee during the time period relevant to this Lawsuit.

3. Defendant JPMorgan Chase Bank, National Association ("JPMorgan") is a national banking association incorporated in the state of New York with its principal place of business at 270 Park Ave., New York, New York 10017-2070. JPMorgan is doing business in the State of Texas and has been served with process and entered an appearance herein.

4. Defendant, Patricia Schultz-Ormond is an individual residing in San Antonio, Bexar County, Texas, and has been served with process and entered an appearance herein.

5. There are no other necessary parties to this action.

III. JURISDICTION AND VENUE

6. This Court has exclusive and dominant jurisdiction over this matter pursuant to Section 115.001 of the Texas Property Code. The relief sought is within the jurisdictional limits of this Court.

7. Defendant JPMorgan is authorized to conduct business in Texas and regularly and systematically transacted substantial business in the State of Texas.

8. Pursuant to Section 15.001 *et seq.* of the Texas Civil Practice & Remedies Code, venue is proper in Bexar County because: (i) JPMorgan has offices, and transacts business, in Bexar County; (ii) Patricia Schultz-Ormond was a resident of Bexar County, Texas, at the time the causes of action accrued; and (iii) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Bexar County.

9. Venue is also proper in Bexar County, Texas pursuant to Section 115.002 of the Texas Property Code, because this is an action brought under Section 115.001 *et seq.*, Defendant JPMorgan, is a corporate trustee, and Bexar County, Texas, is the location in this State where JPMorgan maintains the office that is primarily responsible for dealing with the Burns Trusts.

IV. **INTRODUCTION**

10. The Burns Trusts own fifty percent (50%) undivided mineral interests in excess of 29,000 acres of land, more or less, located in La Salle and Frio Counties (hereinafter the "Burns Ranch"). The Burns Ranch is in the heart of the Eagle Ford Shale geologic formation in South Texas.³

11. At all times relevant to this suit, JPMorgan was the Trustee for the Burns Trusts. In 2009, Patricia Schultz-Ormond, at that time an employee for JPMorgan⁴, was primarily responsible for management of the Burns Trust's fifty percent (50%) undivided interest in the mineral interests in the Burns Ranch (hereinafter the "Burns Trusts Mineral Interests"). Ms. Ormond is no longer an employee of JPMorgan.

12. This suit arises from the actions and inactions of JPMorgan and Ms. Ormond in the management of the Burns Trusts. On behalf of the Burns Trusts, JPMorgan negotiated with and

³ The mineral interests in over 29,000 acres of the Burns Ranch were open and available for lease. In 2009, it was one of the largest contiguous tracts of un-leased minerals in the Eagle Ford Shale formation in South Texas.

⁴ At that time Ms. Ormond was Vice President and Senior Property Manager for "Specialty Assets, Oil and Gas Management" for JPMorgan.

executed an Option Agreement with an entity called BlackBrush Energy (“BlackBrush”). The Option Agreement granted BlackBrush⁵ a three-year oil & gas lease on the Burns Ranch for nominal consideration for bonus payments of \$125 per acre. This amount was grossly below the then market for the Eagle Ford Shale formation. For these reasons, and those set forth below, Ms. Ormond and JPMorgan (i) grossly mismanaged the Burns Trusts Mineral Interests; (ii) breached their fiduciary duty to the Burns Trusts, to Mrs. Dailey and to her children; and (iii) made actionable misrepresentations related to its responsibilities and conduct in managing those interests.

V.
FACTUAL ALLEGATIONS

13. In January 2002, Gary Aymes, a trust officer with JPMorgan Chase, contacted Mrs. Dailey to confirm the corporate integration of Morgan Guaranty Trust Company of New York and The Chase Manhattan Bank, creating JPMorgan Chase Bank. Mr. Aymes represented to Mrs. Dailey that she would have “experts in fiduciary administration, tax, investment management, etc. that [would] work with her to determine the most appropriate wealth management strategies.” Simply put, in the words of JPMorgan, this was a “*fiduciary team working together toward one common goal and a commitment to using their expertise for the successful administration of complex trusts and estates.*”

14. JPMorgan reiterated its fiduciary commitment to the Burns Trusts two years later in a letter from Jean Burke, at that time a Vice President of JPMorgan Private Banking. In that March 12, 2004 correspondence to Mrs. Dailey, Ms. Burke underscored several of JPMorgan’s many duties related to fiduciary oversight and investment management, along with the fee schedules for the substantial fees JPMorgan was charging the Burns Trusts for its services.

⁵ The actual lessee was BB-II Operating LP.

15. During 2009, Ms. Ormond dealt almost exclusively with BlackBrush regarding leasing of the Burns Trust Mineral Interests.⁶ By the summer of 2009, interest in exploration and production in the Eagle Ford Shale formation was exploding. In fact, trade and general circulation publications widely reported on this hot market throughout 2009.

16. In a September 18, 2009 e-mail to Ms. Ormond, Michele Cadwallader, daughter of Mrs. Dailey, asked Ms. Ormond what the status was as to leasing the Burns Trusts Mineral Interests, whether Ms. Ormond was leaving JPMorgan in October, who they would be handed off to next, and the status of BlackBrush negotiations. Ms. Ormond told Mrs. Cadwallader that her last day at JPMorgan was September 30, 2009, and that H.L. Tompkins, Vice President of Specialty Assets at JPMorgan, would be taking her place.

17. Ms. Ormond continued her discussions almost exclusively with BlackBrush and completely failed to take into account the rising Eagle Ford Shale market, failed to take the time and use the resources of JPMorgan to professionally research the market, and failed to investigate, explore and market the Burns Trusts Mineral Interests to qualified and interested competitors of BlackBrush.⁷

18. No option agreement or lease was executed with BlackBrush before Ms. Ormond's departure from JPMorgan on September 30, 2009.

19. The BlackBrush Option was signed by JPMorgan on November 6, 2009. On December 1, 2009, almost a month after JPMorgan signed the BlackBrush Option, Carolyn Clark

⁶ At that time, BlackBrush was an undercapitalized company with prior experience in drilling and exploration in the more shallow Olmos formations. It had no experience in the much more complex process of horizontal drilling and hydro-fracturing required for the Eagle Ford Shale formation, no financial capability to explore and develop in horizontal drilling in the Eagle Ford Shale formation, and little to no ability to attract any of the limited number of available drilling operators experienced in the complex hydro-fracturing process.

⁷ As noted above, responsible and knowledgeable representatives of mineral interest owners in the Eagle Ford Shale formation in this area were soliciting proposals from many or all of the approximately ten financially substantial operators with experience in the complex process of hydro-fracturing that were actively interested in obtaining lease rights in the Eagle Ford Shale geologic formation. Even a minimal inquiry at the local courthouse records office or preparation of a trend map would have very clearly reflected the frenzy in activity created by these companies in the area.

first learned the deal with BlackBrush had been signed by JPMorgan as Trustee of the Burns Trusts. Although the agreement contained a signature block for Carolyn Clark on behalf of Patricia Dailey, Ms. Clark knew nothing about the Agreement when signed and was never asked to and never agreed to execute it.

20. On December 9, 2009, Carolyn J. Clark received a call from John Minter from JPMorgan requesting a meeting with Ms. Clark, Colleen Dean and Gary Aymes that afternoon. Mr. Minter indicated he had spoken with Joe Kenney and Todd Maclin of JPMorgan, and acknowledged that JPMorgan had failed in their communication efforts.

21. Ms. Ormond was aware the Option Agreement had not been signed when she left the employ of JPMorgan and continued to fail to advise Mrs. Dailey or Carolyn Clark of the material deficiencies in the proposed Blackbrush Option Agreement and Lease.

VI. CAUSES OF ACTION

COUNT I: BREACH OF FIDUCIARY DUTY

22. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

23. Trustees have specific fiduciary duties imposed by common law and the Texas Trust Code regarding management and investment of trust assets. *See* TEX. PROP. CODE § 113.051 *et seq.* Trustees have a duty of good faith, fair dealing, loyalty, and fidelity over the trust's affairs and its principal, a duty to fully disclose all material facts, a duty to properly manage, supervise, and safeguard trust funds, a duty to refrain from self-dealing with trust assets, and likewise, under Chapter 117 of the Texas Trust Code, a duty to invest and manage trust assets as a prudent investor would. *See* TEX. PROP. CODE § 113.051 *et seq.*, 117.004(a). "A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that

the trustee has special skills or expertise, has a duty to use those special skills or expertise.” TEX. PROP. CODE § 117.004(f).

24. At the time the BlackBrush Lease was signed by JPMorgan, experienced mineral interests owners/representatives negotiating with credible operators were receiving Bonus Payments greatly in excess of the amount in the Blackbrush Lease. Rather than negotiate a lease consistent with the market, JPMorgan and Ms. Ormond failed to fulfill their duties as a fiduciary by their acts and omissions, including but not limited to the following:

- a. Failure to do a trend analysis or any responsible level of due diligence relating to the potential value of the Burns Trusts Mineral Interests;
- b. Dealing exclusively with BlackBrush, whose principal experience at the time was pipeline management, was undercapitalized, and lacked experience in the highly specialized horizontal drilling and hydro-fracturing required in the Eagle Ford Shale formation;
- c. Refusal and failure to deal, in any substantive manner with any of the numerous other experienced, substantial, experienced producers actively pursuing opportunities in the Eagle Ford Shale formation at the time;
- d. Failure to analyze, investigate, negotiate and execute a lease that included, among other things, bonus payments at market value;
- e. Failure to negotiate additional provisions in the lease which would have provided additional consideration to the Burns Trusts;
- f. Failure to deal in good faith, deal fairly, loyally and with fidelity over the Burns Trusts affairs;
- g. Failure to disclose all material facts known to the Defendants; and
- h. Failure to refrain from acts of self dealing of Burns Trusts accounts.

25. Further, at the time of Ms. Ormond's departure from JPMorgan, neither the BlackBrush Option nor the Lease had been signed, yet as Vice President and Senior Property Manager for JPMorgan, she and others at JPMorgan set in motion a course of conduct that she and others at JPMorgan continued after her departure and which led to JPMorgan's execution of the BlackBrush Option and Lease. Ms. Ormond had a continuing fiduciary duty, before and after her departure, to disclose certain material facts to Mrs. Dailey consistent with her ongoing fiduciary duties of loyalty and fidelity and to refrain from acts of self dealing.

26. As a direct and proximate result of Ms. Ormond and JPMorgan's breach of professional and fiduciary duties to the Burns Trusts, Mrs. Dailey (her Estate) and her children, individually, have incurred substantial damages in excess of the minimal jurisdictional limits of this Court.

COUNT II: BREACH OF TRUST – TEX. PROP. CODE § 114.001

27. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

28. Section 114.001(c) of the Texas Property Code provides:

(c) A trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust, including but not limited to:

- (1) any loss or depreciation in value of the trust estate as a result of the breach of trust;
- (2) any profit made by the trustee through the breach of trust; or
- (3) any profit that would have accrued to the trust estate if there had been no breach of trust.

29. JPMorgan's conduct, including leasing the Burns Trusts Mineral Interests for below the market value and without performing adequate and reasonable due diligence, constitutes a violation of the statutory duty JPMorgan owed to the Burns Trust.

30. As a result of JPMorgan's wrongful actions, the Burns Trusts, and Mrs. Dailey (and her Estate) and her children, individually, are entitled to all damages resulting from the breach of trust in excess of the minimal jurisdictional limits of this Court.

COUNT III: FRAUD BY NONDISCLOSURE

31. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

32. JPMorgan and Ms. Ormond concealed from or failed to disclose certain material facts to Mrs. Dailey concerning matters related to the Burns Trusts and the Burns Trusts Mineral Interests. For example, JPMorgan failed to disclose to Mrs. Dailey that JPMorgan, on behalf of the Burns Trusts, entered into the Option Agreement with BlackBrush, and that the Option Agreement provided for bonus payments grossly below market value.

33. Defendants' fiduciary relationship with the Burns Trusts and Mrs. Dailey created a duty to disclose facts related to the Burns Trusts. JPMorgan, as well as Ms. Ormond, knew that Mrs. Dailey did not have knowledge of these facts and did not have equal opportunity to discover the truth, and that JPMorgan and Ms. Ormond intended Mrs. Dailey or Carolyn Clark to refrain from acting as a result of withholding material information from them. Mrs. Clark relied on Ms. Ormond and JPMorgan's nondisclosure. As a proximate result of proceeding without knowledge of undisclosed facts, the Burns Trusts and Mrs. Dailey (her Estate) and her children, individually, sustained damages in excess of the minimal jurisdictional limits of this Court.

COUNT IV: NEGLIGENT MISREPRESENTATION

34. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above as if fully set forth herein.

35. JPMorgan, in the course of its business as trustee, in which it had a pecuniary interest, made representations to Mrs. Dailey and thereby provided information to her which JPMorgan knew to be false or should have known with the exercise of reasonable care. On information and belief, JPMorgan, and Ms. Ormond, knew of and approved such representations made to Mrs. Dailey. Furthermore, JPMorgan did not exercise reasonable care or competence in obtaining or communicating the information contained in those representations. Mrs. Dailey justifiably relied on those representations to her detriment. Such negligent misrepresentations have proximately caused the Burns Trusts and Mrs. Dailey (her Estate) and her children, individually, to sustain actual and consequential damages in an amount in excess of the jurisdictional limitations of this Court.

**VII.
DAMAGES SUSTAINED**

39. Defendants' actions, inactions, and intentional wrongdoing constitute gross mismanagement and breach of the Burns Trusts, breach of its fiduciary duties, fraud, negligent misrepresentations, and resulted in damages to the Burns Trusts and Mrs. Dailey (her Estate) and her children, individually, in excess of the jurisdictional limits of this Court

40. In addition to the damages described above, the Burns Trusts and Mrs. Dailey (her Estate) and her children, individually, have suffered damages resulting from Defendants' mismanagement of the financial affairs of the Trust.

VIII.
DEMAND FOR ACCOUNTING

41. Plaintiffs demand an accounting pursuant to Section 113.151 of the Texas Trust Code and demand a written statement of accounts for all transactions during the time periods JPMorgan served as trustee.

IX.
ATTORNEYS' FEES

42. Plaintiffs have found it necessary to retain counsel to pursue damages caused by Defendants' breach of the trust. Plaintiffs seek recovery of reasonable and necessary attorney's fees pursuant to Texas Property Code § 114.064.

X.
EXEMPLARY DAMAGES

43. Defendants' conduct as alleged in this Petition constitute gross negligence and further, manifests a heedless and reckless disregard for Plaintiffs' rights so as to demonstrate Defendants' actual, intentional, and conscious indifference to Plaintiffs' rights and welfare. Furthermore, Defendants' actions as described herein were performed willfully and maliciously. Accordingly, Plaintiffs are entitled to an award of exemplary damages.

XI.
CONDITIONS PRECEDENT

44. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

XII.
PRODUCTION OF DOCUMENTS

45. Plaintiffs hereby place Defendants on notice that Plaintiffs intend to use any document produced by Defendants in any pretrial proceeding or at trial.

XIII.
REQUEST FOR DISCLOSURE TO DEFENDANTS

46. Defendants are hereby requested to disclose the information or material listed in Rule 194 of the Texas Rules of Civil Procedure.

XIV.
DEMAND FOR JURY

47. Plaintiffs demand a jury trial and tenders the appropriate fee with this petition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that Defendants be cited to appear and answer, and that after trial Plaintiffs have judgment against Defendants for the following:

- A. JPMorgan provide an accounting;
- B. An award of actual damages in excess of the jurisdictional limits of the Court;
- C. An award of exemplary damages;
- D. An award of attorneys' fees and costs allowed under Tex. Prop. Code § 114.064;
- E. An award of prejudgment and post judgment interest on all sums awarded; and
- F. All other relief, in law and in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

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By: /s/ Les J. Strieber, III

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State Bar No. 19398000
RYAN J. TUCKER
State Bar No. 24033407

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served pursuant to the Texas Rules of Civil Procedure on the 12th day of October, 2011, on the following counsel of record:

Patrick K. Sheehan
Kevin M. Beiter
Hornberger, Fuller, Sheehan & Beiter, Inc.
The Quarry Heights Bldg.
7373 Broadway, Suite 300
San Antonio, TX 78209

/s Les J. Strieber, III

Les J. Strieber, III

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EXHIBIT "B"

2011-CI-16542
073RD JUDICIAL DISTRICT COURT
CRAIG W CLARK ET AL VS JPMORGAN CHASE B
DATE FILED: 10/11/2011

FILED
DISTRICT CLERK
BEXAR CO. TEXAS
11 OCT 11 P 4:36

CRAIG WILLIAM CLARK AND
RICHARD BURNS CLARK

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BY _____
DEPUTY
IN THE DISTRICT COURT

vs.

JPMORGAN CHASE BANK, N.A.,
INDIVIDUALLY AND CORPORATELY
AND AS TRUSTEE OF THE BURNS
IRREVOCABLE TRUST AND THE
BURNS TESTAMENTARY TRUST,
AND PATRICIA SCHULTZ-ORMOND

____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Craig William Clark and Richard Burns Clark, Plaintiffs, complaining of JPMorgan Chase Bank, N.A., Individually and Corporately, and as Trustee of the Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond, and for cause of action would respectfully show the following:

Discovery Plan

1. Plaintiffs intend to conduct discovery in this case under Tex. R. Civ. Pro. 190.4 (Level 3).

Parties

2. Plaintiff, Craig W. Clark, is an individual residing in Aransas County, Texas.

3. Plaintiff, Richard B. Clark, is an individual residing in Bexar County, Texas.

4. Defendant, JPMorgan Chase Bank, N.A. ("JPMorgan"), is a national banking association and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul, Suite 2900, Dallas, Texas 75201-4234.

5. Defendant, Patricia Schultz-Ormond ("Ormond"), is an individual residing in San Antonio, Bexar County, Texas, and may be served with process at 15035 Miss Ellie, San Antonio, Texas 78247.

Jurisdiction and Venue

6. This Court has jurisdiction of this cause pursuant to Section 115.001 of the Texas Property Code and because Plaintiffs' damages exceed the minimum jurisdictional limits of this Court.

7. Venue is proper in Bexar County under and pursuant to Section 15.002 of the Texas Trust Code because Defendant, JPMorgan, is a corporate trustee, and Bexar County is the situs of administration of the trusts, and because two of the Defendants reside in Bexar County, Texas. Venue is also proper pursuant to Section 15.001 *et seq.* of the Texas Civil Practice & Remedies Code, because (i) JPMorgan has offices, and transacts business, in Bexar County; (ii) Patricia Schultz-Ormond was a resident of Bexar County, Texas, at the time the causes of action accrued; and (iii) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Bexar County.

Conditions Precedent

8. All conditions precedent to the assertion of the claims herein and the prosecution of this lawsuit have been performed or fulfilled.

Nature of Suit

9. This suit arises from the actions and inactions of JPMorgan and Ormond in the management of the Burns Ranch. It is a suit for breach of fiduciary duties, waste, negligence, mismanagement, improper accounting, incompetence, overcharging of fees, commissions and expenses, and oppression.

Plaintiff's Title and Ownership in the Burns Ranch

10. Plaintiffs are the owners of legal and beneficial interests in approximately 29,958 acres of land, more or less, in Frio and La Salle Counties, Texas, known as the Burns Ranch, which was founded by their great grandfather, Hugh Burns, early in the twentieth century.

11. The Burns Ranch is a cattle ranch, and has produced oil and gas income and grazing and hunting rentals.

12. Plaintiffs' interests in the Burns Ranch were largely subject to two trusts:

- (a) The "Irrevocable Trust", created by T.E. Burns pursuant to written trust agreement dated May 1, 1961; and
- (b) The "Testamentary Trust" under the will of T.E. Burns, deceased, dated July 25, 1962 which was probated in Bexar County, Texas.

13. Under both trusts, Plaintiffs' mother, Patricia Burns Clark Dailey, was the income beneficiary, and Plaintiffs and their siblings were the owners of the remainder, free of trust, upon the death of their mother.

14. Patricia Burns Clark Dailey died on August 5, 2011, whereupon Plaintiffs' interests in the Burns Ranch which were subject to the trusts vested in them.

15. Pursuant to partitions and agreements between and among Plaintiffs and other interest owners, and following the death of their mother, Richard Clark is the owner of the surface estate in 2,940 acres of land, and Craig Clark is the owner of the surface estate in 3,075 acres of land, both out of what is known as the "Middle Tract" of the Burns Ranch.

16. Pursuant to previous gifts by their mother, and following her death, under her Will and under the terms of the Testamentary Trust and the Irrevocable Trust, (1) Richard Clark is the owner of a .12500 mineral interest in 29,297.65 acres of the Burns Ranch in depths below the Georgetown formation ("deep rights") and a .10833 mineral interest above the base of the Georgetown formation ("shallow rights"), and a .20000 interest in a 639.26 acre tract out of the ranch known as "the Farm"; and (2) Craig Clark is the owner of a .12222 interest in the deep rights, a .10000 interest in the shallow rights, and a .20000 interest in the Farm.

17. Because of Mrs. Dailey's incapacity, Defendant, JPMorgan acted as the sole trustee under both trusts at all times relevant hereto.

18. Pursuant to the trusts, JPMorgan managed and administered a 50% undivided interest in the oil, gas and mineral estate in the Burns Ranch except for a 639 acre tract (the "Farm") for which it manages 100% of the minerals; 100% of the surface estate in 10,245 acres known as the "Middle Tract"; and a 56.13% undivided

interest in the surface estate of 8,770 acres out of what is known as the "East Tract." Two-thirds of JPMorgan's mineral interest in the East Tract, Middle Tract, and West Tract was vested in the Testamentary Trust and one-third in the Irrevocable Trust. Its mineral interest in the Farm Tract was vested in the Testamentary Trust.

19. Defendant, Patricia Schultz-Ormond, was Vice President and Senior Property Manager for Specialty Assets, Oil and Gas Management, for JPMorgan at the time of the execution of the option to lease its oil and gas interest in the Burns Ranch as more fully described below. She was responsible for management of the trusts' oil, gas and mineral interest including leasing transactions. She actively participated with and aided and abetted JPMorgan in certain of its wrongful acts and omissions, more fully described below.

First Cause of Action: Breach of Fiduciary Duty

Negligence and Mismanagement of the Mineral Estate

20. The Burns Ranch has been productive of oil and gas, and is located in an area of south Texas that is known to be highly prospective and productive. Mineral income, including bonuses for execution of leases, rentals and royalties have been a major source of income to the Burns Ranch and its owners.

21. In 2008, the Burns Ranch was not subject to any oil and gas lease, with the exception of certain productive well units covering approximately 5,000 acres, and was open for leasing.

22. During and about the year 2008, a well known oil and gas play was in progress across south Texas. This was known as the Eagle Ford Shale trend. La

Salle and Frio Counties were and are at the center of this trend. Bonus consideration paid for oil and gas leases in the area had markedly increased and were continuing to increase. These were facts well known in the oil and gas industry, and among reasonably well informed mineral owners in the south Texas area.

23. On November 8, 2009, JPMorgan gave an option to lease the mineral interest to BB-II Operating, LP ("BB-II") for a bonus consideration of \$125.00 per acre. On or about February 1, 2010, BB-II exercised its option and acquired the oil and gas lease from JPMorgan.

24. A \$125.00 per acre bonus was greatly below the market price and unreasonable in late 2009. Plaintiffs were not notified of the option or lease until well after the fact, and were never consulted regarding the BB-II option or lease.

25. In fact, within a few short months following JPMorgan's lease to BB-II, the owners of the other one-half interest in the minerals in the Burns Ranch leased their interest to Chesapeake Exploration, LLC, for \$1,300.00 per acre.

26. By leasing the Burns Ranch oil and gas for a bonus of \$125.00 per acre, a consideration which was greatly below the market and far less than should have been realized, and by failure to negotiate additional provisions in the lease which would have provided additional consideration to the Plaintiffs, JPMorgan and Ormond were negligent, guilty of mismanagement and maladministration, failed to reasonably investigate market conditions, failed to exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence exercise in the management of their own affairs, failed to properly make reasonable and

prudent decisions in managing the mineral estate, and demonstrated a lack of basic competency and knowledge in administering the trusts' mineral interests.

As a direct and proximate result of JPMorgan's wrongful actions, Plaintiffs are entitled to recover all their damages for which they now sue.

Second Cause of Action: Breach of Trust – TEX. PROP. CODE § 114.001

Breach of Trust

27. Section 114.001(c) of the Texas Property Code provides that a trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust.

29. JPMorgan's conduct, including leasing the Burns Ranch for below the market value and without performing adequate and reasonable due diligence, constitutes a violation of the statutory duty JPMorgan owed to the Burns Trust.

30. As a direct and proximate result of JPMorgan's wrongful actions, Plaintiffs are entitled to recover all their damages for which they now sue.

Third Cause of Action: Breach of Fiduciary Duty

Failure to Disclose

31. As trustee of the trusts, JPMorgan and Ormond have at all times had the fiduciary duty to make full and complete disclosure to the Plaintiffs and other beneficiaries of all material facts concerning the assets, management, administration and accounting of the trusts.

32. Ormond had a continuing fiduciary duty, before and after her departure, to disclose certain material facts to Plaintiffs consistent with her ongoing fiduciary

duties of loyalty and fidelity and to refrain from acts of self dealing. In breach and violation of their fiduciary duty, JPMorgan and Ormond have failed to disclose and/or been secretive, vague and tardy in their limited and inadequate disclosures. By way of example only, and without limiting the generality of these allegations, Plaintiffs requested on more than one occasion that JPMorgan provide copies of the BB-II option and lease, and correspondence concerning them, but JPMorgan refused any such disclosure, despite Plaintiffs' clear rights.

33. Because of JPMorgan's and Ormond's failure to disclose, Plaintiffs are presently uncertain of the full extent to which JPMorgan has breached its duties and responsibilities as trustee, and reserve the right to seek additional relief.

34. JPMorgan's and Ormond's failure to disclose has been a proximate cause of damages to Plaintiffs, for which they now sue.

Fourth Cause of Action: Breach of Fiduciary Duty

Unreasonable Fees and Expenses

35. JPMorgan has charged and collected unreasonable and excessive fees and commissions as trustee of the trusts, and paid unreasonable and excessive expenses, in breach of its fiduciary obligations.

36. The charging of such excessive and unreasonable fees, commissions and expenses has been a proximate cause of damages to Plaintiffs, for which they now sue.

Fifth Cause of Action: Breach of Fiduciary Duty

Waste

37. On or about February 1, 2009, JPMorgan granted and executed a grazing/farming lease, as lessor, to Billy Applewhite, as lessee, covering and including the Middle Tract of 10,245 acres.

38. JPMorgan permitted and allowed the surface to be severely overstocked and over-grazed to the point that it is depleted of grasses and reduced to a desert like condition. It now bears no resemblance to the conditions of a properly managed ranch.

39. JPMorgan, although clearly empowered to do so, and despite repeated complaints and requests by Plaintiffs, have wholly failed in any effective respect to manage the surface estate of the Middle Tract.

40. JPMorgan's conduct and omissions constitute waste.

41. The wrongful acts and omissions of JPMorgan constitute failure to exercise the judgment and care under the circumstances then prevailing that ranchers of ordinary prudence exercise in the management of their own affairs concerning the preservation of the corpus of the trust estate; failure to properly monitor and administer the grazing lease; failure to exercise their duty to investigate the condition of the property, and they have demonstrated a lack of basic competency and knowledge in administering and managing the surface of the estate.

42. JPMorgan's breaches of fiduciary duty in these respects constitute waste of the surface estate in the lands included in the Middle Tract and have caused

damages to Plaintiffs, including loss of market value of the land, loss of grazing and hunting, lost income, and costs of remediation, all of which are continuing and for which Plaintiffs now sue.

Accounting

43. Pursuant to Section 113.151 of the Texas Trust Code, Plaintiffs demand a written statement of accounts covering all transactions since the creation of the trusts, inasmuch as JPMorgan has never furnished a complete and proper accounting to Plaintiffs.

Exemplary Damages

44. In its acts, omissions and conduct alleged above, Defendants have been grossly negligent, have acted with malice toward Plaintiffs, have defrauded Plaintiffs, and have breached fiduciary duties to Plaintiffs. Plaintiffs seek an award of exemplary damages.

Attorney's Fees

45. It has been necessary for Plaintiffs to engage the undersigned firms of attorneys to prepare and prosecute this suit, and they are entitled to recover reasonable attorney's fees.

Production of Documents

46. Plaintiffs hereby place Defendants on notice that Plaintiffs intend to use any document produced by Defendants in any pretrial proceeding or at trial.

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury, and tender the jury fee.

WHEREFORE, Plaintiffs, Craig W. Clark and Richard B. Clark pray that Defendants be cited to appear and answer herein, and that upon final hearing, Plaintiffs have and recover judgment of and from J.P. Morgan Chase Bank, N.A., Individually and Corporately, and as Trustee of the Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond:

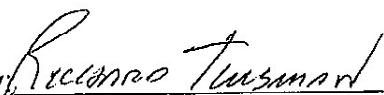
- (1) For damages;
- (2) For exemplary damages;
- (3) For an accounting;
- (4) For attorney's fees;
- (5) For prejudgment and post-judgment interest.

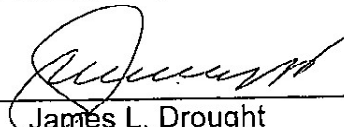
Plaintiffs pray for general relief.

Respectfully submitted,

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By: 
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ATTORNEYS FOR PLAINTIFFS
w/ permission by JCO

By: 
 James L. Drought
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ATTORNEYS FOR PLAINTIFFS

CAUSE NO. 2011-CI-02000

CAROLYN J. CLARK, AS EXECUTRIX OF	§	IN THE DISTRICT COURT
THE ESTATE OF PATRICIA BURNS CLARK,	§	
AND CAROLYN J. CLARK, MICHELE	§	
DAILEY CADWALLADER AND	§	
CHRISTOPHER CLARK, INDIVIDUALLY	§	
Plaintiffs,	§	
	§	
v.	§	438 TH JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.,	§	
INDIVIDUALLY AND IN ITS CAPACITY	§	
AS TRUSTEE FOR THE PATRICIA BURNS	§	
CLARK TESTAMENTATY TRUST	§	
AND THE PATRICIA BURNS CLARK	§	
IRREVOCABLE TRUST, AND	§	
PATRICIA SCHULTZ-ORMOND	§	
Defendants	§	BEXAR COUNTY, TEXAS

CAUSE NO. 2011-CI-16542

CRAIG WILLIAM CLARK AND	§	IN THE DISTRICT COURT
RICHARD BURNS CLARK	§	
Plaintiffs,	§	
	§	
v.	§	73 RD JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.,	§	
INDIVIDUALLY AND CORPORATELY	§	
AND AS TRUSTEE OF THE BURNS	§	
IRREVOCABLE TRUST AND THE	§	
BURNS TESTAMENTARY TRUST,	§	
AND PATRICIA SCHULTZ-ORMOND	§	BEXAR COUNTY, TEXAS

CRT

FIAT

The foregoing is set for hearing on November 15, 2011 at 8:30 a.m. in the Presiding District Court, Bexar County, Texas.

Signed on the **NOV - 2 2011** day of November, 2011.

Cathleen M. Stryker
Presiding Judge
224th District Court

JUDGE PRESIDING