

CAUSE NO. 2011-CI-02000

PATRICIA BURNS CLARK DAILEY,  
SOLE INCOME AND ONLY PRIMARY  
BENEFICIARY OF THE PATRICIA  
BURNS CLARK TRUST UNDER THE  
WILL OF T.E. BURNS AND THE  
PATRICIA BURNS CLARK  
IRREVOCABLE TRUST, BY AND  
THROUGH CAROLYN J. CLARK IN  
HER CAPACITY AS HER ATTORNEY-  
IN-FACT,

Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A.,  
INDIVIDUALLY AND IN ITS  
CAPACITY AS TRUSTEE FOR THE  
PATRICIA BURNS CLARK TRUST  
UNDER THE WILL OF T.E. BURNS  
AND THE PATRICIA BURNS CLARK  
IRREVOCABLE TRUST, and PATRICIA  
SHULTZ-ORMOND,

Defendants.

§ IN THE DISTRICT COURT

§ 438<sup>TH</sup> JUDICIAL DISTRICT

§ BEXAR COUNTY, TEXAS

**MOTION TO COMPEL PRODUCTION OF  
WITNESSES STATEMENTS**

Nonparties South Texas Syndicate Trust Beneficiaries (“Movants” or “STS Plaintiffs”) file this Motion to Compel Witness Statements and would show as follows:

**I.**

**OVERVIEW**

Movants represent over fifty percent of the beneficial interests in the South Texas Syndicate Trust (“STS Trust”). During the relevant time periods, the same employees of JP Morgan Case Bank (“JP Morgan”), who mismanaged the trust in this case (“Clark Trust”), participated in the mismanagement of the STS Trust. Movants have also sued JP Morgan

alleging mismanagement of their trust. The STS Plaintiffs' case is styled *Cause No. 2010-CI-10977, John K. Meyer, et al. v. JP Morgan Chase Bank, NA, Individually and as Trustee of the South Texas Syndicate Trust and Gary P. Aymes; in the 225<sup>th</sup> Judicial District, Bexar County, Texas* (the "STS Action").

These four JP Morgan employees and former employees participated in the administration and management of the STS and Clark Trusts. They each gave deposition testimony in this action. This deposition testimony is relevant to the STS Plaintiffs' claims and the deposition transcripts constitute witness statements under Texas Rule of Civil Procedure Rule 194.2(i). In the STS Action, the STS Plaintiffs moved to compel the deposition testimony of JP Morgan employees ("Witness Statements") given in this case. A hearing on the STS Plaintiffs' motion to compel was held before the Honorable David A. Berchelmann, Jr. During that hearing, JP Morgan argued that production of the Witness Statements would violate the Agreed Protective Order entered in this case. Judge Berchelmann held that the STS Plaintiffs should file for relief under the protective order in this case to gain access to the Witness Statements.

The same individuals, policies, procedures and organizational inadequacies that led to JP Morgan's failures in this case led to JP Morgan's failures to properly administer and manage the STS Trust. In their petition the STS Plaintiffs allege that JP Morgan: (1) failed to disclose conflicts of interest on a number of transactions where it represented the STS Trust as trustee; (2) failed to adequately evaluate, value and manage the STS Trust property and to maximize the value of the STS Trust property for the beneficiaries; (3) failed to negotiate market-rate lease terms for STS Trust assets (including leases in the Eagle Ford play); (4) failed to act competently on the STS beneficiaries' behalf during legal and business-negotiation matters; and (5) repeatedly failed to provide material information, such as lease terms and details, to the STS

Trust beneficiaries. JP Morgan failed to marshal the appropriate resources and expertise to competently discharge its duties as a trustee of the STS Trust. JP Morgan's trust management for oil and gas trusts in South Texas was deeply flawed and those flaws led to millions of dollars of damages to the beneficiaries of numerous trusts, including the Clark and STS Trusts.

Therefore, because the deposition transcripts constitute Witnesses Statements under 194.2(i), Tex. R. Civ. P. and because the deposition testimony is relevant to the STS Plaintiffs' claims, the STS Plaintiffs move this Court to compel JP Morgan to produce the Witness Statements described below pursuant to the Agreed Protective Order entered in this case on August 3, 2011.

## II.

### BACKGROUND FACTS

#### A. The Witness Statements

The STS Trust is a trust consisting of the mineral interests to approximately 132,000 acres in South Texas. JP Morgan managed the STS Trust during the timeframe it managed the Clark Trust. The same personnel, policies and organizational inadequacies that lead to the mismanagement of the Clark Trust lead to the mismanagement of the STS Trust—except with even greater injury to the STS Trust beneficiaries JP Morgan purported to represent.

The witnesses that administered both the STS Trust and the Clark Trust and provided deposition testimony in this case are:

1. Patricia Schultz-Ormond;
2. Gary Aymes;
3. Bertram Hayes-Davis; and
4. H.L. Thompkins.

These individuals gave deposition testimony, at least in part, related to the operation of the relevant business unit within JP Morgan during relevant time periods.

**B. The STS Plaintiffs properly requested the Witness Statements.**

The Witness Statements are covered by several discovery requests from the STS Plaintiffs to JP Morgan in the STS Action—including requests for disclosure and requests for production. The STS Plaintiffs requested the Witness Statements as statements of “persons with knowledge of relevant facts” under Texas Rule of Civil Procedure 194.2(i) on December 9, 2011. *See* Letter from J. Flegle to P. Sheehan dated December 9, 2011 attached hereto as Exhibit A. Each of the deponents in this case were identified by JP Morgan as persons with knowledge of relevant facts in the STS Action. *See* STS Plaintiffs’ Request for Disclosures, attached hereto as Exhibit F.

**C. Judge Berchermann required STS Plaintiffs to seek relief from this Court in order to obtain the Witness Statements.**

On June 14, 2012, Judge Berchermann heard the STS Plaintiffs’ motion to compel the Witness Statements. *See* Transcript of June 14, 2012 Hearing, attached hereto as Exhibit C. At that hearing JP Morgan argued that it could not produce the Witness Statements because it was bound by a confidentiality order in this case. *See id.* at 45 (“[W]e have a confidentiality order that was executed by Judge Littlejohn . . .”). Judge Berchermann determined that, in order to gain access to the Witness Statements, the STS Plaintiffs would need to file a motion in this case. *See id.* at 59 (“[Y]ou can file a motion and go have it heard before Judge Littlejohn.”).

**D. The Agreed Protective Order in this case gives the Court authority to order disclosure of the Witness Statements.**

The Agreed Protective Order in this case gives the Court the authority to order disclosure of the documents subject to it after notice to the affected parties. Specifically, the Agreed Protective Order provides:

Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as “Confidential” consents to such disclosure **or, if the court, after notice to all affected parties, orders such disclosures.**

Agreed Protective Order entered August 3, 2011, at ¶9 (emphasis added) attached hereto as Exhibit D.

### III.

#### ARGUMENTS AND AUTHORITIES

**A. The Court should compel JP Morgan to produce the deposition transcripts because the STS Plaintiffs are entitled to them as Witness Statements under Rule 194.2(i).**

Rule 194.2(i), TEX. R. CIV. P., provides that “[a] party may request disclosure of . . . (i) any witness statements described in Rule 192.3(h). Rule 192.3(h) provides:

*Statements of Persons with Knowledge of Relevant Facts.* A party may obtain discovery of the statement of any person with knowledge of relevant facts—a “witness statement”—**regardless of when the statement was made.** A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) **a stenographic, mechanical, electrical, or other type of recording of a witness’s oral statement, or any substantially verbatim transcription of such a recording.** Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party. (emphasis supplied).

On March 2, 2012, Plaintiffs again requested production of the depositions taken in this action. *See* March 2, 2012 letter from Jim Drought to P. Sheehan attached hereto as Exhibit B. Depositions from previous litigation are witness statements. For example, in *Bohannon v. Honda Motor Co. Ltd.*, 127 F.R.D. 536, 540 (D. Kan. 1989) the court ordered production of depositions from prior lawsuits under the previous version of FED. R. CIV. P. 26(b)(3). “Statement” was defined as a “written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical electrical or other recording or transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded,” where certain factual assertions in those prior lawsuits were in

dispute. *Bohannon*, 127 F.R.D. at 540 (“The transcripts of deposition testimony given and approved by employees of Honda, however, are discoverable ‘statements.’”).

Because the deposition testimony of the four JP Morgan trust department employees constitute “witness statements” under Rule 194.2, the Court should order Defendants to produce transcripts of these depositions including all exhibits.

**B. JP Morgan should produce the Witness Statements because these documents are reasonably calculated to lead to the discovery of admissible evidence.**

Under Texas law, a party is entitled to obtain discovery on any matter that is not privileged, is relevant to the subject matter of the pending action, and/or appears to be reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., In re K.L. & J. Ltd. P'ship*, 336 S.W.3d 286, 290 (Tex. App.—San Antonio 2010, no pet.); Rule 192.3, TEX. R. CIV. P. On a number of occasions, the STS Plaintiffs requested the production of the Witness Statements on the ground that the Witness Statements are relevant and discoverable. *See, e.g., STS Plaintiffs’ December 21, 2011 Motion to Compel at 3*, attached hereto as Exhibit E.

The Witness Statements are not privileged. In fact, the Witness Statements were provided to counsel for the Clark Trust beneficiaries *in an adversarial context*. Any argument that witness statements made by employees and former employees of a trustee are not privileged as to an adversary, but are privileged as to another trust beneficiary, would border on frivolous. *See, e.g., TEX. R. EVID. 503*.

Because the Witness Statements are not privileged, are relevant to the subject matter of the STS Action, and are reasonably calculated to lead to the discovery of admissible evidence this Court should order JP Morgan to produce transcripts of these depositions including all exhibits.

**C. The Witness Statements can be protected under the Agreed Protective Order in the STS Action.**

A protective order has been entered in the STS Action. See STS Action Protective Order, attached hereto as Exhibit G. Therefore, the Witness Statements will be protected from disclosure to parties without the legal right to access them.

**IV.**

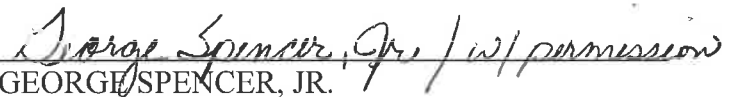
**CONCLUSION**

For the reasons described herein the STS Plaintiffs request that the Court order that Defendants produce transcripts of the Witness Statements including all exhibits to Movants within ten days and grant such other relief to which Movants are entitled.

DATE: August 28, 2012.

Respectfully submitted,

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LOEWINSOHN FLEGLE DEARY, L.L.P.



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**ATTORNEYS FOR INTERVENORS**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via Certified Mail, RRR, this 28th day of August 2012:

Patrick K. Sheehan  
David Jed Williams  
Mark A. Randolph  
Kevin M. Beiter  
Hornberger Sheehan Fuller  
& Beiter Inc.  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209

DAVIS, CEDILLO & MENDOZA, INC,  
Ricardo G. Cedillo  
Les j. Strieber  
Ryan J. Tucker  
Davis, Cedillo & Mendoza  
755 E. Mulberry Ave., Suite 500.  
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(210) 822-6666 Telephone  
(210) 922-1151 Fax

  
\_\_\_\_\_  
Michael J. Donley

# EXHIBIT A

— ★ ★ ★ —  
LOEWINSOHN FLEGLE DEARY  
— L · L · P —

December 9, 2011

Via Facsimile and Email

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

Re: Cause No. 2011-CI-10977; *John K. Meyer, et al. v. JP Morgan Chase Bank N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust and Gary P. Aymes*; in the 225<sup>th</sup> District Court, Bexar County, Texas

Dear Pat:

On March 22, 2011, our clients served a Request for Disclosure on JP Morgan. Item (i) in the request requires production of witness statements.

It is our understanding that there were depositions taken in the litigation filed by JP Morgan against Pioneer and EOG, styled *JP Morgan Chase Bank, N.A., in its Capacity as Trustee of the South Texas Syndicate Trust v. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*; Cause No. 09-04-00036-CVL, in the 218th District Court, LaSalle County Texas. This litigation and JP Morgan's conduct involving it are identified in our amended petition filed November 15, 2011. Depositions taken in that litigation are certainly statements of persons with knowledge of relevant facts.

If there are any confidentiality concerns, they are addressed by the protective order we previously approved in this cause.

Please forward copies of all depositions and exhibits to us by December 16, 2011.

Patrick K. Sheehan, Esq.  
December 9, 2011  
Page 2

If JP Morgan refuses, we will set a rehearing on our motion to compel addressing these witness statements.

Very truly yours,



Jim L. Flegle  
Direct Dial: (214) 572-1701  
Email: [jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)

JLF/mlj

cc: George H. Spencer, Jr.  
Richard Tinsman  
James L. Drought

# EXHIBIT B



**DROUGHT DROUGHT & BOBBITT LLP**

ATTORNEYS AT LAW

**FACSIMILE COVER SHEET**

**TO:** Mr. Patrick K. Sheehan FAX: (210) 271-1740  
Mr. David Jed Williams

**CC:** Mr. Steven J. Badger FAX: (214) 760-8994  
Ms. Ashley Bennett Jones

**CC:** Mr. John Massopust FAX: (612) 336-9100

**CC:** Mr. Ronald A. Simank FAX: (361) 884-2822

**CC:** Mr. David L. Ortega FAX: 210-785-2953

**CC:** Mr. George H. Spencer, Jr. FAX: (210) 227-0732  
Mr. Jeffrey J. Jowers

**CC:** Mr. Richard Tinsman FAX: (210) 225-6235  
Ms. Sharon Savage

**CC:** Mr. Ricardo Cedillo FAX: (210) 822-1151

**CC:** Mr. David R. Deary FAX: (214) 572-1717  
Mr. Jim L. Flegle

**FROM:** James L. Drought/bob

**DATE:** March 2, 2012

**TOTAL PAGES:** 4

**RE:** Clark v. JPM and Meyer v. JPM

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT. YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.



**DROUGHT DROUGHT & BOBBITT LLP**

ATTORNEYS AT LAW

March 2, 2012

VIA FAX

Mr. Patrick K. Sheehan  
Hornberger Sheehan Fuller & Beiter, Inc.  
Quarry Heights  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

Re: Cause No. 2011-CI-02000; *Carolyn J. Clark, et al. v. JP Morgan Chase Bank, NA et al*; in the District Court, 438<sup>th</sup> Judicial District, Bexar County, Texas

Re: Cause No. 2010-CI-10977; *John K. Meyer, et al., Plaintiffs v. JP Morgan Chase Bank, N.A. Individually/Corporately and as Trustee of the South Texas Syndicate Trust and Gary P. Aymes, Defendants*

Dear Pat:

As you know, we have recently conducted substantial discovery in the Clark Action involving JP Morgan document production and the depositions of current and former JP Morgan employees. In significant part, the discovery in the Clark Action included documents and testimony that is also relevant to the claims being made by the Plaintiffs in the STS Action.

There is an Agreed Protective Order regarding confidential information in both cases, the one in the Clark case having been signed on August 3, 2011, and the one in the Meyer case having been signed on November 14, 2011.

The two cases have many similarities. The Plaintiffs' pleadings essentially allege the same causes of action against JP Morgan, in its capacity as trustee. Most, if not all, of the JP Morgan witnesses will be the same in both cases. Much of the documentation produced by JP Morgan will be relevant to both cases.

I am sure that your client, as a trustee with fiduciary duties to trust beneficiaries, is very interested in minimizing litigation expenses where possible. It is clear to me, and to my co-counsel, that one such way to minimize litigation

JLD\Clark, Craig\497.0002 - Clark v. JPM\Sheehan et al - Agreed Protective Order.wpd

497.0002

Mr. Patrick K. Sheehan  
March 2, 2012  
Page 2

expenses is to allow discovery in either case to be used in the other. If JP Morgan is agreeable to this concept, I am confident that the plaintiffs in both actions will also agree, particularly where protective orders are in place.

I suggest that we enter into an agreed order which allows all confidential information produced by either side to be used in either case. I would prefer doing this by agreement. However, if JP Morgan will not so agree, we will prepare the necessary motions and take the matter up with the respective courts.

Please let me know if this meets with your approval at your earliest convenience. I look forward to hearing from you.

There is an Agreed Protective Order regarding confidential information in both cases, the one in the Clark case having been signed on or about August 3, 2011, and the one in the Meyer case having been signed on or about November 14, 2011.

The two cases have many similarities. The Plaintiffs' pleadings essentially allege the same causes of action against JP Morgan. Most, if not all, of the JP Morgan witnesses will be the same in both cases. Much of the documentation produced by JP Morgan will be relevant to both cases.

In order to eliminate confusion and the difficult logistics of attempting to keep information produced in one confidential from the other, I suggest that we enter into an agreed order which allows all confidential information produced by either side to be used in either case.

Please let me know if this meets with your approval.

With best regards.

Sincerely,



James L. Drought

JLD/kf



Mr. Patrick K. Sheehan  
March 2, 2012  
Page 3

*cc via facsimile transmission:*

Mr. Steven J. Badger  
Ms. Ashley Bennett Jones

Mr. John B. Massopust

Mr. Ronald A. Simank

Mr. David L. Ortega

Mr. George H. Spencer, Jr.  
Mr. Jeffrey J. Jowers

Mr. Richard Tinsman  
Ms. Sharon Savage

Mr. Ricardo G. Cedillo  
Mr. Les J. Strieber III  
Mr. Ryan J. Tucker

Mr. David R. Deary  
Mr. Jim L. Flegle  
Mr. Michael J. Donley

# **EXHIBIT C**

REPORTER'S RECORD  
VOLUME 1 OF 1  
CAUSE NO. 2010-CI-10977

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JOHN K. MEYER, et al., ) IN THE DISTRICT COURT OF  
Plaintiffs, )  
VS. )  
) BEXAR COUNTY, TEXAS  
JPMORGAN CHASE BANK, N.A., )  
INDIVIDUALLY/CORPORATELY )  
AND AS TRUSTEE OF THE SOUTH )  
TEXAS SYNDICATE TRUST AND )  
GARY P. AYMES, )  
Defendants. ) 225th JUDICIAL DISTRICT

\*\*\*\*\*  
HEARING ON PLAINTIFFS' APPLICATION  
FOR TEMPORARY INJUNCTION  
JUNE 14, 2012  
\*\*\*\*\*

On the 14th day of June, 2012, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Judge David A. Berchelmann, Jr., Judge of the 37th District Court presiding, held in San Antonio, Bexar County, Texas:

Proceedings reported by Machine Shorthand.

C O P Y

## A P P E A R A N C E S

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(Continuation)

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## EXHIBIT INDEX

DEFENDANTS'

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
1	Letter to Jed Williams, dated 4/11/12	19	19
2	Affidavit, with Chart	25	
3	Affidavit of Mr. Gary Aymes	33	33
1	Agreed Protective Order	48	(Withdrawn)
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3	Agreed Protective Order	48	48
4	Affidavit of James M. "Marty" Truss	48	(Withdrawn)
5	Agreed Protective Order	49	49
6	Defendants' Designation of "Confidential" Portions of Deposition Transcripts of Patricia Schultz-Ormond	49	49
7	Defendants' Designation of "Confidential" Portions of Deposition Transcript of H.L. Tompkins	49	49

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
1	<u>DEFENDANTS'</u>		
2			
3	8 Defendants' Designation of		
4	"Confidential" Portions		
5	of Deposition Transcript		
6	of Bertram Hayes-Davis	49	49
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14	of Kyle Gubernator	49	49
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1 (Proceedings.)

2 THE COURT: Okay. Sorry, I just had  
3 my eyes dilated. All right. I've been gone, and I  
4 just came in for this hearing. If you want me to  
02:04:44 5 read this stuff obviously beforehand, it won't happen  
6 today, obviously. I mean everything is -- I'm okay,  
7 but everything is a little bit bright, and it's  
8 getting better. But if I'd known better, I never  
9 would have set the doctor's appointment at the same  
02:04:58 10 time I had this hearing. I didn't know that when  
11 they did this that it changes everything completely.

12 So where do we stand? What do you-all want  
13 to do? Like I said, I can do it. I can sit here;  
14 you'll just have to tell me. I don't want to have to  
02:05:14 15 try to read all this stuff right now.

16 MR. DROUGHT: We've got four motions  
17 today that are to be heard, and I've got a list up  
18 here, if you can read it.

19 THE COURT: Oh, yeah. Yeah, it's not  
02:05:24 20 terrible.

21 MR. SPENCER: Well, just tell him.

22 MR. DROUGHT: Okay.

23 THE COURT: Yeah. That would make it  
24 easier.

02:05:30 25 MR. DROUGHT: All right. The first



02:05:32 1 one is going to be argued by John Massopust, counsel  
2 here with us --

3 THE COURT: Okay.

4 MR. DROUGHT: -- that's a motion to  
02:05:42 5 compel production of electronically-stored  
6 information. We've been trying to get this  
7 information for a while from JPMorgan and haven't  
8 gotten it, so he's going to argue that one.

9 The next one is our motion to compel a hard  
02:05:56 10 copy of trust administration documents. And what  
11 that is is the trust has got about 30 boxes of  
12 documents that belong to our beneficiaries, and we'd  
13 like to get -- that they be turned over. And  
14 Mr. Flegle is going to argue that motion.

02:06:12 15 The third one is a motion to compel  
16 documents regarding related cases. And one of the  
17 related cases is the one you heard before, JPMorgan  
18 versus EOG and Pioneer, and that part of the motion  
19 I'm going to argue. But a part on that case I'm  
02:06:32 20 getting close to reaching an agreement with the  
21 lawyers for Pioneer and EOG to give JPMorgan  
22 permission to give us the documents.

23 I've got David Ortega here, representing  
24 Pioneer, and I believe that confirms what we had  
02:06:44 25 talked about.

02:06:46 1 MR. ORTEGA: It does, Judge. It's,  
2 technically, that it boiled down to what Mr. Drought  
3 and I have talked about today. We should have it  
4 done by next week.

02:06:54 5 THE COURT: Okay.

6 MR. DROUGHT: The other part of my  
7 motion is that I've got two JPMorgan cases, one with  
8 Pioneer and with Clark versus JPMorgan, and I'm  
9 representing the Clark family. Five depositions of  
10 the JPMorgan's representatives have been taken. We  
11 want those depositions to be used in this case, and  
12 I'm going to argue that motion, and that's the third  
13 one.

14 And then, finally, George Spencer is going  
02:07:20 15 to argue the motion basically requesting that  
16 JPMorgan pay its own attorneys' fees in this  
17 litigation rather than charging the trust.

18 I think that pretty much covers it; right,  
19 David?

02:07:30 20 MR. MASSOPUST: Yes, sir.

21 THE COURT: Okay.

22 MR. DROUGHT: So Mr. Massopust will  
23 start first.

24 THE COURT: Do you-all have any -- oh,  
02:07:34 25 hold on a second. Is there anything that you --

02:07:36 1 MR. FLEGLE: Well, Judge, all we have  
2 are some motions for protective order that we set in  
3 light of some of the issues that we're trying to get,  
4 like 50 boxes of ESI, and related cases. These are  
02:07:48 5 mostly for protective order. They filed a motion in  
6 response to discovery requests, so we set those for  
7 hearing.

8 THE COURT: That's fine. We'll hear  
9 them all at once.

02:07:56 10 Okay. Go ahead. You may proceed, Counsel.

11 MR. MASSOPUST: Good morning.

12 THE COURT: Good morning.

13 MR. MASSOPUST: Or good afternoon.

14 THE COURT: Yeah.

02:07:58 15 MR. MASSOPUST: John Massopust, I'm  
16 with the law firm of Zelle, Hofmann, Voelbel & Mason,  
17 from Minneapolis, Minnesota. We have a Texas office  
18 in Dallas. I'm here representing. And I guess it's  
19 because the beginnings of the STS Trust go back to a  
02:08:20 20 land purchase in 1910 by essentially five families  
21 from Minnesota, and it goes back there.

22 So I represent the plaintiffs in this case  
23 that total in excess of 16,400 of the 30,000  
24 beneficiaries in the trust. And I've been here at  
02:08:42 25 prior hearings. This is the first time that I've

02:08:46 1 participated in one of their arguments. And it's a  
2 real pleasure to be in your courtroom, and thank  
3 you. I look forward to working at this to a  
4 resolution, hopefully, before too long.

02:08:58 5 The motion to compel electronically-stored  
6 information actually goes back about a year now, when  
7 we put out our request for this information. We've  
8 been working on it for a year. As a matter of fact,  
9 it's already been the subject of a hearing last

02:09:14 10 November in your courtroom where you essentially  
11 overruled their objections and instructed them to  
12 work with us to make progress on the electronically-  
13 stored information. I'm here to tell you that since  
14 that time there has been no progress, despite the  
02:09:36 15 order that you gave them and our repeated attempts to  
16 move that forward.

17 But before I make the specific argument, I  
18 just want to set a little bit of a context here.  
19 Because essentially when I sat here and listened to  
02:09:50 20 the argument last November, what the JPMorgan argued  
21 to you could be boiled down to, Listen, Your Honor,  
22 we're just too big, we've got too much stuff, there's  
23 too much information, and it's impossible for us to  
24 retrieve this information that the plaintiffs had  
02:10:06 25 requested and wanted in this case. They used the

02:10:08 1 word "impossible" more than once.

2 And I'm going to focus on that argument  
3 from that position, which, again, you overruled their  
4 objections and told them to go forward with this.

02:10:24 5 And here's the context: Although JPMorgan  
6 successfully convinced the United States government  
7 that it was too big to fail, during the middle of  
8 litigation is certainly too late for them to try to  
9 convince this Court that they're also too big to

02:10:44 10 fulfill their disclosure requirements as trustee of  
11 this trust, under the Texas Trust Code. And the same  
12 effect, it's too late for them to argue that they are  
13 too big to fulfill their discovery responsibilities  
14 under the Texas Rules of Civil Procedure.

02:11:04 15 If, in fact, what they're telling us is  
16 true, that they're too big to live up to their  
17 disclosure responsibilities, they should resign as  
18 trustee and get out of the trustee business; however,  
19 they haven't. They continue to collect each and

02:11:22 20 every quarter from us, fees for being trustee; and we  
21 keep paying those. Yet they're trying to tell you  
22 that the basic requirement of loyalty and disclosure  
23 they can no longer fulfill because it's simply too  
24 big to be able to accomplish that. I think at this

02:11:42 25 point if that's in fact true, they have to live with

02:11:44 1 whatever burdens comes along with that.

2 But I would also question this argument  
3 about being too big and there's too much information  
4 to be able to fulfill their statutory disclosure and  
02:12:00 5 loyalty responsibilities to the beneficiaries. It's  
6 true, the STS Trust dates back to 1910 with the  
7 purchase of 132,000 acres by these five families from  
8 Minnesota. However, on the ESI issue, we've been --  
9 exchangeable, have an agreement -- will limit that to  
02:12:26 10 ESI demands from the year 2000 to the present time,  
11 so it's a much more confined period than the whole  
12 history of this.

13 The other thing that's interesting to point  
14 out is, it's really not too big of an enterprise. If  
02:12:44 15 you look at the financial statements, and I'm going  
16 to start with the year 2000, the total revenue of the  
17 STS Trust in the year 2000 was a million dollars.  
18 And there were total expenses that year of \$102,000,  
19 including \$27,700 in trustee fees; that's a very  
02:13:08 20 small enterprise. And a lot of the grocery stores or  
21 drugstores on these corners have bigger operations  
22 than that. And even if you go forward to 2006, the  
23 total revenues were only \$3.6 million, and they're  
24 spending \$34,000 in professional fees, and  
02:13:26 25 accountants keep track of all of this information.

02:13:30 1 And even if you go up to 2010, after the Eagle Ford  
2 and there was a substantial growth in revenues, the  
3 revenue still is only \$16.8 million, with expenses of  
4 \$1.7 million, and it's something in excess of  
02:13:46 5 \$600,000 in trustee fees.

6 So this notion, first of all, that it's too  
7 big to be able to carry on the responsibilities, it's  
8 too late to make that argument because they're still  
9 acting as trustee. So if they're going to do it and  
02:13:58 10 get paid for it, they have to live up to the  
11 responsibilities. But, moreover, it isn't such a big  
12 and complex matter that it is, as they argued to you  
13 last November, impossible to meet their disclosure  
14 responsibilities.

02:14:18 15 So we were here in November, you overruled  
16 their objections and tell them to start working with  
17 the plaintiffs in -- in fulfilling this, because they  
18 have to produce this information. We sent out our  
19 protocol on December 22nd outlining the terms and how  
02:14:36 20 to go forward, and essentially since that time we've  
21 been stiff-armed. We've had some more hearings since  
22 then on other subjects.

23 And as a matter of fact, when we were here  
24 in March on another topic, we talked to Pat Sheehan  
02:14:50 25 afterwards and reminded him about the outstanding

02:14:54 1 protocol, and he told us that, Geez, my associate  
2 here, Jed, is remiss, He'll get on that, Don't worry,  
3 We'll start making progress on that. Despite  
4 repeated e-mails and telephone calls since that time,  
02:15:10 5 they're still -- just continue to ignore us in their  
6 responses. We've made no progress in virtually a  
7 year.

8 It's clear that without another order from  
9 this Court and putting some -- and one of the things  
02:15:24 10 that's interesting is they're using our money, of  
11 course, to have all of these hearings and stretch  
12 this out forever. And as I've told others in the  
13 past, the easiest thing to do in the world is to  
14 spend somebody else's money. And they're doing it  
02:15:38 15 exceptionally well, but not making any progress on  
16 this.

17 When they ignore us and stiff-arm us, we're  
18 out of ideas on how to move this forward, other than  
19 getting yet another order out of this Court telling  
02:15:52 20 them to get it done and attaching some sort of  
21 sanction to this so we can finally get their  
22 attention and start moving this case forward. This  
23 is the base foundation information of this case.  
24 They have a responsibility to provide that  
02:16:08 25 information under the Texas Trust Code, in addition



02:16:12 1 to the Rules of Civil Procedure.

2 We've limited the time frame, at their  
3 suggestion, to the year 2000 going forward. We've  
4 talked about, We'll do this in phases so we can make  
02:16:26 5 progress as we go forward. We've asked them for  
6 their suggestions on how to make it more  
7 cost-effective, and it's a stiff-arm, nothing coming;  
8 that's why we were forced to, yet again, bring this  
9 motion in. This time we ask some sort of sanctions,  
02:16:42 10 so we can probably get their attention and move  
11 forward with these basic responsibilities as a  
12 trustee.

13 MR. WILLIAMS: Your Honor, just to put  
14 this in context: First of all, we have not been  
02:16:56 15 given an order of request. And although I've never  
16 talked to Mr. Massopust about this, I have had  
17 conversations with counsel from one of the other  
18 firms, I believe the Flegle firm, about this. And  
19 the basic problem has been, when we went -- go back  
02:17:10 20 to November, and we did talk about the difficulty in  
21 producing ESI, which I think the Court recognizes,  
22 probably read the ESI hearings, you know that these  
23 e-mails are not just in some folder somewhere, where  
24 we could just go grab them and produce them; it's  
02:17:22 25 much more complicated than that. We did make the

02:17:26 1 argument that it's impossible, and I believe we made  
2 the argument it could be extremely expensive. And we  
3 filed motions for protective order to say, if we are  
4 ordered to do this and if they really want us to do  
02:17:36 5 what they're asking us to do, we're going to ask the  
6 Court to order them, the plaintiffs, to pay for what  
7 they're asking us to do. Now, I've got some numbers  
8 put together that are going to show what that would  
9 be.

02:17:46 10 But I want to get back to why we kind of  
11 stalled, because we have successfully negotiated ESI  
12 agreements in the past and -- for this client, and in  
13 the case of Mr. Drought, which we were able to  
14 negotiate an ESI agreement. And what it takes is,  
02:18:02 15 first of all, you have to agree on what the scope is  
16 that you're going to go look for. There has to be  
17 some agreement that, you know, here are -- here are  
18 the areas, here are the contentions that we're  
19 making, here are the claims that we're making, and so  
02:18:14 20 we're going to go look for e-mails that pertain to  
21 these particular claims. There has to be some kind  
22 of narrow focus to that. And once you have that  
23 established, then you can determine, well, who are  
24 the custodians that we need to do a search for?  
02:18:28 25 Because these e-mails are categorized by all the

02:18:30 1 different people: We have Gary Aymes, the trust  
2 administrator; we have Patricia Schultz-Ormond, who  
3 was the mineral manager, who would go see a lot of  
4 leases; we've got a lot of individuals that are  
02:18:40 5 attached to this trust. But the idea is, well, let's  
6 figure out who the custodians are that we need to go  
7 actually look for that are going to get them the  
8 information that's relevant to their claims that  
9 they're making in the case.

02:18:48 10 And then once you have the custodians  
11 established, then you can come up with some search  
12 terms, and you run the search terms. It's like doing  
13 a Westlaw search, where you try to go into this  
14 entire body. Say, for example, we select all of  
02:19:02 15 Gary Aymes' e-mails going back to some year. Let's  
16 do all the Gary Aymes' e-mails having to do with  
17 everything he works on, not just with his trust. So  
18 then you have to apply search terms to that body of  
19 e-mails to try to narrow those down so that you have  
02:19:14 20 a manageable number for them to review.

21 And then once you do that phase, then they  
22 actually have to be reviewed by attorneys who know  
23 something about the case, who know what's relevant to  
24 what they're claiming, and then you can go through  
02:19:28 25 the e-mails one by one and say, yes, this is

02:19:32 1 potentially relevant, this is not, this may be  
2 privileged, this may not be privileged; that's called  
3 the first-pass review. That gets very expensive  
4 because JPMorgan hires contract attorneys to do  
02:19:44 5 that. There's offshore attorneys that do that, that  
6 reduces the costs some, or they use contract  
7 attorneys, domestically, that increases the cost.

8 Then once you have a first-pass review  
9 completed, then there's a second-pass review, and  
02:19:56 10 that's where it goes to us, as outside counsel, and  
11 then we have to review the cull number of e-mails  
12 down, and go through them one by one to make sure  
13 their privileges have been maintained, and then make  
14 sure they are relevant.

02:20:08 15 So when the plaintiffs asked us about  
16 this -- and I've got this letter that I need to offer  
17 as an exhibit, just to make our record here.

18 May I approach, Judge?

19 THE COURT: Sure.

02:20:28 20 MR. WILLIAMS: And I know you have a  
21 problem reading today, so I'll read to you the  
22 pertinent part of this.

23 THE COURT: Okay. Thank you.

24 MR. WILLIAMS: What I told them back  
02:20:40 25 in April is, I said for us to make progress on this,

02:20:44 1 what we needed to do is, we need to know what's the  
2 scope of what you're looking for, and once we know  
3 the scope of what you're looking for, then we can  
4 start determining who the custodians are, what the  
02:20:52 5 search terms were, etcetera.

6 And their response to that is in the second  
7 paragraph in Exhibit 1, which I now offer Exhibit 1.

8 THE COURT: Any objection?

9 MR. MASSOPUST: No objection.

02:21:06 10 THE COURT: Received in evidence.

11 (Exhibit No. 1 admitted.)

12 MR. WILLIAMS: The second paragraph,  
13 their response to my request is, what I'd asked them  
14 is that they request in the letter: This letter is  
02:21:14 15 in response to your request of April 5. The  
16 plaintiffs and intervenors provide specific topics  
17 upon which to base searches for JPMorgan's  
18 electronically-stored information.

19 And then their answer is in the second  
02:21:26 20 paragraph: Specifically, we are seeking documents  
21 relating to the administration and management of the  
22 South Texas Syndicate Trust.

23 So what they're asking for, really, is each  
24 and every e-mail that has anything to do with the  
02:21:38 25 administration and management of the South Texas

02:21:42 1 Syndicate Trust. That's no limitation as to scope.  
2 And so at that point, since we weren't making any  
3 progress on getting this down to a limitation of  
4 scope, we weren't able to make further progress on  
02:21:54 5 the custodians.

6 So what they're in here asking today for is  
7 they want us to go back to the year 2000, even though  
8 most of the custodians they've asked for weren't even  
9 working on this trust back in 2000, and they want us  
02:22:10 10 to provide every e-mail that relates to the  
11 administration and management of the South Texas  
12 Trust.

13 Now, when you look at that request, you  
14 have to look at that in the context of the rules of  
02:22:22 15 discovery. And the rules of discovery are the same  
16 when we're talking about ESI as they are with written  
17 discovery requests. And, for example, the CSX court  
18 case, Supreme Court case, which the court is probably  
19 familiar with, the court says that the discovery  
02:22:40 20 requests must be reasonably tailored to include only  
21 relevant matters.

22 And then we have the In re Houstonian  
23 Campus case -- I'll leave you these, Judge. I know  
24 you can't read today, so I'll just kind of read you  
02:22:56 25 where it's from. But the Houstonian case says -- it

02:22:58 1 repeats what the CSX case says, the discovery  
2 requests must be reasonably tailored to include only  
3 matters relevant to the case. But it also says it's  
4 not the burden of the responding party to tailor a  
02:23:10 5 reasonable discovery request from requesting party,  
6 rather the requesting party has the responsibility to  
7 narrowly tailor the request to produce.

8 So for us to make progress towards the  
9 agreement, which we can do, which I'm fairly  
02:23:26 10 confident we can do, we have to get some restriction  
11 of what it is they're looking for, something more  
12 restrictive than every -- each and every e-mail  
13 pertaining to the administration of the STS Trust  
14 going back to 2000. And they're the ones that need  
02:23:40 15 to come up with that; it's their lawsuit and their  
16 claims, and so the burden should be upon them.  
17 Because we objected to the request being overly  
18 broad, overly burdensome, etcetera, and we filed a  
19 motion for protective order.

02:23:50 20 So the burden should be upon them to come  
21 back and say, here are the topic areas, we negotiate  
22 those, we can't reach an agreement on those, we come  
23 back to the Court, have the Court tell us, Okay,  
24 these are the topic areas that you have to go find;  
02:24:04 25 and then we can come up with the custodians that are

02:24:06 1 relevant, we can come up with search terms, and we  
2 can make some real progress here.

3 I also have for the Court an affidavit,  
4 which I'm going to mark it as Exhibit 2.

02:24:36 5 And then a chart which has some of the  
6 information that's in this affidavit.

7 (Hands to Plaintiffs' counsel.)

8 And this is the affidavit of a gentleman in  
9 New York with JPMorgan by the name of Michael  
02:24:52 10 Varzally, and he's the head of -- the executive  
11 director of the eDiscovery Group. And what we asked  
12 Mr. Varzally and his group to do -- let me give you  
13 this chart. This chart kind of summarizes what's in  
14 the affidavit.

02:25:08 15 Mr. Massopust said that we made the  
16 argument that it's impossible for us to comply with  
17 what they're asking for, and if that's what we said,  
18 that's not entirely accurate. It's not impossible,  
19 but what we asked Mr. Varzally to do and his group  
02:25:24 20 was to go and determine what would be required in  
21 order for us to provide for them what they're asking  
22 for.

23 And what he did and what he computed and  
24 what his chart shows, is that if you take 16  
02:25:38 25 custodians -- they're asking for 18 in their original



02:25:42 1 request -- but they ran a number on 16 custodians.  
2 They went back to 2005 for it, not 2000, and they  
3 estimated that if you did that and ran search terms,  
4 and pulled all those e-mails, you'd have 862,800

02:25:58 5 individual documents that would have to be reviewed.  
6 Each one of those would have to be restored, and so  
7 there's tape -- tape restored costs of \$138,500 to  
8 restore all these e-mails from the backup tapes,  
9 etcetera, where they're housed. And then those  
02:26:14 10 e-mails have to be posted on the platforms so that  
11 they could be reviewed, and those costs are  
12 \$115,000.

13 And then there's a first-pass review that I  
14 mentioned, where you use attorneys, either  
02:26:26 15 domestic-contract attorneys or offshore attorneys,  
16 and those fees are -- first-pass review would be a  
17 million-three if we used domestic attorneys, \$690,000  
18 if we used offshore. And then the second-pass review  
19 for the outside counsel adds on another million  
02:26:40 20 dollars. And so the total anticipated costs are  
21 estimated -- not to give you everything they're  
22 asking for -- but to go back just to 2005, the total  
23 would be \$2,669,308, if we use domestic attorneys,  
24 and \$1.5 million if we use offshore attorneys.

02:27:02 25 The point of this e-mail -- or the point of

02:27:04 1 this affidavit is to establish the burden of costs  
2 that would be upon us if we go and try to do, and try  
3 to attempt to do, provide all the e-mails as they're  
4 asking us to do for all these custodians.

02:27:16 5 And if you look at -- there is a rule of  
6 procedure on this in Texas that applies directly to  
7 ESI electronic data, and that's Rule 196.4. 196.4  
8 says that the responding party must produce the  
9 electronic data that is responsive to the request and

02:27:40 10 is reasonably available to the responding party in  
11 its ordinary course of business. If the responding  
12 party cannot, through reasonable efforts, retrieve  
13 the data or information requested or produce the  
14 report requested, the responding party must make an  
02:27:52 15 objection, which we have done. And we filed a motion  
16 for protective order.

17 If the Court orders the responding party to  
18 comply with the request, the Court must also order  
19 that the requesting party pay the reasonable expenses  
02:28:04 20 of any expert, under the statute, required to  
21 retrieve and produce the information. So if the  
22 Court were to order us to do what Mr. Massopust has  
23 asked us to do, based upon the evidence that we've  
24 offered in this Exhibit 2, which I'll now offer into  
02:28:16 25 evidence.

02:28:20 1 MR. MASSOPUST: I'll object to that,  
2 because I saw it for the first time when I walked  
3 into the courtroom today. As a matter of fact, it's  
4 exactly what we've been trying to get from them since  
02:28:30 5 you ordered them last November to produce.

6 And, quite frankly, I think the affidavit  
7 underscores the point that I made, which is they  
8 can't create an obstacle to fulfill their basic  
9 obligation as trustee of disclosure of all  
02:28:44 10 information. We're entitled to this, as  
11 beneficiaries of this trust. And the litigation is  
12 not required for them to have this responsibility to  
13 produce this. And when you hand me a document that  
14 says to fulfill their obligations as trustee is going  
02:29:04 15 to cost my clients \$2.6 million to get at, for  
16 instance, e-mails that their people created in 2000,  
17 when the entire trustee fee for the year was \$27,000,  
18 underscores the point. If they're going to, in fact,  
19 take these documents out of San Antonio and out of  
02:29:24 20 the STS file, and pull them into a black hole in  
21 New York so they can hide behind that forever, they  
22 should get out of the business. They should have  
23 gotten out of the business as a trustee a long time  
24 ago. The other point is --

02:29:34 25 MR. SHEEHAN: Your Honor, I'm going to

02:29:36 1 object to that, because that is not an objection to  
2 this exhibit. So I --

3 THE COURT: Well, no, I understand. I  
4 want to hear --

02:29:42 5 MR. SHEEHAN: Well, he --

6 THE COURT: Well, stop. Stop, stop,  
7 stop. I want to allow him the opportunity to make  
8 his point. Okay, Mr. Sheehan?

9 MR. SHEEHAN: Yes, sir.

02:29:48 10 THE COURT: Go ahead.

11 MR. MASSOPUST: It is an objection to  
12 the admission of this into evidence and, again, in  
13 seeing it for the first time right now.

14 Although it was good, because I did lose  
02:30:04 15 track of the next point I was going to make. The --

16 THE COURT: You were calling him  
17 names, as I recall.

18 MR. MASSOPUST: No. Actually...

19 THE COURT: That's all right.

02:30:20 20 MR. MASSOPUST: But I wasn't calling  
21 him names.

22 THE COURT: It's okay. You're  
23 entitled to do it.

24 MR. MASSOPUST: Well, I used to when I  
02:30:26 25 was in my 30s, but hopefully I've moved on --

02:30:28 1 THE COURT: I didn't say you were  
2 using four-letter words, just that you were calling  
3 him names.

4 MR. MASSOPUST: -- from that point in  
02:30:34 5 time. But, anyway --

6 THE COURT: I understand your point.

7 MR. MASSOPUST: Oh, I remember what my  
8 point is.

9 THE COURT: Okay.

02:30:40 10 MR. MASSOPUST: And the other point is  
11 this, the claims that are being made in this  
12 litigation is the mismanagement over the relevant  
13 period of the STS Trust and the assets. The only  
14 assets in their trusts are the mineral rights. And  
02:31:00 15 so -- as a matter of fact, he had that discussion  
16 with one of my partners, Michael Donley, from the  
17 Flegle firm, and they put the question of him, What  
18 possibly could relate to the STS Trust that would not  
19 be relevant to this lawsuit, and he can't identify  
02:31:18 20 anything that would fit that. That's why -- that's  
21 the catchall there. And that's why his argument was  
22 misplaced when he said Gary Aymes had the  
23 responsibility for all sorts of trusts. That's why  
24 we focused in on the STS Trust and what's coming out  
02:31:32 25 of there. So they can't create this black hole in

02:31:36 1 New York to isolate and separate themselves from the  
2 responsibilities they have under the Texas Trust Code  
3 or the Rules of Civil Procedure in this case.

4 And the affidavit that he's trying to  
02:31:50 5 introduce into evidence -- he got our protocol in  
6 December; he's never responded with an alternative  
7 protocol to that. It was signed June 14th, 2012, and  
8 I got it again when I sat down here at this desk, so  
9 that's clearly not admissible at this point in time.

02:32:06 10 THE COURT: I think it goes more to  
11 the weight than the admissibility. I mean, I  
12 understand what they're attempting to show here, and  
13 he can make whatever arguments he chooses.

14 So your objection is overruled.

02:32:18 15 Okay. Go ahead, Mr. Williams.

16 MR. WILLIAMS: Judge, I just want to  
17 respond as to the disclosure argument, because  
18 Mr. Massopust's argument, which I believe is entirely  
19 misplaced, is not consistent with Texas law, is that  
02:32:30 20 because we're the trustee of a trust, we have a duty  
21 to turn over every scrap of paper and every byte of  
22 electronic information we've ever created, going back  
23 as long as we've been trustee that touches on this  
24 STS Trust; that is not Texas law.

02:32:46 25 Texas law says we have a duty of full

02:32:50 1 disclosure of material facts that may affect the  
2 beneficiaries' rights. They're asking us to go back  
3 and produce every single e-mail, piece of electronic  
4 mail, that has anything to do with the trust. So,  
02:33:02 5 for example, if beneficiary Joe Smith sends an e-mail  
6 to Gary Aymes, and says, Gary, it's been really nice  
7 to see you at the shareholders -- or the  
8 beneficiaries' meeting, Hope you and the family are  
9 doing fine, that's a relevant e-mail, under  
02:33:14 10 Mr. Massopust; so we have a duty of full disclosure  
11 to turn those over, no matter that it costs us close  
12 to \$3 million to actually have to go pull all of  
13 those and do that. And that's not consistent with  
14 Texas law or whatever the obligations are in  
02:33:28 15 producing ESI.

16 What I'm trying to do, Judge, and what  
17 JPMorgan is trying to do here, is to come up with a  
18 sensible workable approach that we can do to get the  
19 plaintiffs responsive relevant e-mails that relate to  
02:33:40 20 what their claims are in the case.

21 And Mr. Massopust says they claim that  
22 we've mismanaged the trust: Have we mismanaged the  
23 trust forever; have we mismanaged the trust in all  
24 ways? They've had this case going on for two years.  
02:33:54 25 We'd like to -- they need to get specific with us,

02:33:56 1 and say, Okay, here's what we're complaining about,  
2 Here's the scope of what we're looking for. You  
3 can't just send a request in discovery when they've  
4 sued us, and say, Give us every document which  
02:34:06 5 touches on the trust, and we'd go fish around. It's  
6 not consistent with the Supreme Court saying, You  
7 don't get to be going on a "fishing" expedition.

8 So what we're suggesting we do here is that  
9 we have the plaintiffs come up with a narrowing of  
02:34:20 10 the scope of what they're looking for, that we work  
11 from that, and then narrow the list of custodians.

12 I've got a third affidavit here, which  
13 shouldn't be too controversial, because it basically  
14 gives them information we've already provided to  
02:34:34 15 them, which is a list of all the custodians they've  
16 asked for and what their involvement has been with  
17 the trust, or lack of involvement been with the  
18 trust, so that we could try to get this down to the  
19 custodians we need to look for. And this is an  
02:34:48 20 affidavit of Mr. Aymes, where he just goes through,  
21 Judge, and lists all the different people that  
22 they've asked for e-mails on, and details what their  
23 involvement has been or lack of involvement.

24 And if you really get down to it, going  
02:35:04 25 back to 2005, we're choosing that date because 2005



02:35:08 1 is when Patricia Schultz-Ormond became the mineral  
2 manager of the STS, which led to leasing activity in  
3 subsequent years, makes some allegations about. And  
4 so if you go back to 2005, the primary people that  
02:35:26 5 have been involved with this STS are Patricia Ormond,  
6 Al Leach, who is the trust officer and primarily been  
7 with the trust up through 2008, Gary Aymes, who took  
8 over the trust as primary fiduciary officer in 2008,  
9 and then we have H.L. Tompkins, who's a mineral  
02:35:42 10 manager who took over for Mrs. Ormond when she left  
11 the bank in 2009. Those are the primary managers, if  
12 you will, of the STS, going back to 2005. If we  
13 limited the scope of the custodians to those four  
14 people, we should be able to get the vast majority of  
02:36:02 15 all e-mails that they might be entitled to. There's  
16 no reason to go do 16 or 18 different people at  
17 supervisory levels and other levels who have  
18 tangential roles, and who likely, in their  
19 correspondence, would have actually had Ormond or  
02:36:16 20 Gary Aymes or Al Leach, or H.L. Tompkins.

21 So once we get the scope, we can narrow the  
22 list of custodians, we can come up with a time frame  
23 that's reasonable, not going back 12 years but trying  
24 to come up with a time frame that relates to the  
02:36:32 25 people who are still around, and who have had

02:36:34 1 substantial involvement with the trust. And then we  
2 narrow the search terms, and we come up with some  
3 search terms to try to reduce the number of e-mails  
4 we're going to have to go physically look at, because  
02:36:44 5 that's where the costs get very expensive.

6 And if you look at their search terms  
7 they're asking for, they gave us a list of 89 search  
8 terms, which really don't do anything to limit the  
9 scope of what we're going to have to look through.  
02:37:02 10 They have words in here like "trust," "beneficiary,"  
11 they have "Gary." So we would have to go physically  
12 look through every e-mail that has the word "Gary" in  
13 it. The search terms don't provide any limitations  
14 whatsoever on what we're going to have to do.

02:37:18 15 So, in short, Judge, what we're suggesting  
16 happen here is that you ask them to come to us with a  
17 limitation of the scope of what they're looking for,  
18 something more narrow and more pertinent to their  
19 actual claims in the case, than everything having to  
02:37:36 20 do with the administration and -- administration of  
21 the trust, that we get a reasonable time frame. And  
22 at that point I believe we can negotiate custodian  
23 search terms and get this down to a reasonable  
24 number; again, reserving the right to come back and  
02:37:52 25 ask the Court for reimbursement of the cost on this,

02:37:54 1 if the costs are too prohibitive.

2 And let me offer Exhibit 3. I don't know  
3 if I did that or not.

4 THE COURT: You didn't. You just  
02:38:02 5 spoke about it.

6 MR. MASSOPUST: That's fine,  
7 Your Honor.

8 THE COURT: Okay. Received in  
9 evidence.

02:38:08 10 (Exhibit No. 3 admitted.)

11 THE COURT: All right. Go ahead.

12 MR. MASSOPUST: And I'll keep this  
13 response very short, Your Honor. What he just said  
14 is: What we, JPMorgan, are trying to do here is --  
02:38:22 15 and I acknowledge this is the first time I've been in  
16 your courtroom as a speaker; although, this is a very  
17 strange way to proceed, which is, in November we were  
18 here, the Court overruled their objection, totally --  
19 yeah.

02:38:40 20 On December 22nd we sent a protocol to  
21 them. They ignored us and stiff-armed us until we  
22 filed a motion to get in here. And as I sit here, I  
23 get produced with all of this, and now he starts  
24 talking about, Well, we can make this concession,  
02:38:54 25 that concession. Their terms are no good. I've got

02:39:00 1 a stack of e-mails going to them and phone calls,  
2 about six or seven different ones, saying, Will you  
3 please respond, If you have a different idea to make  
4 it work cost-effective, will you please respond; they  
02:39:10 5 don't.

6 How I practice law is -- and, again, it  
7 helps when you're using somebody else's money to  
8 finance your litigation. But doing things like this,  
9 after you've been ordered by a judge, doesn't mean  
02:39:26 10 sitting in Barsony for six months, and then when they  
11 filed a motion and get in there, and then date them  
12 with a number of affidavits and arguments; it just  
13 doesn't work that way. We've reached out to them.  
14 At first it was much a broader term; we limited the  
02:39:42 15 term. We limited the people that were being deposed;  
16 we get no response to this. So this is not how you  
17 proceed with discovery.

18 Now, if we have to do it this time, I know  
19 the next discovery we're in will proceed the same  
02:39:58 20 way: Let's ignore them as long as possible, force  
21 them to bring a motion, force them to seek sanctions,  
22 and when they do that, we'll finally, begrudgingly --  
23 but then, again, he really didn't, because what he  
24 told you is the same thing that he told you last  
02:40:12 25 November, which is, Boy, if I can get out of this

02:40:16 1 courtroom today and kick the can down the road a  
2 little bit. I can sit and talk to them, Your Honor,  
3 and I'm sure that this time they will figure  
4 something out. We don't continually bite on that  
02:40:28 5 story forever, and there's nothing in the rules that  
6 require us to.

7 MR. WILLIAMS: Judge, I'm sorry, I  
8 just can't believe that we've stiff-armed and never  
9 responded --

02:40:38 10 THE COURT: Well, what he -- well,  
11 Mr. Williams, whether he was stiff-armed or not,  
12 basically I hear him saying, we want what we want and  
13 we want it from you and we want it today. And I'm  
14 inclined to order you to produce, regardless of the  
02:40:56 15 costs -- and you're not going to get to bill your --  
16 to bill the trust at this time. You bill your client  
17 for this, they produce all their stuff; and as far as  
18 the costs for this, that will be for future. All  
19 right?

02:41:10 20 So your protective order, your request for  
21 protective order on this electronic discovery is  
22 denied. I'm not going to narrow it any more; I'm  
23 going to leave it like this. We're going to see what  
24 happens. And JPMorgan is going to have to foot the  
02:41:26 25 bill, and they can submit it to the trust after the

02:41:28 1 fact, and we'll see what happens then.

2 All right. Let's move on. Next.

3 MR. FLEGLE: Yes, Your Honor. It's  
4 Jim Flegle, and I am arguing plaintiffs' motion to  
02:41:40 5 compel hard-copy trust administration documents.

6 What we're talking about are something less  
7 than 50 boxes of documents that apparently are in  
8 JPMorgan's office that relate specifically with the  
9 STS Trust and are located somewhere close to the  
02:41:54 10 airport here in San Antonio.

11 Let me put it in perspective. In May of  
12 2011, like over a year ago, we made requests for  
13 production of JPMorgan. Number 35 is all documents  
14 or communications regarding and reflecting any aspect  
02:42:14 15 of management or operation of the trust. Request  
16 under 36 said that reflecting the administration of  
17 the trust.

18 In November of 2011, as Your Honor probably  
19 remembers, we argued on a motion to compel that  
02:42:32 20 Mr. Drought presented. And what I heard then and  
21 what I read in the transcript, when I was preparing  
22 for this hearing, were the following: Number one,  
23 Mr. Massopust argued to the Court, all of our ESI,  
24 electronically stored information, has been put in a  
02:42:46 25 black hole in New York, it's going to be expensive

02:42:48 1 for us to find, and please don't count that against  
2 us because that's just the way we operate. And,  
3 number two, the hard copy documents are strewn all  
4 over kingdom come; they're in San Antonio, in  
02:42:58 5 New York, in Houston, and Austin, and it's just --  
6 you're just going to have to hire all sorts of  
7 people.

8 Well, as Your Honor would probably  
9 remember, in March of 2012, after two hearings on the  
02:43:10 10 matter because of our trustees' counsel's objection,  
11 Your Honor ordered that the trustee produce to us the  
12 depositions that were taken in the Pioneer litigation  
13 that we paid for, and we paid for the lawyer in that,  
14 that related to statements that are involved in this  
02:43:26 15 case. One of those depositions was by Mr. Aymes,  
16 who's here in the courtroom this afternoon; it was  
17 taken on January 29th, 2010. And I want to read to  
18 you, Your Honor, the relevant parts.

19 On page 45, the question at line 18 was:  
02:43:44 20 Okay. Do you recall about when JPMorgan first became  
21 the trustee of the STS Trust?

22 The answer: 1951.

23 QUESTION: Okay. And that would have been  
24 in the iteration of Alamo Bank?

02:43:56 25 And the answer was yes.

02:44:00 1           Let me stop you right there. In getting  
2 the deposition, we didn't get it till after March.  
3 Mr. Aymes has admitted that JPMorgan had  
4 responsibilities, through the successor of the bank  
02:44:14 5 for this trust, and this argument about we only have  
6 to give up stuff for the last four years becomes  
7 closer to nonsense.

8           But then when we get to page 49 of his  
9 deposition, we get to the documents.

02:44:28 10           Question in line 3: Mr. Aymes, you  
11 mentioned that the records that are maintained by  
12 JPMorgan going back to 1950 are voluminous. What  
13 does voluminous mean? Are we talking, you know, 100  
14 boxes of stuff, 1,000 boxes of stuff?

02:44:44 15           ANSWER: No, no. I would say less than 100  
16 boxes.

17           QUESTION: Okay. Do they fill a file  
18 room?

19           ANSWER: No.

02:44:52 20           QUESTION: Okay. 50 boxes?

21           ANSWER: Depends on the size of the file  
22 room.

23           QUESTION: Yeah, I know. 50 boxes of  
24 stuff?

02:45:02 25           ANSWER: Yeah, I'd say that's probably



02:45:04 1 about accurate.

2           So now, instead of going into a black hole  
3 in New York, instead of marching all over the  
4 country, we have 50 boxes of stuff that relate to our  
02:45:14 5 beneficiaries' trust that are here in San Antonio,  
6 within throwing distance of the airport. So what did  
7 we do? After we read this deposition, which was  
8 within a week or two of the time that we got it, we  
9 saw that and we said, Boy, this is strange, This is  
02:45:32 10 contrary to what JPMorgan's counsel is telling Your  
11 Honor and us, or at least as we understood it.

12           So we wrote a letter to them, and it was on  
13 April 20, 2012, my colleague, Mr. Donley, wrote it,  
14 and here's what he said on page 2:

02:45:46 15           It has come to our attention that JPMorgan  
16 holds, as trustee with the South Texas Syndicate  
17 Trust, approximately 50 boxes of hard-copy documents  
18 related to the administration of the STS Trust. It  
19 is our understanding that these documents are located  
02:46:02 20 in San Antonio. These documents are clearly covered  
21 by plaintiffs' requests for production. See, for  
22 example, request for production number 36. We then  
23 request access to these documents. Additionally,  
24 under Texas Trust law, beneficiaries of the STS Trust  
02:46:18 25 have a right to review such information apart from

02:46:20 1 the rights granted by the Texas Rules of Civil  
2 Procedure. If your clients are willing to provide  
3 access to these documents, please let me know and we  
4 will arrange a time to review and copy.

02:46:32 5 We got nothing in response to our letter,  
6 nothing, not even an e-mail. No phone call, no  
7 responsive letter.

8 So on May 11th, we had filed this motion.  
9 And in this motion we had advised the Court that  
02:46:52 10 these document boxes are relevant because they would  
11 show the actions taken and not taken in the  
12 administration of the trust, that they show evidence  
13 of documents that the defendants chose to neglect in  
14 the administration, which may help explain the  
02:47:06 15 defendants' failure to evaluate economic prospects  
16 for the trust, and would show the current state in  
17 the STS Trust fund, which we think would show the  
18 breaches that we have alleged.

19 Now, these trust box documents, I don't  
02:47:18 20 know who, because we've had nobody -- oh, and by the  
21 way, we asked for a withholding statement from  
22 JPMorgan; none of these documents are on the  
23 withholding statement. The argument may be, well,  
24 you know there's old documents in the boxes. I guess  
02:47:38 25 the first reaction to that is, so what? What does

02:47:42 1 JPMorgan care? If the trust is administering to our  
2 clients, then our clients should be able to see the  
3 documents.

4 But, number two, in terms of documents that  
02:47:50 5 go back in the past, JPMorgan knows that those are  
6 important, because they were confronting those  
7 documents in the Pioneer litigation in which they  
8 were representing our beneficiaries' interest in  
9 going after Pioneer. And there are -- there are  
02:48:08 10 exhibits in the very depositions that have been kept  
11 from us for months that we had to have two hearings  
12 on, and we finally got, that go back to the '60s  
13 and '70s and the '80s and the '90s that show JPMorgan  
14 raising issues on a lease and the lessor -- lessee,  
02:48:26 15 I'm sorry -- comes back and says, no, no, don't touch  
16 this, and JPMorgan drops the issue. And that is one  
17 of the very essential claims we are making in this  
18 case, particularly as it relates to the Pioneer  
19 litigation.

02:48:40 20 So, Your Honor, we would ask -- and this  
21 should not take very much effort, certainly not \$2.6  
22 million -- that the Court order JPMorgan to get these  
23 boxes that Mr. Aymes, our co-trustee, says exists  
24 that relate to our trust and let us look through them  
02:48:56 25 and copy what we need.

02:49:04 1 MR. WILLIAMS: Our response to that  
2 motion is that their request for production number 36  
3 is overly broad and unduly burdensome and doesn't  
4 meet the standards of the Texas Rules of Civil  
02:49:16 5 Procedure to narrowly tailor your request to items  
6 that are relevant in an issue of lawsuit. It asks  
7 for all documents regarding and referring to and  
8 reflecting any aspect of the administration of the  
9 trust before you were appointed the trustee of the  
02:49:28 10 trust.

11 So that request is by its very nature  
12 obviously overly broad, does not meet the standards  
13 that you're supposed to meet under the Texas Rules of  
14 Civil Procedure, under the CSX case, the Texas  
02:49:44 15 Supreme Court, it needs to be specific in narrowly  
16 tailoring your request to actually get at information  
17 or documents that pertain to your claims. They're  
18 not telling you they know what's in the 50 boxes;  
19 they don't know what's in the 50 boxes. So they  
02:49:58 20 don't know if what's in the 50 boxes has anything to  
21 do with any of their claims. A proper request would  
22 be something like all documents referring to a  
23 particular issue or a particular matter. And then we  
24 would be obligated to look through the 50 boxes to  
02:50:12 25 see if there's anything in there that's responsive.

02:50:14 1 But just to say, Okay, turn over these 50 boxes  
2 without knowing what's in there and without any idea  
3 as to whether or not they're relevant to anything in  
4 issue in the case, is overly broad; the request is  
02:50:24 5 not proper under the Rules of Civil Procedure, and  
6 that's why we objected to the request and that's why  
7 we filed a motion for protective order.

8 THE COURT: Your objection is  
9 overruled. Your request for protective order is  
02:50:42 10 overruled. Turn over the documents, the boxes.

11 Okay. Next.

12 MR. DROUGHT: Your Honor, I'm going to  
13 discuss the motion that we have requesting, actually,  
14 five depositions that were taken in a similar case  
02:51:00 15 that is pending currently, that case is Clark vs.  
16 JPMorgan. I'm one of the lawyers representing Clark  
17 and that family. The cases involve the same  
18 representatives that are involved in this case. They  
19 both -- both cases allege mismanagement by JPMorgan  
02:51:24 20 in running the mineral estate. Both cases involve --  
21 both cases involve Eagle Ford matters, oil and gas  
22 matters down there, and they both concern the same  
23 time periods involved.

24 We previously had before this Court a  
02:51:38 25 motion to order the depositions in the Pioneer case,

02:51:42 1 which this Court ordered that they be produced. And  
2 we're asking that the same depositions, the  
3 depositions in the Clark case, also be produced. The  
4 situation here is that I'm involved in both cases, so  
02:51:56 5 I obviously know what's going on in both of the  
6 cases. Counsel for JPM knows what's going on in both  
7 cases, too.

8 I can't see where it would be  
9 disadvantageous or prejudicial to them not to produce  
02:52:08 10 these documents. The witness statements were already  
11 ordered in the Pioneer case, that they be produced.  
12 And their protective order is almost identical  
13 protective orders in both the Clark case and the  
14 Dailey case, so they're protected in that respect.

02:52:24 15 The Court has already ordered those  
16 documents and similar documents be produced in  
17 another case, and the Court ought to be consistent in  
18 this case and require that JPMorgan produce the five  
19 depositions that have already been taken of the JPM  
02:52:38 20 representatives, along with the exhibits.

21 MR. SHEEHAN: That'd be me, Judge,  
22 Pat Sheehan.

23 Your Honor, we strenuously object to having  
24 to produce any of the information, the depositions or  
02:52:54 25 the exhibits that are attached to the depositions in

02:52:58 1 an unrelated case for a variety of reasons, including  
2 these: We filed a response to this request, and we  
3 filed a -- and I'm going to file and offer some  
4 evidence to support our response to this request.

02:53:14 5 Because what really is happening here -- and we've  
6 had a little bit of this discussion before, really  
7 more about the Pioneer case. The Pioneer case had  
8 some relationship to the STS Trust because it  
9 involved STS minerals, assets, etcetera. The

02:53:32 10 distinction to be made here is significant, and that  
11 distinction is that this trust that Mr. Drought is  
12 referring to, the Burns' trusts and the Sonoma Ranch  
13 have nothing to do with STS. These trusts that  
14 involved the Clarks' and the Burns' ranch were set up  
02:53:52 15 in the early '60s, and they're completely separate  
16 and apart from anything to do with STS or any of  
17 these beneficiaries.

18 And I will also say -- and I'll get to this  
19 evidence in just a minute -- that we have in the  
02:54:08 20 Clark case, the Dailey case in the lawsuit that we're  
21 involved in there, we have a confidentiality order  
22 that was executed by Judge Littlejohn in that case  
23 that Mr. Drought is bound by. The point is, what we  
24 have is Mr. Drought, as a lawyer in the Dailey-Clark  
02:54:26 25 lawsuit that involves a trust, and a trust completely

02:54:32 1 unaffiliated and unrelated with the STS Trust, is in  
2 here asking that you set aside, ignore, reverse, act  
3 like it doesn't exist, a confidentiality order that  
4 was entered by another court; he can't do that, and  
02:54:48 5 he should not be asking you to do that. I would hope  
6 that you would not do that. In my view, it would be  
7 inappropriate for you to, in effect, order that we  
8 produce documentation in the form of depositions or  
9 exhibits in another case, on an unrelated trust, an  
02:55:06 10 unrelated litigation and ignore the effect, the  
11 binding, valid effect of a confidentiality order that  
12 binds, among other people, Mr. Drought, who in this  
13 lawsuit is now apparently asking that you, as the  
14 judge who didn't sign that earlier order in the Clark  
02:55:26 15 case, overrule Judge Littlejohn and her intent when  
16 she signed it.

17           And I will say that I -- I can testify to  
18 this -- I relied on his approval of that; I relied on  
19 Ricardo Cedillo's firm's approval of that. When we  
02:55:40 20 produced documents and JPMorgan produced documents  
21 and third parties have produced documents, everybody  
22 should rely on the fact, in doing so, when they were  
23 stamping their documents "confidential" when they  
24 were being produced, that those documents would be  
02:55:58 25 kept solely to and within the confines of each



02:56:00 1 lawsuit. And the only people who are entitled to see  
2 those documents then, according to a valid court  
3 order which they never attacked, are the lawyers in  
4 the case, the parties, and the experts.

02:56:14 5 Now, what he's asking you to do is to say,  
6 Forget all of that, we've got some sweeping  
7 allegation, without any proof or relevance, Oh, well,  
8 you know, this is sort of like the same case. Well,  
9 it isn't the same case. It involves different

02:56:28 10 trusts, different allegations. To the extent it  
11 involves some people at JPMorgan, all of whom may  
12 have had, and some of whom may have had something to  
13 do with the STS Trust, so what? I mean, that's just  
14 part of their job.

02:56:40 15 But at the end of the day, Judge, I want to  
16 offer -- I want to offer into evidence at this point  
17 some exhibits. I want to offer JPMorgan Exhibits 1  
18 through 10. And I will withdraw Exhibit No. 4,  
19 because it's an affidavit of "Marty" Truss that deals  
02:57:02 20 with the EOG/Pioneer issue which they're not pursuing  
21 today.

22 May I approach?

23 THE COURT: Sure.

24 MR. SHEEHAN: There you are, sir.

02:57:10 25 THE COURT: Thanks.

02:57:12 1 MR. SHEEHAN: I've got yours.  
2 Now, I want to -- what I want to do, Judge,  
3 is I want to just tell you what these are, and then  
4 I'm going to tell you why I offered them. The first  
02:57:38 5 one is the Agreed Protective Order in the Pioneer  
6 case; I will withdraw that one, because we're not  
7 having that here today.  
8 I will offer Exhibit No. 2, which is the  
9 Order Granting Defendants' Motion to Consolidate,  
02:57:52 10 which consolidated Mr. Cedillo and Mrs. Clark's and  
11 Mr. Drought's case.  
12 Any objection to that?  
13 MR. DROUGHT: No objection.  
14 THE COURT: Received in evidence.  
02:57:58 15 (Exhibit No. 2 admitted.)  
16 MR. SHEEHAN: I will offer Exhibit  
17 No. 3, which is, in fact, the Agreed Protective Order  
18 that was issued and signed in the Clark-JPMorgan  
19 case -- let's see -- in August of 2011, by  
02:58:16 20 Judge Littlejohn, and is the order, among others,  
21 that binds Mr. Drought. And we offer Exhibit No. 3.  
22 MR. DROUGHT: No objection.  
23 THE COURT: Received in evidence.  
24 (Exhibit No. 3 admitted.)  
02:58:24 25 MR. SHEEHAN: Your Honor, I'll

02:58:26 1 withdraw Exhibit No. 4.

2 I'll offer into evidence Exhibit No. 5.  
3 Exhibit No. 5 is the Agreed Protective Order that's  
4 in force and effect in this case, the John K. Meyer  
02:58:40 5 case, that was executed in November of 2011.

6 We offer Exhibit No. 5.

7 MR. DROUGHT: No objection.

8 THE COURT: Received in evidence.

9 (Exhibit No. 5 admitted.)

02:58:48 10 MR. SHEEHAN: And, Your Honor, I would  
11 just briefly tell you that exhibits -- I offer  
12 Exhibits No. 6 through 10. And what these are is in  
13 the Clark case, the Clark-Dailey case that they're  
14 trying to get you to order these depositions produced  
02:59:08 15 to them from, these exhibits, 6 through 10, are  
16 actually JPMorgan -- our designation of the  
17 transcripts of these JPMorgan witnesses' testimony as  
18 being confidential.

19 So we offer Exhibits 6 through 10.

02:59:24 20 MR. DROUGHT: No objection.

21 THE COURT: Received in evidence.

22 (Exhibit Nos. 6 through 10  
23 admitted.)

24 MR. SHEEHAN: Now, and, Judge, I can  
02:59:30 25 also testify that I was at the depositions of those

02:59:34 1 JPMorgan people, and I can testify, I think with  
2 pretty much a high degree of confidence, that I would  
3 say that in excess of 90 percent of the exhibits that  
4 would have been offered -- that would have been used,  
02:59:50 5 reviewed, relied on, discussed with witnesses in the  
6 depositions of these five JPMorgan people that  
7 they're trying to get the depositions concerning,  
8 would have been confidential, and they would have  
9 been marked confidential.

03:00:02 10 So the problem we have here, Judge, is that  
11 we have an order in another case that Mr. Drought is  
12 bound by and we have an order in another case that  
13 hasn't been overturned, and we have an order in  
14 another case where parties, including non-parties and  
03:00:20 15 third parties, have relied on the content of  
16 protection of the information. We have utilized the  
17 procedures set forth in that order to protect, as  
18 being confidential, JPMorgan deposition testimony as  
19 is reflected in these exhibits that I've offered.

03:00:38 20 And as a result of that, I think and we  
21 believe, it's completely inappropriate for these  
22 plaintiffs, and in particular Mr. Drought, to be  
23 asking you to give him information about another  
24 lawsuit when there's an expressed order that says  
03:00:54 25 that it's confidential.

03:00:58 1           So I'll close by basically just making a  
2           few points, because I know we discussed this issue  
3           really in relation to the Pioneer question before;  
4           again, what's very different about this one is the  
03:01:10 5           fact it's completely an unrelated trust. These  
6           people, these lawyers, their client had nothing to do  
7           with Mrs. Dailey or her trust.

8           And I'll also tell you that in these  
9           depositions there are things talked about like the  
03:01:22 10          financial condition of the beneficiaries, there are  
11          things talked about like the health conditions of  
12          beneficiaries, the financial needs of these  
13          beneficiaries, and a lot of very confidential,  
14          proprietary and personal information about the  
03:01:40 15          beneficiaries in the trust that have absolutely  
16          nothing to do with these people or STS. And if what  
17          Mr. Drought is saying, Well, just look through all  
18          that, give us and all 269 potentially, eventually, of  
19          the beneficiaries, these hundreds of people and these  
03:01:58 20          lawyers, the ability to review all of that  
21          proprietary, confidential and sensitive information.  
22          And on what record -- on what evidence? They've  
23          offered none. Their argument doesn't support a  
24          request that this kind of sensitive information be  
03:02:16 25          given to them. There certainly isn't any evidence

03:02:18 1 that any of this type of information would be  
2 helpful, let alone that it would even be relevant,  
3 other than a sweeping assertion, No, there's another  
4 case like that out there, there may be something in  
03:02:28 5 there. That's not good enough, forget that.

6 So we intend to protect the beneficiaries'  
7 interest and the trust's interest in these documents  
8 and in this testimony from being disseminated, both  
9 in violation of the General Trust law.

03:02:46 10 Our brief reflects, Judge, that trustees,  
11 it will come at no surprise, have a duty not to  
12 disclose confidential trust and beneficiary  
13 information to third parties. We don't want to do  
14 that. So we're pretty vigorous in our argument here  
03:03:02 15 about, Well, we shouldn't have to do that. They  
16 can't get these documents and this information on  
17 basically this group motion. They need to be  
18 specific. If they're looking for documents or  
19 information, they have to show what they're entitled  
03:03:12 20 to and why.

21 And I also will point out, because it  
22 really is kind of ironic that these guys, the  
23 plaintiffs in this particular case, they asked for a  
24 protective order, they asked for a confidentiality  
03:03:30 25 order in this STS case and got one. And they said

03:03:34 1 they didn't want to disclose confidential financial  
2 information, contracts, cell documents, etcetera,  
3 therefore they said protect it, Judge. In accord  
4 with this Meyer case, entered that particular order.

03:03:46 5 I would close simply by saying, the reality  
6 of it is, if the shoe was on the other foot, they've  
7 got their confidentiality order over here, if I was  
8 over there in the Dailey case now, and I was  
9 Jim Drought, I'd go over to the Dailey case and I'd

03:04:00 10 be saying, You know what? All that stuff that  
11 they've got over there in that Meyer case, there  
12 might be some good tidbits that we plaintiffs can use  
13 in this other lawsuit; we don't care about that  
14 confidentiality order, let me have it. My guess is

03:04:14 15 that most of the STS beneficiaries and their lawyers  
16 would be jumping up and down saying, Judge, they  
17 can't do that. The confidentiality order has the  
18 imprimatur of the court. Everybody relied on it; it  
19 would be beyond inappropriate to allow strangers to

03:04:32 20 that trust to see our private confidential  
21 information for either our clients or our  
22 beneficiaries. So we'd ask that you deny their  
23 motion.

24 MR. DROUGHT: Your Honor, the  
03:04:42 25 beneficiaries that he's trying to protect, that now

03:04:46 1 that he claims, those are our clients in the Clark  
2 case. And the sensitive information, that really  
3 isn't pertinent at all, because I am seeking the  
4 depositions of the five JPMorgan witnesses, not any  
03:05:00 5 of the others. So there's not any sensitive  
6 information, let me start off with that.

7 The next thing is, Pattie Ormond was the  
8 single person in charge of this trust and the park  
9 trust; she managed both of them. Both of them  
03:05:12 10 involved -- both of them involved getting the lease  
11 between 20 miles of each other, and in the same time  
12 period.

13 Now, what they would want us to do is spend  
14 a lot of additional money taking these depositions  
03:05:30 15 over again. If we had the benefit of the Pattie  
16 Ormond deposition and the other representatives, we  
17 would not have to spend hours and hours asking the  
18 same questions. And JPMorgan should be with us on  
19 this, so we wouldn't incur additional attorneys' fees  
03:05:46 20 taking -- these were all six-hour depositions, to  
21 start off with.

22 So the same county, the trust -- or the  
23 same issues that were involved, you already have  
24 tendered. And I will present this to you, Your  
03:06:04 25 Honor. In the Meyer -- in the Pioneer case you



03:06:08 1 ordered, as witness statements, that those  
2 depositions in the Pioneer case be turned over.  
3 There is no distinction between that and this case.  
4 In fact, it's even a more similar situation because  
03:06:22 5 we've got the exact same party involved, same lease  
6 matters involved, and you should order that they  
7 produce those five depositions so we're not going to  
8 have to go through that additional expense.

9 And as a practical matter, I know what's in  
03:06:36 10 those depositions anyhow, so it's very difficult, you  
11 know, to put up a Chinese wall and stop the rain. I  
12 mean, I've been involved in those depositions.

13 Furthermore, the two Agreed Protective  
14 Orders that were introduced as exhibits, there's a  
03:06:54 15 protective order in the Meyer case, there's a  
16 protective order in the Clark case; we, of course,  
17 will abide by those protective orders. They're  
18 almost identical in terms. Their protections are  
19 there. We ask that these depositions be turned  
03:07:08 20 over.

21 MR. SHEEHAN: May I say something,  
22 Judge?

23 THE COURT: Yeah.

24 MR. SHEEHAN: Okay. It really -- it's  
03:07:16 25 really almost like the ultimate irony. I mean, one

03:07:18 1 minute they're telling you, Well, there's a  
2 protective order in this case that will protect those  
3 documents. Really? I mean, the whole purpose of  
4 this motion is to go over to that case and that court  
03:07:30 5 and overrule that particular court's protective order  
6 so that it has no force and effect, so that those  
7 documents can come into this case and be used by  
8 these lawyers, and be reviewed by these hundreds of  
9 people that they potentially represent. Well, what's  
03:07:44 10 the use of having a confidentiality order, then?  
11 What's the point of it? And what is the point?  
12 After all they're saying, Well, we have a  
13 confidentiality order in the Meyer case, so they'll  
14 be protected. When the whole purpose that they're  
03:07:58 15 here for is to say, Go give us those documents from a  
16 case that involves a trust separate from ours.  
17 So I'll close with two points: One, again,  
18 and I emphasize, the Burns' trusts and the Clark  
19 lawsuit involves trust, an interest in people's  
03:08:18 20 financial situation, background, etcetera; it has  
21 nothing to do with this group of people or with this  
22 group of plaintiffs; they should not be allowed to  
23 see it. We have an obligation to prevent them from  
24 being able to see them; that's number one.  
03:08:34 25 Number two, as Mr. Drought -- he doesn't

03:08:36 1 represent -- he doesn't represent all of the  
2 plaintiffs in that case. In fact, he represents two  
3 of the beneficiaries -- regardless of dealing with  
4 his firm -- represents three of the other  
03:08:50 5 beneficiaries and also the estate of the lady, the  
6 primary beneficiary that died. They don't have  
7 anything there from that group or that firm or those  
8 people saying, No problem, Give them all of our  
9 secret personal and financial records. They have  
03:09:04 10 not -- they have not even made an effort to meet any  
11 kind of a burden to justify giving them any of that  
12 type of relief, and we'd ask that you deny their  
13 motion.

14 THE COURT: My concern, Mr. Drought,  
03:09:18 15 is, number one, the protective order that  
16 Judge Littlejohn has signed down there. You know,  
17 just some merely overruling of this thing, it may  
18 have worked for a while, but it doesn't work anymore  
19 and it's not appropriate.

03:09:38 20 I would think that the best way to do this  
21 would be to petition the Court, but you'd have to  
22 give notice to all these people, let them come in and  
23 object; let her make a decision as to whether or not  
24 she wants to carve out part of the protective order  
03:09:54 25 and give you that information. Or get releases from

03:09:56 1 these people who are involved in that case.

2 Because --

3 MR. DROUGHT: Judge --

4 THE COURT: -- I mean, I have a real  
03:10:00 5 problem -- I know what -- I understand what you  
6 already know, but I don't think that -- I'm in no  
7 position to abrogate what she has done and what she  
8 has signed and what the parties agreed to, without  
9 having everybody here, or something -- something to  
03:10:16 10 that effect.

11 MR. DROUGHT: Well, Your Honor --

12 THE COURT: I know it's going to save  
13 you money and time and all those things. I  
14 understand all the practical reasons, but --

03:10:24 15 MR. DROUGHT: There was a protective  
16 order in the Pioneer case, and --

17 THE COURT: But they gave it up.

18 MR. DROUGHT: Well, no -- I mean, I  
19 think you forced me to give it up, and you ordered  
03:10:32 20 these documents --

21 THE COURT: Well, nobody ever made  
22 these objections at the same time, made these points,  
23 and these points are made today. And it doesn't mean  
24 that just because they didn't before that it's been  
03:10:46 25 waived.

03:10:52 1 MR. DROUGHT: Your Honor, if I -- if I  
2 get an agreement from Cedillo's clients that --  
3 THE COURT: Sure. I mean, I'll look  
4 at anything that you have, okay? But at this point,  
03:11:00 5 at this time --  
6 MR. DROUGHT: All right.  
7 THE COURT: -- you know, or you can  
8 file a motion and go have it heard before  
9 Judge Littlejohn.  
03:11:08 10 MR. DROUGHT: Okay. Thank you,  
11 Your Honor.  
12 THE COURT: You're not too excited  
13 about that proposition.  
14 MR. DROUGHT: No, it's okay.  
03:11:16 15 THE COURT: Okay. All right. What's  
16 next?  
17 MR. SPENCER: We have our application  
18 for a temporary injunction, that the defendants be  
19 required to pay their own attorneys' fees during the  
03:11:28 20 course of litigation.  
21 MR. GARZA: I'll be arguing that,  
22 Your Honor. And --  
23 THE COURT: Mr. Garza, nice to see you  
24 on a different side. I don't even recognize you over  
03:11:40 25 here. Of course, you're more clean-shaven now that

03:11:40 1 you're on the defense side rather than the  
2 plaintiffs' side.

3 MR. GARZA: Oh, I appreciate that.  
4 But you do recall I was with Mr. Tinsman at one  
03:11:46 5 point, so...

6 THE COURT: Yeah. But he doesn't have  
7 any hair, so there's a big difference. So I assume  
8 this means now you play a lot more golf, you're a  
9 member of a country club? Am I correct,  
03:11:56 10 Mr. Garza?

11 MR. GARZA: The reality, Judge, is I  
12 play a lot less golf now. They didn't tell me  
13 exactly what I was getting into, but here I am.

14 THE COURT: Okay. Go ahead.

03:12:04 15 MR. GARZA: Your Honor, I'm here on  
16 behalf of the defendants, and --

17 I don't know if you had preliminary  
18 statements...

19 MR. SPENCER: And, obviously, I was  
03:12:12 20 going to give an orientation to the Court of what  
21 we --

22 MR. GARZA: Okay. I think that's  
23 fine, and then I'll follow.

24 THE COURT: Go ahead.

03:12:20 25 MR. SPENCER: Your Honor, as I think

03:12:24 1 you're already aware and have touched on several  
2 times already this afternoon, my clients,  
3 Mr. Massopust's clients, Mr. Flegle's clients are  
4 paying the fees and expenses of every lawyer, and  
03:12:38 5 also paying some up in Dallas who aren't here, who  
6 are handling the mandamus that the defendants have  
7 taken from your order denying the plea in abatement.

8 THE COURT: Darn it.

9 MR. SPENCER: The defendants concede  
03:12:50 10 that they were using the money from South Texas  
11 Syndicate Trust, money that in equity and truth  
12 belongs to the plaintiffs and the intervenors, to pay  
13 the costs of defending the defendants, and, frankly,  
14 toward the wishes and desires of the plaintiffs and  
03:13:08 15 intervenors. And of course the defendants are able  
16 to do that, because they have control of the trust  
17 checkbook. That's inherently not right, I would  
18 submit, and as other courts have found -- we'll  
19 discuss those cases in due course -- but it's  
03:13:26 20 particularly not right that my clients and  
21 Mr. Massopust's clients should have to pay for the  
22 defendants' lawyers, given the way that this  
23 litigation has been defended and how much money has  
24 been thrown at it, thrown at it pointlessly, I would  
03:13:42 25 submit, that makes it particularly inappropriate for

03:13:46 1 the defendants to be making the beneficiaries pay for  
2 this.

3 I do want to emphasize, though, that what  
4 we're asking for is not a final decision that the  
03:13:58 5 defendants may not have their litigation fees and  
6 expenses paid for. If in February 2013, at the  
7 conclusion of the trial on the merits, and after the  
8 verdict is returned, in whatever court is hearing it  
9 has heard the entire matter, the defendants would be  
03:14:16 10 fully entitled to come in and say at that point that  
11 they should be reimbursed for the personal and  
12 corporate money that they have expended in the  
13 interim. That, by the way, is what the Trust Code  
14 provides, and that's what this order from 1951 says,  
03:14:34 15 that they can be reimbursed. They're really not  
16 entitled under any theory to do what they're doing,  
17 which is to exonerate themselves, which is just pay  
18 the money directly out of the trust.

19 But as I say, the issue today in here is  
03:14:52 20 that under the standard that controls as to whether a  
21 trustee, in the context of defending a case where the  
22 case is asserting the trustee has breached its  
23 duties, exactly what we have here, the trustee can  
24 only get reimbursement if they're proceeding  
03:15:08 25 reasonably in good faith, and they're not. I believe



03:15:12 1 that we will be able to easily establish that.

2 Let me just say one last thing, and that is  
3 that just as the rule regarding reimbursement of  
4 defense attorneys' fees is different where a trustee  
03:15:28 5 itself is being accused of wrongdoing, as opposed to  
6 a situation like the Pioneer litigation that you've  
7 heard about, whether in litigation with some third  
8 party, there are -- different rules apply in this  
9 context, similarly there are exceptions to the normal  
03:15:44 10 requirements for a temporary injunction that relate  
11 to this type of case.

12 And when we get to that, in terms of the  
13 law that controls this, I want to share with the  
14 Court a case from the Austin Court of Appeals which  
03:15:56 15 is directly on point; it involves a temporary  
16 injunction that prohibited and precluded a fiduciary  
17 from paying his attorneys' fees out of the fiduciary  
18 funds, and is held by the Austin Court of Appeals.  
19 This is something that is purely equitable and  
03:16:16 20 doesn't require proof of the -- some of the things  
21 that are typically required in a temporary  
22 injunction.

23 With that as my orientation. Mr. Garza.

24 MR. GARZA: I'll be glad to respond,  
03:16:24 25 but I don't believe I've seen that case, sir.

03:16:26 1 MR. SPENCER: Here you go. It's the  
2 case of -- it's a numeral, 183/620 Group Joint  
3 Venture v. SPF Joint Venture.

4 MR. GARZA: Was that in the brief?

03:16:38 5 MR. SPENCER: No, it wasn't.

6 You served on us, about 45 minutes before  
7 this hearing began, your response to our application  
8 of temporary injunction, and you raised them here; it  
9 really should have been raised by way of special  
03:16:54 10 exception, that being our application. It was not in  
11 proper form. But since you raised this, I wanted to  
12 respond to this.

13 MR. GARZA: May I? Your Honor, if I  
14 may respond? Mr. Spencer has things backwards. He  
03:17:08 15 is asking for a temporary injunction. He is the one  
16 that is trying to maintain the status quo, but he's  
17 not really doing that.

18 First of all, let's be clear, and I know  
19 the Court's having a hard time, due to his eyesight  
03:17:24 20 at the moment, and that it's just a very difficult  
21 situation. I put on your desk a notebook that has  
22 case log, the authorities, our response.

23 Mr. Spencer also gave you a pamphlet, and  
24 he's got this Plaintiffs' Application for Temporary  
03:17:40 25 Injunction. Your Honor, you have heard, I am sure,

03:17:44 1 many, many temporary injunctions. Every single one  
2 has certain allegations that are required by the  
3 Texas Supreme Court. Mr. Spencer's claim does not.  
4 There is not an allegation in here that says there's  
03:18:00 5 any irreparable harm. There's no allegation in here  
6 that says he doesn't have an adequate remedy at law.  
7 He talks about there being a case that  
8 JPMorgan can get its fees. Well, we start in this  
9 case with a trust agreement that does specifically  
03:18:18 10 provide for fees to be paid to the trustee. That is  
11 how it started. That's how the trust began; that's  
12 how it's gone since 1951, Your Honor. Yes, JPM pays  
13 the attorneys' fees with respect to this litigation  
14 and any other issues relating to the trust property,  
03:18:36 15 whether they be county or legal fees from the trust.  
16 That is the status quo. Mr. Spencer files an  
17 application that attempts to disturb the status quo.  
18 When we are asking for temporary injunction, you're  
19 supposed to be upholding the status quo. And I don't  
03:18:52 20 know -- I don't know if the Court -- but we can ask  
21 Mr. Spencer, there's no allegation anywhere that he  
22 asserts that he does not have adequate remedy at  
23 law. He, in fact, does. The same issue that he  
24 raised as to JPMorgan, at the end of the case,  
03:19:08 25 whatever it is, his client can make the claim for

03:19:12 1 attorneys' fees against JPMorgan, if they so wish.

2 The Trust Code specifically speaks to this;  
3 Section 064 -- 114.064 of the Trust Code talks about  
4 what the rights of the parties are, and that the

03:19:24 5 Judge, at the conclusion of the case, makes an award  
6 of fees that are equitable and just, and that's when  
7 this matter ought to be had.

8 I guess that the real issue here, Your  
9 Honor, is this, the Trust Code -- which by the way

03:19:42 10 authorizes the hiring and payment of attorneys' fees;  
11 it's in the response. The agreement authorizes the  
12 hiring and payment of attorneys' fees, and he wants  
13 to change that. Now, without a pleading that asserts  
14 those issues, we would move to dismiss the

03:20:00 15 application because it simply hasn't played  
16 sufficiently to have the application heard and  
17 decided.

18 There are two Supreme Court cases, the  
19 Butnaru case, which is in the packet, and Walling v.

03:20:14 20 Metcalfe, which both hold that you must allege the  
21 irreparable harm remedy and to not have a remedy at  
22 law. He can't do that, because he knows he does have  
23 a remedy at law. This is really a claim for money  
24 damages.

03:20:30 25 There is case authority, Your Honor, and

03:20:32 1 I'll look at the case that he's provided; we can  
2 search that out. But in this case, the defendant has  
3 proceeded in good faith. The only way that the final  
4 determination of these issues will be made will be at  
03:20:46 5 the conclusion of the case, once the Court, the jury  
6 has heard all the evidence. And at this point, it is  
7 simply premature to try to make some sort of argument  
8 that there is a lack of good faith on behalf of  
9 JPMorgan in order to have JPMorgan pay fees, in their  
03:21:02 10 corporate capacity, as opposed to the way it should  
11 be, through the trust agreement and state law, and  
12 that is by relief from the trust and funds due from  
13 the trust.

14 MR. SPENCER: Your Honor, we sent over  
03:21:20 15 our application with the case -- we sent it over  
16 yesterday. I don't know. Did you receive that or  
17 not?

18 THE COURT: I haven't -- I haven't  
19 been here. I came in for this hearing.

03:21:30 20 MR. SPENCER: May I approach, Your  
21 Honor?

22 THE COURT: Sure.

23 MR. SPENCER: This is our application  
24 with, you know, the cases, and this is the additional  
03:21:36 25 case that -- because of the way Mr. Garza responded

03:21:44 1 in the middle of today, that addresses his -- his  
2 argument that we have to have allegations of lack of  
3 remedy at law for this, and that case is Redtem  
4 Landabus (phonetic). It involves a situation where a  
03:22:04 5 fiduciary is refusing to issue money to fund his  
6 defense of a claim against him, that he was acting  
7 improperly, violating his duties, and the Austin  
8 court holds there. This type of case is separate  
9 from the normal requirement of irreparable injury.

03:22:18 10 Anyway, though, I would further say,  
11 procedurally, that this needs to be raised by special  
12 exception. When you're saying that the pleading is  
13 not adequately drawn, is not -- does not contain the  
14 elements that it should, what you need to do is file  
03:22:34 15 a special exception order in response.

16 MR. GARZA: Okay. I disagree totally  
17 with that, Your Honor. If you don't allege the  
18 elements of the cause of action or the claim, then  
19 you don't get to submit a case. It's not a question  
03:22:46 20 of special exception. He does not allege the proper  
21 elements for a temporary injunction as required. I  
22 don't have to special exempt to that.

23 My co-counsel has looked at the case.  
24 Apparently the trust in this particular case, which  
03:22:58 25 Mr. Spencer cites, did not have a provision for the

03:23:00 1 payment of attorneys' fees like ours does. So we  
2 start from a different situation, and we'll --  
3 certainly they can look at this case, but there is no  
4 other case in his brief that he provided that come  
03:23:12 5 close to, in the middle of the case, trying to  
6 attempt to make a trustee cease paying the attorneys'  
7 fees relative to that issue from the trust. And  
8 included there would be none, where you have somebody  
9 like JPMorgan, who's got -- you know, who's solvent,  
03:23:30 10 who's got the ability to respond, and they have  
11 remedy at law at the end of the case.

12 MR. SPENCER: May I proceed, Your  
13 Honor?

14 Frankly, your eyesight is such that you're  
03:23:38 15 not going to be able to read that case.

16 THE COURT: Well, I tried. I mean, I  
17 can kind of look at it, but I can't look at it for  
18 very long; I have to look away. It's going to take  
19 me a little bit of time.

03:23:52 20 So he wants an opportunity to further brief  
21 the case, is that what you're telling me?

22 MR. GARZA: I'll be glad to move the  
23 case, Your Honor. My position -- he chose a separate  
24 issue; that case had to do with whether there can be  
03:24:06 25 some sort of relief, I assume in the middle of a

03:24:10 1 case, or some sort of injunctive relief.

2 THE COURT: Right.

3 MR. GARZA: My primary point is, he  
4 hasn't properly --

03:24:14 5 THE COURT: The elements.

6 MR. GARZA: -- has no elements in  
7 there, and this ought to be dismissed on the  
8 pleadings, because he really can't produce evidence  
9 on pleadings that he hasn't presented.

03:24:24 10 MR. SPENCER: Your Honor, actually,  
11 you say you've not read the case. The case directly  
12 addresses that argument and holds that, because the  
13 law -- according to the law, cannot give a remedy for  
14 this type of matter; it's not an apropos

03:24:40 15 requirement. This is as plain here. It's at the top  
16 of the third sheet of paper. But --

17 MR. GARZA: The Texas Supreme Court is  
18 clear about this, Your Honor, about the allegations  
19 of temporary injunction.

03:24:52 20 THE COURT: Okay. Well, here's the  
21 easiest way to get through this temporarily is --  
22 till my vision is a little bit better to where I can  
23 really read all this -- give me an opportunity. You  
24 can come back here in the next -- sometime next week,

03:25:14 25 and you can make whatever arguments you want, and



03:25:18 1 I'll rule on it, one way or the other. I guess that  
2 would be the easiest for everybody.

3 MR. SPENCER: All right.

4 MR. GARZA: Yes, sir.

03:25:24 5 THE COURT: And that way Mr. Tinsman  
6 doesn't have to talk. I'm just trying to save you.

7 I could see that you wanted to pick on one  
8 of your offspring over here - Mr. Garza.

9 MR. GARZA: Yes, Your Honor. Thank  
03:25:34 10 you. We appreciate that particular consideration.

11 THE COURT: He was ready. He's  
12 ready. He got out of the jury box to dress you  
13 down.

14 MR. GARZA: I'm not sure he's done  
03:25:42 15 yet.

16 MR. TINSMAN: I would just say, Your  
17 Honor, that one of the elements is reasonable and  
18 necessary. You can see from the hearings that you  
19 had, most of the work of the lawyers has been trying  
03:26:00 20 to keep the beneficiaries from getting information  
21 that they're entitled to under the Trust Code. And  
22 there's been no hearing as to whether any of these  
23 fees, that they've already taken out of the trust,  
24 are necessary.

03:26:12 25 MR. GARZA: Your Honor --

03:26:16 1 MR. TINSMAN: This should be -- what  
2 we're basically saying, wait till the evidence of  
3 this case, and then make that determination.

4 MR. GARZA: With all due respect,  
03:26:24 5 Your Honor, we completely deny Mr. Tinsman's  
6 allegations. And I appreciate the fact that the  
7 Court wanted him not to say something, but he did, in  
8 spite of that.

9 If the Court would like us to come back  
03:26:34 10 next week, we'll be happy to do so.

11 THE COURT: Sure.

12 MR. GARZA: All right.

13 THE COURT: Okay. Does that take care  
14 of everything, at least short-term?

03:26:42 15 MR. WILLIAMS: Yes, sir, I believe it  
16 does. I believe so.

17 MR. DROUGHT: Thank you, Your Honor.

18 THE COURT: Okay. All right. See  
19 you-all. Good luck.

03:26:50 20 Go ahead. You-all can leave.

21 (Proceedings concluded.)  
22  
23  
24  
25

1 STATE OF TEXAS )

2 COUNTY OF BEXAR )

3

4 I, CARMEN G. FRAGOSO, Certified Court  
 5 Reporter in and for Bexar County, State of Texas, do  
 6 hereby certify that the above and foregoing contains  
 7 a true and correct transcription of all portions of  
 8 evidence and other proceedings requested in writing  
 9 by counsel for the parties to be included in this  
 10 volume of the Reporter's Record, in the above-styled  
 11 and numbered cause, all of which occurred in open  
 12 court or in chambers and were reported by me.

13 I further certify that this Reporter's  
 14 Record of the proceedings truly and correctly  
 15 reflects the exhibits, if any, admitted by the  
 16 respective parties.

17 I further certify that the total cost for  
 18 the preparation of this Reporter's Record is \$ \_\_\_\_\_  
 19 and was paid/will be paid by Hornberger, Sheehan,  
 20 Fuller, Beiter, Wittenberg & Garza, Inc.

21

22

23

24

25

*Carmen G. Fragoso*

CARMEN G. FRAGOSO, CSR #3876  
 Expiration Date: 12/31/2012  
 Freelance Court Reporter  
 Bexar County, Texas  
 100 Dolorosa Street  
 San Antonio, Texas 78205  
 (210) 481-0041

# **EXHIBIT D**



08/03/11

CAUSE NO. 2011-CI-02000

PATRICIA BURNS CLARK DAILEY, SOLE INCOME AND ONLY PRIMARY BENEFICIARY OF THE PATRICIA BURNS CLARK TRUST UNDER THE WILL OF T.E. BURNS AND THE PATRICIA BURNS CLARK IRREVOCABLE TRUST, BY AND THROUGH CAROLYN J. CLARK IN HER CAPACITY AS HER ATTORNEY-IN-FACT, Plaintiffs,	§ § § § § § § § § § § § § § §	IN THE DISTRICT COURT
---	---	-----------------------

v.	§	438 <sup>TH</sup> JUDICIAL DISTRICT
----	---	-------------------------------------

JPMORGAN CHASE BANK, N.A., INDIVIDUALLY AND IN ITS CAPACITY AS TRUSTEE FOR THE PATRICIA BURNS CLARK TRUST UNDER THE WILL OF T.E. BURNS AND THE PATRICIA BURNS CLARK IRREVOCABLE TRUST, and PATRICIA SHULTZ-ORMOND, Defendants	§ §	BEXAR COUNTY, TEXAS
--	---	---------------------

**AGREED PROTECTIVE ORDER**

The Court, after considering the agreement of the parties as to the matters contained herein, finds that documents and information subject to discovery in this case may contain confidential information, and that good cause exists for the entry of this Order.

It is hereby ORDERED that:

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.
2. "Confidential Information," as used herein, means any information of any type, kind or character which is designated as "Confidential" by the supplying party, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating

RECEIVED FOR RECORD BY

information as "Confidential," a party will make such designation only as to that information that it in good faith believes contains confidential information.

3. "Qualified Persons," as used herein means:
  - (a) Attorneys of record for the parties and in-house counsel for corporate parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation;
  - (b) Actual or potential independent experts or consultants who have signed a document in form of the attached "Exhibit A";
  - (c) The party or party representatives (for entity parties);
  - (d) Carolyn Clark, Michele Cadwallader, Randy Cadwallader, Christopher Clark, Richard Clark, and Craig Clark; and
  - (e) Any other person designated as a Qualified Person by order of this Court, after notice and hearing to all parties, or by written agreement of the parties.
4. Documents produced or exchanged in this action may be designated by any party or parties as "Confidential" information by marking each page of the document(s) so designated with a stamp stating "Confidential."
5. Information disclosed at depositions may be designated by any party as "Confidential" information by indicating on the record at the deposition that the testimony is "Confidential" and is subject to the provisions of this Order. Any party may also designate information disclosed at such deposition as "Confidential" by notifying all of the parties in writing within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts shall be treated as "Confidential" for a period of thirty (30) days after the receipt of the transcript.
6. "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons.

CONFIDENTIAL FOR PERSONS ONLY

7. Documents produced prior to the date of this Order may be retroactively designated by notice in writing of the designated class of each document by Bates number within ten (10) days of the entry of this order. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party. However, a party shall not be held to have violated the terms of this Order if the Party has disclosed information that is later designated as "Confidential" prior to the date it receives notice of such "Confidential" designation.
8. If the receiving party should receive any court order or subpoena to produce all or any portion of Confidential Information, the receiving party's counsel shall immediately notify the producing party's counsel of that fact.
9. Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record (or any attorney designated in advance in writing by a party's counsel of record) from using "Confidential" documents and/or information in the examination or cross-examination of any person, be it in a deposition or trial of this cause.
10. A party shall not be obligated to challenge the propriety of a designation as "Confidential" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event any party to this litigation disagrees at any state of these proceedings with the designation by the designating party of any information as "Confidential" or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this

Protective Order by objecting in writing to the party who has designated the document or information as "Confidential." The designating party shall be required to move the Court for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item. The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

11. Nothing shall be regarded as "Confidential" information if it is information that either:
  - (a) is available to the public or in the public domain at the time of disclosure, as evidenced by a written document;
  - (b) becomes available to the public or part of the public domain through no fault of the other party;
  - (c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or
  - (d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.
  
12. In the event a party wishes to use any "Confidential" information in any affidavits, briefs, memoranda of law, depositions, motions, exhibits, or other papers filed in Court in this litigation, such "Confidential" information used therein shall be filed under seal with the Court.
  
13. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential" information by a party to this action.

CONFIDENTIAL

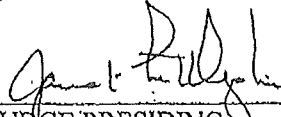


14. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to "Confidential" documents or any other "Confidential" information shall be subject to the provisions of this order.
15. Within thirty (30) days after conclusion of this litigation and any appeal thereof, any document and all reproductions of documents produced by a party, in the possession of any Qualified Person shall be returned to the producing party, except under the following circumstances: (1) as this Court may otherwise order; (2) to the extent such information was used as evidence at the trial; or (3) if the document or information contains or constitutes attorney-work product. In the latter circumstance, the Qualified Person shall destroy any such documents or information containing attorney-work product within thirty (30) days of the conclusion of this litigation and any appeal thereof. As far as the provisions of any protective orders entered in this action restricting the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or, order of the Court with respect to dissolution or modification of such protective orders.
16. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person is made aware of the terms of this Protective Order.

THIS IS A COPY OF THE ORIGINAL DOCUMENT

17. The prohibitions of this Protective Order do not restrict in any way the producing party's use of its own confidential information or documents in carrying on its business.

SIGNED this AUG - 3 2011 day of \_\_\_\_\_, 2011.

  
\_\_\_\_\_  
JUDGE PRESIDING

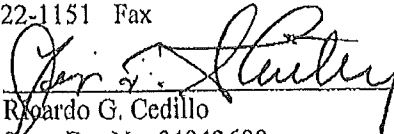
CONFIDENTIAL FOR PROTECTIVE ORDER

AGREED:

**DAVIS, CEDILLO & MENDOZA, INC.**

755 E. Mulberry Ave., Suite 500  
San Antonio, Texas 78212-3149  
(210) 822-6666 Telephone  
(210) 922-1151 Fax

By:



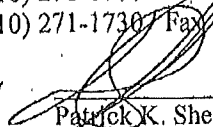
Ricardo G. Cedillo  
State Bar No. 04043600  
Les J. Strieber  
State Bar No. 19398000  
Ryan J. Tucker  
State Bar No. 24033407

**ATTORNEYS FOR PLAINTIFF**

**HORNBERGER SHEEHAN FULLER  
& BEITER INCORPORATED**

7373 Broadway, Suite 300  
San Antonio, Texas 78209  
(210) 271-1700 Telephone  
(210) 271-1730 Fax

By:



Patrick K. Sheehan  
State Bar No. 18175500  
David Jed Williams  
State Bar No. 21518060

**ATTORNEYS FOR DEFENDANTS**

2025 RELEASE UNDER E.O. 14176

EXHIBIT A

**Written Acknowledgement**

I hereby certify my understanding that "Confidential Information," is being provided to me pursuant to the terms and restrictions of the Agreed Protective Order entered by the Court in the Cause No. 2011-CI-0200, now pending in the 438th Judicial District Court, Bexar County, Texas. I also acknowledge and certify that I have been given a copy of that Agreed Protective Order, have read its terms and conditions, and understand that I am bound by them. I understand that those terms include, but are not limited to, the following:

1. I am prohibited from using the Confidential information for any purpose not connected to the litigation identified in the Protective Order.
2. I am prohibited from disclosing the Confidential Information, or the contents thereof, to any person or party, except as provided in the Protective Order.
3. At the conclusion of the litigation, or my involvement in it, I will be required to return such Confidential Information to the person from whom I received them, including any notes, memoranda, computer files, software documentation and other form of information which includes, incorporates, or otherwise discloses the contents of the Confidential Information.
4. I shall continue to be bound by the terms of the Order as a condition to being provided access to the Confidential Information. Further, by executing this Written Acknowledgment, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms and conditions for the Protective Order.

CONFIDENTIAL

5. I recognize that, pursuant to the provisions of the Protective Order, any Party disclosing or producing Confidential Information may, in the event of an actual or anticipated breach of this Written Acknowledgement, bring an action to specifically enforce the terms of the Protective Order and this Written Acknowledgement and to prevent the unauthorized disclosure or use of Confidential Information.

DATED: \_\_\_\_\_, 2011

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

CONFIDENTIAL FOR PROTECTIVE ORDER

# **EXHIBIT E**

FILED  
CLERK  
BEXAR COUNTY, TEXAS

11 DEC 21 PM 1:55

DEPUTY

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET AL.,

Plaintiffs,

JP MORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND  
AS TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST AND GARY P.  
AYMES,

Defendants.

§  
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§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFFS' MOTION TO COMPEL WITNESS STATEMENTS AGAINST  
DEFENDANT JP MORGAN CHASE BANK, N.A., INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH TEXAS SYNDICATE TRUST**

Plaintiffs hereby file this Motion to Compel against Defendants JP Morgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust and Gary P. Aymes ("Defendants") and would respectfully show the Court as follows:

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

This lawsuit involves the administration of the South Texas Syndicate Trust ("STS Trust"). Plaintiffs, beneficiaries of the STS trust, have sued Defendants because of Defendants' pattern of neglect, mismanagement and tortious behavior that has caused millions of dollars of damage to the STS Trust assets and estate. Plaintiffs also seek a statutory accounting, the removal of Defendants as Trustee and judicial reformation of the STS Trust instrument to protect the beneficiaries' interests in the future, provide transparency, define the duties and responsibilities of the trustee, and ensure the efficient and proper administration of the STS Trust.

12/21/11

In their Amended Petition, among many other violations, Plaintiffs specifically allege Defendants violated their fiduciary duties by actions taken and not taken in filing, litigating and settling an action against Pioneer Natural Resources USA, Inc. and EOG Resources, Inc., previously pending as Cause No. 09-04-00036-CVL; *JP Morgan Chase Bank, N.A., in its capacity as Trustee of the South Texas Syndicate Trust v. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*; in the 218th Judicial District Court, LaSalle County, Texas. Am. Pet. at 7, 9, 12.

Plaintiffs served Defendants with Requests for Disclosure as part of their Original Petition, which was filed on March 22, 2011. Defendants responded on May 17, 2011. Ex. A. As part of their responses, Defendants stated that they had no witness statements. *Id.* at 6. Because Plaintiffs were aware of prior deposition testimony that should have been produced in response to the Request for Disclosure, counsel for Plaintiffs sent a letter December 9, 2011 that specifically identified the prior deposition testimony that should have been produced as part of the initial discovery. Ex. B, Letter dated December 9, 2011 from J. Flegle to P. Sheehan. Defendants responded on December 15, 2011 and refused to produce the prior deposition testimony. Ex. C.

## II.

### ARGUMENTS AND AUTHORITIES

As part of their initial discovery obligations, Defendants had an obligation to produce all witness statements. Tex. R. Civ. P. 194.2 and 192.3(h). Texas Rule of Civil Procedure 192.3(h) specifically includes witness statements “regardless of when the statement was made”, and includes “a stenographic, mechanical, electrical, or other type of recording of a witness’s oral statement.” *Id.* The rule therefore clearly includes prior deposition statements.



Comment 9 to the rule provides that discovery includes witness statements subject to “the same rules concerning the scope of discovery and *privileges* applicable to other documents or tangible things.” Tex. R. Civ. P. 193.2(h), cmt. 9 (emphasis added). *See also In re Fontenot*, 13 S.W.3d 111, 113 (Tex. App. – Fort Worth, 2000, no pet.) (finding that witness statements were privileged because of the attorney-client relationship). Prior deposition testimony that is reasonably calculated to lead to the discovery of admissible evidence regarding the issues in the case should be produced as part of the discovery process. *In re Exmark Mfg. Co., Inc.*, 299 S.W.3d 519, 528-530 (Tex. App. – Corpus Christi 2009, no pet.) (prior deposition statements requested as part of document production). Further, the requested witness statements are relevant to specific allegations in Plaintiffs’ Amended Petition. Am. Pet. at 7, 9, 12.

Plaintiffs requested copies of relevant witness statements pursuant to Texas Rule of Civil Procedure 194.2. Defendants’ only response was “None.” Ex. A at 6. Defendants did not assert any objections and therefore waived them. Tex. R. Civ. P. 193.2(e) and 193.3. Because Defendants did not identify or produce prior deposition testimony, Plaintiffs sent a letter on December 9, 2011 that specifically identified the prior deposition testimony that should have been produced as part of the initial discovery. Ex. B, Letter dated December 9, 2011 from J. Flegle to P. Sheehan. Defendants’ sole basis for refusing to comply with their discovery obligations is that deposition testimony is not included under “witness statements.” Ex. C, Letter dated December 15, 2011 from P. Sheehan to J. Flegle. Because prior deposition testimony is included under the clear language of Tex. R. Civ. P. 192.3(h) and because Defendants have not asserted any privilege, the Court should grant Plaintiffs’ motion to compel and order Defendants to produce the prior deposition testimony within ten days of the entry of the order.

III.

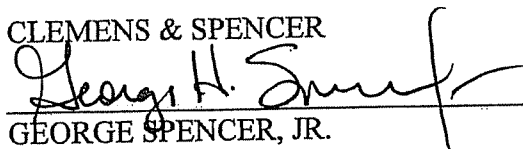
**REQUEST FOR RELIEF**

For the reasons described in this Motion to Compel, Plaintiffs respectfully request that the Court enter an order requiring Defendants to produce the deposition transcripts from the case styled *JPMorgan Chase Bank, Trustee of South Texas Syndicate Trust v. Pioneer Natural Resources and EOG Resources*, Cause No. 09-04-00036-CVL within ten days of the entry of the order.

DATE: December 21, 2011.

Respectfully submitted,

CLEMENS & SPENCER

  
\_\_\_\_\_  
GEORGE SPENCER, JR.

State Bar No. 18921001

112 E. Pecan St., Suite 1300

San Antonio, Texas 78205

Telephone: (210) 227-7121

Facsimile: (210) 227-0732

RICHARD TINSMAN

State Bar No. 20064000

TINSMAN & SCIANO, INC.

10107 McAllister Freeway

San Antonio, Texas 78205

Telephone: (210) 225-3121

Facsimile: (210) 225-6235

JAMES L. DROUGHT

State Bar No. 06135000

DROUGHT DROUGHT & BOBBITT, LLP

112 E. Pecan St., Suite 2900

San Antonio, Texas 78205


Telephone: (210) 225-4031

Facsimile: (210) 222-0586

ATTORNEYS FOR PLAINTIFF

JOHN K. MEYER

LOEWINSOHN FLEGLE DEARY, L.L.P.

  
\_\_\_\_\_  
DAVID R. DEARY

State Bar No. 05624900

JIM L. FLEGLE

State Bar No. 07118600

MICHAEL J. DONLEY

State Bar No. 24045795

12377 Merit Drive, Suite 900

Dallas, Texas 75251

Telephone: (214) 572-1700

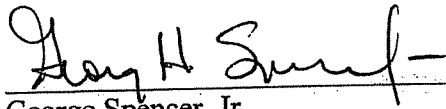
Facsimile: (214) 572-1717

ATTORNEYS FOR PLAINTIFF

EMILIE BLAZE

**CERTIFICATE OF CONFERENCE**

Michael Donley has conferred with counsel for Defendants regarding the substance of this Motion and the parties were unable to come to an agreement thereby necessitating the filing of this Motion.

  
\_\_\_\_\_  
George Spencer, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via the method indicated, this 21st day of December 2011:

Patrick K. Sheehan  
David Jed Williams  
Mark A. Randolph  
Hornberger Sheehan Fuller  
& Beiter Inc.  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209

*Via Facsimile*

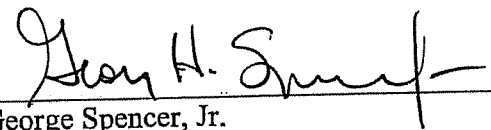
  
\_\_\_\_\_  
George Spencer, Jr.

EXHIBIT A



**HORNBERGER SHEEHAN FULLER & BEITER**  
INCORPORATED

David Jed Williams  
Direct Dial (210) 271-1731  
jwilliams@hsfblaw.com

May 17, 2011

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. David R. Deary  
Loewinsohn Flegle Deary LLP  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251-2224

Re: Cause No. 2011-CI-04747; *Emilie Blaze v. JPMorgan Chase Bank, N.A., et al.*,  
in the 225<sup>th</sup> Judicial District Court, Bexar County, Texas (the "Lawsuit")

Dear Mr. Deary:

Enclosed are Defendants' Responses to Plaintiff's Request for Disclosure.

Very truly yours,

  
Jed Williams

DJW/lrk  
Enclosures

CAUSE NO. 2011-CI-04747

EMILIE BLAZE,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND AS  
TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST AND GARY P. AYMES

Defendants.

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IN THE DISTRICT COURT

225TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUEST FOR DISCLOSURE**

JPMorgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas  
Syndicate Trust (collectively "J.P. Morgan") and Gary P. Aymes, Defendants in the above-styled  
and numbered cause, submit these Responses to Plaintiff's Request for Disclosure.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &  
BEITER INCORPORATED**

The Quarry Heights Building

7373 Broadway, Suite 300

San Antonio, TX 78209

TEL.: (210) 271-1700 FAX: (210) 271-1730

By: \_\_\_\_\_

Patrick R. Sheehan

State Bar No. 18175500

Kevin M. Beiter

State Bar No. 02059065

David Jed Williams

State Bar No. 21518060

Mark A. Randolph

State Bar No. 00791484

Attorneys for Defendants

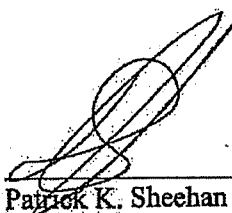
**CERTIFICATE OF SERVICE**

This is to certify that on this 17<sup>th</sup> day of May, 2011, a true and correct copy of the foregoing document was served on the following Plaintiff's counsel of record by the method indicated:

Mr. David R. Deary  
Mr. Jim L. Flegle  
Mr. Jeven R. Sloan  
Loewinsohn Flegle Deary, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

**CERTIFIED MAIL RRR**

this 17<sup>th</sup> day of May, 2011.



---

Patrick K. Sheehan  
David Jed Williams



**DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUEST FOR DISCLOSURE**

- (a) The correct names and addresses of the parties to the lawsuit.

**RESPONSE:**

JPMorgan Chase Bank, N.A.  
Individually/Corporately and  
as Trustee of the South Texas Syndicate Trust  
1020 NE Loop 410  
San Antonio, Texas 78209  
(210) 841-5870

Mr. Gary P. Aymes  
1020 NE Loop 410  
San Antonio, Texas 78209  
(210) 841-5870

- (b) The name, address, and telephone number of any potential parties.

**RESPONSE:**

All persons who are actually receiving distributions from the South Texas Syndicate Trust are necessary parties to this action under TEX. PROP. CODE §115.011(b)(3).

- (c) The legal theories and, in general, the factual bases of Defendant's claims or defenses.

**RESPONSE:**

Defendants deny all of the claims and allegations contained in Plaintiff's Original Petition and all amendments and supplements thereto. See Defendants' Original Answer and all amended and supplemental answers filed herein.

- (d) The amount and any methods of calculating economic damages.

**RESPONSE:**

Defendants are not presently seeking any economic damages.

- (e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

**RESPONSE:**

Mr. Gary P. Aymes  
JPMorgan Chase Bank, N.A.  
1020 NE Loop 410  
San Antonio, Texas 78209  
(210) 841-5870

Defendant; Employee of J.P. Morgan.

Ms. Colleen W. Dean  
JPMorgan Chase Bank, N.A.  
1020 NE Loop 410  
San Antonio, Texas 78209  
210-841-5870

Employee of J.P. Morgan.

Ms. Sherry Harrison  
JPMorgan Chase Bank, N.A.  
1020 NE Loop 410  
San Antonio, Texas 78209  
210-841-7030

Employee of J.P. Morgan.

Mr. H.L. Tompkins  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue  
Dallas, Texas 75201  
214-965-2047

Employee of J.P. Morgan.

Mr. Jason Beck  
JPMorgan Chase Bank, N.A.  
420 Throckmorton  
Fort Worth, Texas 76102  
817-871-3528

Employee of J.P. Morgan.

Ms. Charlotte Ray  
JPMorgan Chase Bank, N.A.  
451 Florida Street  
Baton Rouge, LA 70801  
225-332-4218

Employee of J.P. Morgan.

Ms. Deborah M. Round  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue  
Dallas, Texas 75201  
214-965-3196

Employee of J.P. Morgan.

Mr. John C. Minter  
JPMorgan Chase Bank, N.A.  
221 West Sixth Street  
Austin, Texas 78701  
512-479-5707

Employee of J.P. Morgan.

Mr. Kevin R. Smith  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, Floor 10  
Dallas, Texas 75201  
214-965-3205

Employee of J.P. Morgan

Mr. Bertram Hayes-Davis  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, Floor 10  
Dallas, Texas 75201  
214-965-2225

Employee of J.P. Morgan

Defendants reserve the right to supplement the foregoing and also reserve the right to call any witnesses designated by Plaintiff.

(f) For any testifying expert:

- (1) the expert's name, address, and telephone number.
- (2) the subject matter of which the expert will testify.
- (3) the general substance of the expert's mental impression and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information:
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
  - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony and
  - (B) the expert's current resume and bibliography

**RESPONSE:**

No such experts have been retained by Defendants at this time.

(g) Any indemnity and insuring agreements described in Rule 192.3(f) T.R.C.P.

**RESPONSE:**

None.

(h) Any settlement agreements described in Rule 192.3(g) T.R.C.P.

**RESPONSE:**

None.

(i) Any witness statements described in Rule 192.3(h) T.R.C.P.

**RESPONSE:**

None.

- (j) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

**RESPONSE:**

N/A

- (k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

**RESPONSE:**

N/A

- (l) The name, address, and telephone number of any person who may be designated as a responsible third party.

**RESPONSE:**

None of which Defendants are presently aware. Will supplement as appropriate.

EXHIBIT B

— ★ ★ ★ —  
LOEWINSOHN FLEGLE DEARY  
— L · L · P —

December 9, 2011

**Via Facsimile and Email**

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

Re: Cause No. 2011-CI-10977; *John K. Meyer, et al. v. JP Morgan Chase Bank N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust and Gary P. Aymes*; in the 225<sup>th</sup> District Court, Bexar County, Texas

Dear Pat:

On March 22, 2011, our clients served a Request for Disclosure on JP Morgan. Item (i) in the request requires production of witness statements.

It is our understanding that there were depositions taken in the litigation filed by JP Morgan against Pioneer and EOG, styled *JP Morgan Chase Bank, N.A., in its Capacity as Trustee of the South Texas Syndicate Trust v. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*; Cause No. 09-04-00036-CVL, in the 218th District Court, LaSalle County Texas. This litigation and JP Morgan's conduct involving it are identified in our amended petition filed November 15, 2011. Depositions taken in that litigation are certainly statements of persons with knowledge of relevant facts.

If there are any confidentiality concerns, they are addressed by the protective order we previously approved in this cause.

Please forward copies of all depositions and exhibits to us by December 16, 2011.

Patrick K. Sheehan, Esq.  
December 9, 2011  
Page 2

If JP Morgan refuses, we will set a rehearing on our motion to compel addressing these witness statements.

Very truly yours,



Jim L. Flegle  
Direct Dial: (214) 572-1701  
Email: [jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)

JLF/mlj

cc: George H. Spencer, Jr.  
Richard Tinsman  
James L. Drought



# EXHIBIT C



**HORNBERGER SHEEHAN FULLER & BEITER**  
INCORPORATED

Patrick K. Sheehan  
psheehan@hsfbllaw.com

December 15, 2011

**VIA TELECOPIER**

Mr. James L. Flegle  
Loewinsohn Flegle Deary, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

Re: Cause No. 2010-CI-10977; *John K. Meyer vs. JP Morgan Chase Bank, N.A. Individually/Corporately and as Trustee of the South Texas Syndicate Trust and Gary P. Aymes*, in the District Court, 225th Judicial District, Bexar County, Texas

Dear Jim:

This letter is sent in response to your letter to me dated December 9, 2011 requesting production of depositions (and exhibits) from the JPM-Pioneer case.

The transcripts of the depositions (and exhibits) taken in the JPM-Pioneer case are not "witness statements" as defined in Texas Rule of Civil Procedure 192.3(h), the related commentaries nor under Texas law. Therefore, we will not be producing any of the deposition transcripts or exhibits that you asked us to produce in your letter.

Sincerely,

Patrick K. Sheehan

PKS/lrk



**HORNBERGER SHEEHAN FULLER & BETTER INCORPORATED**  
7373 BROADWAY, SUITE 300  
SAN ANTONIO, TEXAS 78209  
TEL: (210) 271-1700  
FAX: (210) 271-1740

**TELECOPIER COVER SHEET**

**Confidentiality Notice:** The information contained in, or accompanying this telecopy is privileged and confidential and is intended only for the recipient(s) below. Nothing in this telecopy is intended by the attorney or the client to constitute a waiver of the confidentiality of the message. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us, and you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited.

**DATE:** December 15, 2011 **NO. OF PAGES (with cover sheet)** 2

**TO:** Mr. James L. Flegle  
**AT:** Loewinsohn Flegle Deary, L.L.P.

**FAX NO.:** (214) 572-1717

**FROM:** Patrick K. Sheehan

**MESSAGE:**

**OPERATOR:** Rose C. **CLIENT NO.** 6439 **TIME SENT:** \_\_\_\_\_

If you did not receive the total number of pages listed above,  
are experiencing difficulties in receiving this transmission, received this in error,  
please call (210) 271-1700

# **EXHIBIT F**

CAUSE NO. 2011-CI-04747

EMILIE BLAZE,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND AS  
TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST AND GARY P. AYMES

Defendants.

§  
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IN THE DISTRICT COURT

225TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUEST FOR DISCLOSURE**

JPMorgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust (collectively "J.P. Morgan") and Gary P. Aymes, Defendants in the above-styled and numbered cause, submit these Responses to Plaintiff's Request for Disclosure.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &  
BEITER INCORPORATED**

The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209  
TEL.: (210) 271-1700 FAX: (210) 271-1730

By: \_\_\_\_\_

Patrick R. Sheehan  
State Bar No. 18175500  
Kevin M. Beiter  
State Bar No. 02059065  
David Jed Williams  
State Bar No. 21518060  
Mark A. Randolph  
State Bar No. 00791484

Attorneys for Defendants

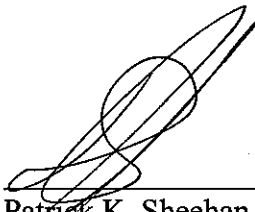
**CERTIFICATE OF SERVICE**

This is to certify that on this 17<sup>th</sup> day of May, 2011, a true and correct copy of the foregoing document was served on the following Plaintiff's counsel of record by the method indicated:

Mr. David R. Deary  
Mr. Jim L. Flegle  
Mr. Jeven R. Sloan  
Loewinsohn Flegle Deary, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

CERTIFIED MAIL RRR

this 17<sup>th</sup> day of May, 2011.



---

Patrick K. Sheehan  
David Jed Williams

**DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUEST FOR DISCLOSURE**

- (a) The correct names and addresses of the parties to the lawsuit.

**RESPONSE:**

JPMorgan Chase Bank, N.A.  
Individually/Corporately and  
as Trustee of the South Texas Syndicate Trust  
1020 NE Loop 410  
San Antonio, Texas 78209  
(210) 841-5870

Mr. Gary P. Aymes  
1020 NE Loop 410  
San Antonio, Texas 78209  
(210) 841-5870

- (b) The name, address, and telephone number of any potential parties.

**RESPONSE:**

All persons who are actually receiving distributions from the South Texas Syndicate Trust are necessary parties to this action under TEX. PROP. CODE §115.011(b)(3).

- (c) The legal theories and, in general, the factual bases of Defendant's claims or defenses.

**RESPONSE:**

Defendants deny all of the claims and allegations contained in Plaintiff's Original Petition and all amendments and supplements thereto. See Defendants' Original Answer and all amended and supplemental answers filed herein.

- (d) The amount and any methods of calculating economic damages.

**RESPONSE:**

Defendants are not presently seeking any economic damages.

- (e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

**RESPONSE:**

Mr. Gary P. Aymes  
JPMorgan Chase Bank, N.A.  
1020 NE Loop 410  
San Antonio, Texas 78209  
(210) 841-5870

Defendant; Employee of J.P. Morgan.

Ms. Colleen W. Dean  
JPMorgan Chase Bank, N.A.  
1020 NE Loop 410  
San Antonio, Texas 78209  
210-841-5870

Employee of J.P. Morgan.

Ms. Sherry Harrison  
JPMorgan Chase Bank, N.A.  
1020 NE Loop 410  
San Antonio, Texas 78209  
210-841-7030

Employee of J.P. Morgan.

Mr. H.L. Tompkins  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue  
Dallas, Texas 75201  
214-965-2047

Employee of J.P. Morgan.

Mr. Jason Beck  
JPMorgan Chase Bank, N.A.  
420 Throckmorton  
Fort Worth, Texas 76102  
817-871-3528

Employee of J.P. Morgan.



Ms. Charlotte Ray  
JPMorgan Chase Bank, N.A.  
451 Florida Street  
Baton Rouge, LA 70801  
225-332-4218

Employee of J.P. Morgan.

Ms. Deborah M. Round  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue  
Dallas, Texas 75201  
214-965-3196

Employee of J.P. Morgan.

Mr. John C. Minter  
JPMorgan Chase Bank, N.A.  
221 West Sixth Street  
Austin, Texas 78701  
512-479-5707

Employee of J.P. Morgan.

Mr. Kevin R. Smith  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, Floor 10  
Dallas, Texas 75201  
214-965-3205

Employee of J.P. Morgan

Mr. Bertram Hayes-Davis  
JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, Floor 10  
Dallas, Texas 75201  
214-965-2225

Employee of J.P. Morgan

Defendants reserve the right to supplement the foregoing and also reserve the right to call any witnesses designated by Plaintiff.

- (f) For any testifying expert:
- (1) the expert's name, address, and telephone number.
  - (2) the subject matter of which the expert will testify.
  - (3) the general substance of the expert's mental impression and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information.
  - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
    - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony and
    - (B) the expert's current resume and bibliography

**RESPONSE:**

No such experts have been retained by Defendants at this time.

- (g) Any indemnity and insuring agreements described in Rule 192.3(f) T.R.C.P.

**RESPONSE:**

None.

- (h) Any settlement agreements described in Rule 192.3(g) T.R.C.P.

**RESPONSE:**

None.

- (i) Any witness statements described in Rule 192.3(h) T.R.C.P.

**RESPONSE:**

None.

- (j) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

**RESPONSE:**

N/A

- (k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

**RESPONSE:**

N/A

- (l) The name, address, and telephone number of any person who may be designated as a responsible third party.

**RESPONSE:**

None of which Defendants are presently aware. Will supplement as appropriate.

# **EXHIBIT G**

(Consolidated Under)  
CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.	§	IN THE DISTRICT COURT
	§	
VS.	§	225 <sup>TH</sup> JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
and GARY P. AYMES	§	BEXAR COUNTY, TEXAS

**AGREED PROTECTIVE ORDER**

The Court, after considering the agreement of the parties as to the matters contained herein, finds that documents and information subject to discovery in this case may contain confidential information, and that good cause exists for the entry of this Order.

It is hereby ORDERED that:

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.
2. "Confidential Information," as used herein, means any information of any type, kind or character which is designated as "Confidential" by the supplying party, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential," a party will make such designation only as to that information that it in good faith believes contains confidential information.
3. "Qualified Persons," as used herein means:
  - (a) Attorneys of record for the parties and in-house counsel for corporate parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation;

- (b) Actual or potential independent experts or consultants who have signed a document in form of the attached "Exhibit A";
  - (c) The party or party representatives (for entity parties); and
  - (d) Any other person designated as a Qualified Person by order of this Court, after notice and hearing to all parties, or by written agreement of the parties.
4. Documents produced or exchanged in this action may be designated by any party or parties as "Confidential" information by marking each page of the document(s) so designated with a stamp stating "Confidential."
5. Information disclosed at depositions may be designated by any party as "Confidential" information by indicating on the record at the deposition that the testimony is "Confidential" and is subject to the provisions of this Order. Any party may also designate information disclosed at such deposition as "Confidential" by notifying all of the parties in writing within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts shall be treated as "Confidential" for a period of thirty (30) days after the receipt of the transcript.
6. "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons.
7. Documents produced prior to the date of this Order may be retroactively designated by notice in writing of the designated class of each document by Bates number within ten (10) days of the entry of this order. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party. However, a party shall not be held to have violated the terms of this Order if the Party has disclosed information that is later designated as "Confidential" prior to the date it receives notice of such "Confidential" designation.

8. If the receiving party should receive any court order or subpoena to produce all or any portion of Confidential Information, the receiving party's counsel shall immediately notify the producing party's counsel of that fact.
9. Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record (or any attorney designated in advance in writing by a party's counsel of record) from using "Confidential" documents and/or information in the examination or cross-examination of any person, be it in a deposition or trial of this cause.
10. A party shall not be obligated to challenge the propriety of a designation as "Confidential" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event any party to this litigation disagrees at any state of these proceedings with the designation by the designating party of any information as "Confidential" or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential." The designating party shall be required to move the Court for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item. The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

11. Nothing shall be regarded as "Confidential" information if it is information that either:
  - (a) is available to the public or in the public domain at the time of disclosure, as evidenced by a written document;
  - (b) becomes available to the public or part of the public domain through no fault of the other party;
  - (c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or
  - (d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.
  
12. Nothing in this Protective Order shall be construed to violate or circumvent the requirements of Texas Rule of Civil Procedure 76a. In the event a party wishes to file pleadings or other papers in this litigation that attach or reference information another party has designated as "Confidential", in order to allow the disclosing party to seek whatever temporary and/or permanent relief it deems appropriate pursuant to Rule 76a, at least seven (7) days before such filings the non-disclosing party shall give the disclosing party written notice describing what will be filed and identifying by document production number or other specific description the "Confidential" information that will be described in or attached to such filing. The party who has designated the document or information as "Confidential" bears the burden of complying with all of the requirements of Rule 76a, including the filing of a written motion to seal and all public notice and hearing requirements, provided, however, that the non-designating party agrees not to oppose any motion to seal court records, and agrees not to oppose any motion for a temporary sealing order pending a hearing on such motion to seal. A party does not waive any rights by electing to wait until a



document has actually been filed before seeking relief pursuant to Rule 76a, or by electing not to seek a temporary sealing order pending a hearing on a motion to seal.

13. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential" information by a party to this action.
14. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to "Confidential" documents or any other "Confidential" information shall be subject to the provisions of this order.
15. Within thirty (30) days after conclusion of this litigation and any appeal thereof, any document and all reproductions of documents produced by a party, in the possession of any Qualified Person shall be returned to the producing party, except under the following circumstances: (1) as this Court may otherwise order; (2) to the extent such information was used as evidence at the trial; or (3) if the document or information contains or constitutes attorney-work product. In the latter circumstance, the Qualified Person shall destroy any such documents or information containing attorney-work product within thirty (30) days of the conclusion of this litigation and any appeal thereof. As far as the provisions of any protective orders entered in this action restricting the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the

producing party or, order of the Court with respect to dissolution or modification of such protective orders.

16. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person is made aware of the terms of this Protective Order.
17. The prohibitions of this Protective Order do not restrict in any way the producing party's use of its own confidential information or documents in carrying on its business.

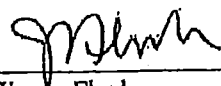
SIGNED this \_\_\_\_\_ day of **NOV 14 2011** 2011.

**Judge Peter Sakal'**  
**225th District Court**  
**Bexar County, Texas**

**JUDGE PRESIDING**

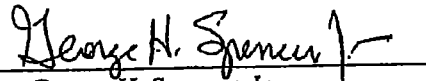
AGREED:

LOEWINSOHN FLEGLE DEARY, L.L.P.

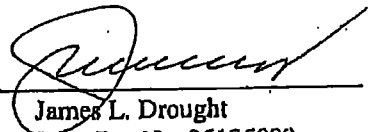
By:   
Jim L. Flegle  
State Bar No. 07118600  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Telecopier: (214) 572-1717  
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ATTORNEYS FOR PLAINTIFF EMILIE  
BLAZE

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Telecopier: (210) 227-0732  
Email: spencer@clemens-spencer.com

DROUGHT, DROUGHT & BOBBITT, LLP

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Telecopier: (210) 222-0586

ATTORNEYS FOR PLAINTIFF JOHN K.  
MEYER

HORNBERGER FULLER SHEEHAN &  
BEITER INCORPORATED

By:   
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Telephone: (210) 271-1700  
Telecopier: (210) 271-1730  
Email: psheehan@hsfblaw.com

ATTORNEYS FOR DEFENDANT JP  
MORGAN CHASE BANK

EXHIBIT A

**Written Acknowledgement**

I hereby certify my understanding that "Confidential Information," is being provided to me pursuant to the terms and restrictions of the Agreed Protective Order entered by the Court in the Cause No. 2010-CI-10977, now pending in the 225th Judicial District Court, Bexar County, Texas. I also acknowledge and certify that I have been given a copy of that Agreed Protective Order, have read its terms and conditions, and understand that I am bound by them. I understand that those terms include, but are not limited to, the following:

1. I am prohibited from using the Confidential information for any purpose not connected to the litigation identified in the Protective Order.
2. I am prohibited from disclosing the Confidential Information, or the contents thereof, to any person or party, except as provided in the Protective Order.
3. At the conclusion of the litigation, or my involvement in it, I will be required to return such Confidential Information to the person from whom I received them, including any notes, memoranda, computer files, software documentation and other form of information which includes, incorporates, or otherwise discloses the contents of the Confidential Information.
4. I shall continue to be bound by the terms of the Order as a condition to being provided access to the Confidential Information. Further, by executing this Written Acknowledgment, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms and conditions for the Protective Order.

5. I recognize that, pursuant to the provisions of the Protective Order, any Party disclosing or producing Confidential Information may, in the event of an actual or anticipated breach of this Written Acknowledgement, bring an action to specifically enforce the terms of the Protective Order and this Written Acknowledgement and to prevent the unauthorized disclosure or use of Confidential Information.

DATED: \_\_\_\_\_, 2011

\_\_\_\_\_  
Printed Name: \_\_\_\_\_