



NO. 2011-CI-02000

CAROLYN J. CLARK, MICHELE  
DAILEY CADWALLADER AND  
CHRISTOPHER CLARK

Plaintiffs,

v.

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

Defendants.

IN THE DISTRICT COURT

CRT

438<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

BY: *Amber Burns*  
CERLEY

2012 JUL -9 PM 4:23

FILED  
DISTRICT CLERK  
BEXAR CO., TEXAS

**THIRD AMENDED PETITION FOR DAMAGES**

TO THE HONORABLE JUDGE OF SAID COURT:

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

**I.  
DISCOVERY PLAN**

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

**II.**  
**PARTIES**

2. Plaintiffs Carolyn J. Clark, Michele Cadwallader and Christopher Clark are children of Patricia Burns Clark Dailey and they bring their claims as remaindermen to recover damages to their remainder interests in the Burns Trusts which vested upon their mother's death and which was caused by JPMorgan's malfeasance as Trustee during the time period relevant to this Lawsuit.

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

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

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

**III.**  
**JURISDICTION AND VENUE**

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

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

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

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

#### **IV.** **INTRODUCTION**

10. The Burns Trusts own fifty percent (50%) undivided mineral interests in excess of 29,000 acres of land, more or less, located in La Salle and Frio Counties (hereinafter the “Burns Ranch”). The Burns Ranch is in the heart of the Eagle Ford Shale geologic formation in South Texas.<sup>1</sup>

11. At all times relevant to this suit, JPMorgan was the Trustee for the Burns Trusts. In 2009, Patricia Schultz-Ormond, at that time an employee for JPMorgan<sup>2</sup>, was primarily responsible for management of the Burns Trust’s fifty percent (50%) undivided interest in the mineral interests in the Burns Ranch (hereinafter the “Burns Trusts Mineral Interests”). Ms. Ormond is no longer an employee of JPMorgan.

12. This suit arises from the actions and inactions of JPMorgan and Ms. Ormond in the management of the Burns Trusts. On behalf of the Burns Trusts, JPMorgan negotiated with and executed an Option Agreement with an entity called BlackBrush Energy (“BlackBrush”). The Option Agreement granted BlackBrush<sup>3</sup> a three-year oil & gas lease on the Burns Ranch for nominal consideration for bonus payments of \$125 per acre. This amount was grossly below the then market for the Eagle Ford Shale formation. For these reasons, and those set forth below, Ms. Ormond and JPMorgan (i) grossly mismanaged the Burns Trusts Mineral Interests; (ii) breached their fiduciary duty; and (iii) made actionable misrepresentations related to its responsibilities and conduct in managing those interests.

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<sup>1</sup> The mineral interests in over 29,000 acres of the Burns Ranch were open and available for lease. In 2009, it was one of the largest contiguous tracts of un-leased minerals in the Eagle Ford Shale formation in South Texas.

<sup>2</sup> At that time Ms. Ormond was Vice President and Senior Property Manager for “Specialty Assets, Oil and Gas Management” for JPMorgan.

<sup>3</sup> The actual lessee was BB-II Operating L.P.

V.  
**FACTUAL ALLEGATIONS**

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

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

15. During 2009, Ms. Ormond dealt almost exclusively with BlackBrush regarding leasing of the Burns Trust Mineral Interests.<sup>4</sup> By the summer of 2009, interest in exploration and production in the Eagle Ford Shale formation was exploding. In fact, trade and general circulation publications widely reported on this hot market throughout 2009.

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

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<sup>4</sup> At that time, BlackBrush was an undercapitalized company with prior experience in drilling and exploration in the more shallow Olmos formations. It had no experience in the much more complex process of horizontal drilling and hydro-fracturing required for the Eagle Ford Shale formation, no financial capability to explore and develop in horizontal drilling in the Eagle Ford Shale formation, and little to no ability to attract any of the limited number of available drilling operators experienced in the complex hydro-fracturing process.

JPMorgan was September 30, 2009, and that H.L. Tompkins, Vice President of Specialty Assets at JPMorgan, would be taking her place.

17. Ms. Ormond continued her discussions almost exclusively with BlackBrush and completely failed to take into account the rising Eagle Ford Shale market, failed to take the time and use the resources of JPMorgan to professionally research the market, and failed to investigate, explore and market the Burns Trusts Mineral Interests to qualified and interested competitors of BlackBrush.<sup>5</sup>

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

19. The BlackBrush Option was signed by JPMorgan on November 6, 2009. On December 1, 2009, almost a month after JPMorgan signed the BlackBrush Option, Carolyn Clark first learned the deal with BlackBrush had been signed by JPMorgan as Trustee of the Burns Trusts. Although the agreement contained a signature block for Carolyn Clark on behalf of Patricia Dailey, Ms. Clark knew nothing about the Agreement when signed and was never asked to and never agreed to execute it.

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

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

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<sup>5</sup> As noted above, responsible and knowledgeable representatives of mineral interest owners in the Eagle Ford Shale formation in this area were soliciting proposals from many or all of the approximately ten financially substantial operators with experience in the complex process of hydro-fracturing that were actively interested in obtaining lease rights in the Eagle Ford Shale geologic formation. Even a minimal inquiry at the local courthouse records office or preparation of a trend map would have very clearly reflected the frenzy in activity created by these companies in the area.

**VI.**  
**CAUSES OF ACTION**

**COUNT I: BREACH OF FIDUCIARY DUTY**

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

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

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

- a. Failure to do a trend analysis or any responsible level of due diligence relating to the potential value of the Burns Trusts Mineral Interests;
- b. Dealing exclusively with BlackBrush, whose principal experience at the time was pipeline management, was undercapitalized, and lacked experience in the highly specialized horizontal drilling and hydro-fracturing required in the Eagle Ford Shale formation;

- c. Refusal and failure to deal, in any substantive manner with any of the numerous other experienced, substantial, experienced producers actively pursuing opportunities in the Eagle Ford Shale formation at the time;
- d. Failure to analyze, investigate, negotiate and execute a lease that included, among other things, bonus payments at market value;
- e. Failure to negotiate additional provisions in the lease which would have provided additional consideration to the Burns Trusts;
- f. Failure to deal in good faith, deal fairly, loyally and with fidelity over the Burns Trusts affairs;
- g. Failure to disclose all material facts known to the Defendants; and
- h. Failure to refrain from acts of self dealing of Burns Trusts accounts.

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

26. As a direct and proximate result of Ms. Ormond and JPMorgan's breach of professional and fiduciary duties, Plaintiffs have incurred substantial damages in excess of the minimal jurisdictional limits of this Court.

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

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

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

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

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

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

30. As a result of JPMorgan's wrongful actions, Plaintiffs are entitled to all damages resulting from the breach of trust in excess of the minimal jurisdictional limits of this Court.

### **COUNT III: FRAUD BY NONDISCLOSURE**

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

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

33. Defendants' fiduciary relationship created a duty to disclose facts related to the Burns Trusts. JPMorgan, as well as Ms. Ormond, knew that Plaintiffs did not have knowledge of these facts and did not have equal opportunity to discover the truth, and that JPMorgan and Ms. Ormond intended Carolyn Clark to refrain from acting as a result of withholding material information from them. Mrs. Clark relied on Ms. Ormond and JPMorgan's nondisclosure. As a proximate result of



proceeding without knowledge of undisclosed facts, Plaintiffs sustained damages in excess of the minimal jurisdictional limits of this Court.

**COUNT IV: NEGLIGENT MISREPRESENTATION**

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

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

**VII.  
DAMAGES SUSTAINED**

36. Defendants' actions, inactions, breach of its fiduciary duties, fraud, and negligent misrepresentations resulted in damages to Plaintiffs in excess of the jurisdictional limits of this Court

37. In addition to the damages described above, Plaintiffs have suffered damages resulting from Defendants' mismanagement of the financial affairs of the Trust.

**VIII.  
DEMAND FOR ACCOUNTING**

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

**IX.**  
**ATTORNEYS' FEES**

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

**X.**  
**CONDITIONS PRECEDENT**

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

**XI.**  
**PRODUCTION OF DOCUMENTS**

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

**XII.**  
**REQUEST FOR DISCLOSURE TO DEFENDANTS**

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

**XIII.**  
**DEMAND FOR JURY**

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

**PRAYER FOR RELIEF**

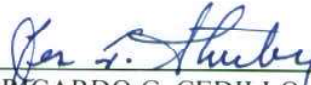
**WHEREFORE**, Plaintiffs pray that Defendants be cited to appear and answer, and that after trial Plaintiffs have judgment against Defendants for the following:

- A. JPMorgan provide an accounting;
- B. An award of actual damages in excess of the jurisdictional limits of the Court;
- C. An award of attorneys' fees and costs allowed under Tex. Prop. Code § 114.064;
- D. An award of prejudgment and post judgment interest on all sums awarded; and

E. All other relief, in law and in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

DAVIS, CEDILLO & MENDOZA, INC.  
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San Antonio, Texas 78212-3149  
(210) 822-6666  
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By:  \_\_\_\_\_  
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State Bar No. 19398000  
RYAN J. TUCKER  
State Bar No. 24033407

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served pursuant to the Texas Rules of Civil Procedure on the 9<sup>th</sup> day of July, 2012, on the following counsel of record:

Patrick K. Sheehan  
Kevin M. Beiter  
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\_\_\_\_\_  
Les J. Strieber, III

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