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NO. 2006-01984

MOSH HOLDING, L.P., AND DAGGER-SPINE HEDGEHOG CORPORATION, Plaintiffs,	§	IN THE DISTRICT COURT
v.	§	
PIONEER NATURAL RESOURCES COMPANY; PIONEER NATURAL RESOURCES USA, INC.; WOODSIDE ENERGY (USA) INC.; AND JPMORGAN CHASE BANK, N.A. AS TRUSTEE OF THE MESA OFFSHORE TRUST, Defendants	§	HARRIS COUNTY, TEXAS
	§	334th JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW
WITH RESPECT TO FINAL SETTLEMENT AGREEMENT

On June 18 and July 23, 2009, this Court held an evidentiary hearing ("the Settlement Approval Hearing") on the Joint Motion to Approve Final Settlement Agreement filed by the following parties:

(1) Plaintiff MOSH Holding, L.P. and Plaintiff-Intervenor Dagger-Spine Hedgehog Corporation, both in their individual capacities and in their claimed capacities as representatives of the Mesa Offshore Trust ("the Trust") and/or the Certificate Holders ("the Unit Holders") of the Trust and/or the Mesa Offshore Royalty Partnership (the "Partnership"). MOSH Holding, L.P. and Dagger-Spine Hedgehog Corporation, in all of their capacities, will be referred to collectively as "the Plaintiffs."

(2) Defendant Pioneer Natural Resources Company and Defendant Pioneer Natural Resources USA, Inc., in their individual capacities, its capacity as managing general partner of the Partnership, and as Subject Lessee and/or operator under the Overriding Royalty Conveyance ("the Conveyance") (collectively, "Pioneer").

(3) Defendant JPMorgan Chase Bank, N.A., in its individual capacity (referred to as "JPMorgan"), in its capacity of Trustee of the Trust ("the Trustee"), and in its capacity as general partner of the Partnership.

(4) Defendant Woodside Energy (USA) Inc.

FILED
Loren Jackson
District Clerk
AUG 06 2009
Time:
By
Harris County, Texas
Deputy

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These parties are referred to herein collectively as "the Settling Parties." The Intervenors and other objectors (including, without limitation, Keith Wiegand, Robert Miles, Gordon Stamper, Michael Brown, Benjamin J. Ginter and the 2009 Unitholders) were afforded the opportunity to participate in the hearing.

The Settling Parties seek the Court's approval of the Final Settlement Agreement. After considering the papers filed, the evidence offered at the hearing, the arguments of the parties, and the arguments of the objectors to the Settlement Agreement, the Court APPROVES the Settlement Agreement as entirely fair to and in the best interest of the Trust and its Unit Holders, and issues the following findings of fact and conclusions of law in support of that approval.[1]

I. This Court Has Jurisdiction

A. Conclusions of Law with Respect to Jurisdiction[2]

1. This Court concludes that it has jurisdiction over this case. *See* Tex. Prop. Code § 115.001 (providing that, with certain exceptions not applicable here, "a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts . . .").

II The Trustee Has the Authority to Settle

A. Conclusions of Law with Respect to the Trustee's Authority to Settle

2. The claims that were or could have been asserted in this case were owned by the Trust and/or the Partnership. The Trustee has the power to prosecute and settle these claims under the

[1] By citing some examples of evidence that supports the Court's findings, the Court does not intend to imply that no other evidence supports the findings; to the contrary, the evidence adduced at the hearing overwhelmingly supports the Court's findings.

[2] To the extent that a conclusion of law should have been designated as a finding of fact, or vice versa, the designation is not controlling, and the correct designation should be substituted. *See Ray v. Farmers' State Bank of Hart*, 576 S.W.2d 607, 608 n.1 (Tex. 1979).

Royalty Trust Indenture ("Trust Indenture"), the Trust Code, and the common law, and, together with the Plaintiffs, to bind the beneficiaries of the Trust to the settlement.

3. Section 3.01 of the Trust Indenture provides that "the Trustee is authorized to take such action as in its judgment is necessary or advisable best to achieve the purposes of the Trust, including . . . to settle disputes with respect thereto." Section 3.05 also expressly grants the Trustee the power to settle claims:

> 3.05. *Power to Settle Claims.* The Trustee is authorized to prosecute or defend, and to settle by arbitration or otherwise, any claim of or against the Trustee, the Trust or the Trust Estate, to waive or release rights of any kind and to pay or satisfy any debt, tax or claim upon any evidence by it deemed sufficient.

Trust Indenture § 3.05.

4. Similarly, the Texas Trust Code expressly empowers the Trustee to settle such claims: "A trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee." Tex. Prop. Code § 113.019.

5. Finally, the common law recognizes that that a trustee has the power to release claims of the trust, and that a "beneficiary of the trust, is bound by that action." *Cogdell v. Fort Worth Nat'l Bank*, 544 S.W.2d 825, 829 (Tex. Civ. App.—Eastland 1977, writ ref'd n.r.e.).

B. Findings of Fact with Respect to the Trustee's Authority to Represent the Trust and to Settle on Its Behalf

6. The Trustee has the power to prosecute and settle these claims under the Royalty Trust Indenture ("Trust Indenture"), the Trust Code, and the common law, and, together with the Plaintiffs, to bind the beneficiaries of the Trust to the settlement.

7. The Trustee has agreed to settle these claims on behalf of the Trust on the Terms set forth in the Settlement Agreement, and has agreed that the Settlement Agreement is fair and in the best interest of the Trust and its Unit Holders.

III. The Plaintiffs Have the Authority to Represent the Trust and to Settle on Its Behalf

A. Conclusions of Law with Respect to Plaintiffs' Authority to Represent the Trust and to Settle on Its Behalf

8. A beneficiary of a trust may be permitted to enforce a claim or cause of action belonging to the trust when the trustee cannot or will not enforce it. *Grinnell v. Munson*, 137 S.W.3d 706, 719 (Tex. App.—San Antonio 2004, no pet.) (citing *Interfirst Bank-Houston, N.A. v. Quintana Petroleum Corp.*, 699 S.W.2d 864, 874 (Tex. App.—Houston [1st Dist.] 1985, writ ref'd n.r.e.)).

B. Findings of Fact with Respect to Plaintiffs' Authority to Represent the Trust and to Settle on Its Behalf

9. The claims that were asserted or that could have been asserted by the Plaintiffs in this case are owned by the Trust and/or the Partnership.

10. Plaintiffs have alleged that the Trustee failed to pursue the Trust and/or the Partnership's claims against Pioneer and Woodside, and that it, in fact, is unable to pursue such claims due to a conflict of interest. Plaintiffs have also argued that they have authority under §§ 115.011 and 115.015 of the Trust Code to pursue and settle the claims in this case. Plaintiffs have argued that, as a result, Plaintiffs are entitled to prosecute and compromise the claims of the Trust and/or the Partnership. Furthermore, the Trustee has previously authorized MOSH Holding, L.P., to pursue claims on behalf of the Trust and its Unit Holders. The Court finds that Plaintiffs, as beneficiaries of the Trust, had the authority to prosecute and agree to a settlement of the claims in this action on behalf of the Trust and its Unit Holders and/or the Partnership.

11. The Court finds that the Plaintiffs did in fact prosecute and agree to the settlement of the claims in this action on behalf of the Trust and its Unit Holders and/or the Partnership, and

agrees that the Settlement Agreement is fair to and in the best interest of the Trust and its Unit Holders.

12. The Court finds that the Plaintiffs are adequate representatives of the Trust and its Unit Holders and/or the Partnership. Plaintiffs have fully and fairly represented the Trust and its Unit Holders and/or the Partnership. Plaintiffs have zealously pursued this Lawsuit at great expense for four years. MOSH Holdings is the largest Unit Holder in the Trust. As such, Plaintiffs' interests are similarly situated to those of the absent Unit Holders. Plaintiffs have also retained experienced and skilled counsel to represent them and the interests of the Trust and its Unit Holders and/or Partnership in this case, thereby further supporting the adequacy of the Plaintiffs' representation. Finally, the Court finds that the Plaintiffs and the Defendants negotiated the Settlement Agreement at arms' length and in good faith.

IV. This Court Has the Authority to Approve the Settlement Agreement

A. Conclusions of Law with Respect to the Court's Authority to Approve the Settlement Agreement

13. Plaintiffs have alleged that the Trustee has a conflict of interest in this case. Accordingly, the Parties seek the Court's approval of the Settlement Agreement. The Court has the power to approve a Trustee's settlement of claims. *See Cogdell*, 544 S.W.2d at 828, 829-30 (noting trustee sought court approval of settlement agreement that released claims against trustee, because of potential conflict of interest, and holding that approval of settlement was a question for the court, rather than jury); RESTATEMENT (SECOND) OF TRUSTS § 192, cmt. d ("Application to court. If the trustee is in doubt whether he should compromise or submit to arbitration a claim, he may ask the instruction of the court or he may agree thereto conditionally upon the subsequent approval of the court.").

V. The Unit Holders Were Afforded Proper Notice of and an Opportunity to Object to the Settlement Agreement

A. Findings of Fact with Respect to the Notice and Opportunity to Object to the Settlement Agreement Afforded to the Unit Holders

14. Full and proper notice of the nature and existence of this Lawsuit, the Settlement Agreement, and the Settlement Approval Hearing was given to the Unit Holders by mail on May 18, 2009, pursuant to the Trust Indenture and the Texas Trust Code. Moreover, the Trustee filed a Form 8K with the Securities and Exchange Commission ("SEC") and issued a press release on May 18, 2009, announcing the settlement and the scheduled approval hearing. These notices satisfied the requirements under the Trust Indenture and § 115.015 of the Texas Property Code. These notices also provided the Unit Holders the ability to obtain a copy of the Settlement Agreement, proposed Final Judgment, and proposed Findings of Fact and Conclusions of Law

with Respect to Settlement Agreement, either by calling a representative of the Trustee or by visiting www.businesswire.com/cnn/mesaoffshoresettlement.htm.

15. A number of Unit Holders appeared and made objections to the settlement, by objection and/or by intervention including, but not limited to, the 2009 Unitholder Group, Keith Wiegand, Robert Miles, Gordon Stamper, Michael Brown, and Benjamin J. Ginter. The Court has considered these objections and interventions in making its findings of fact and conclusions of law.

VI. The Settlement Agreement Is Fair to and in the Best Interests of the Trust and Its Unit Holders

A. Conclusions of Law with Respect to the Whether the Settlement Agreement Is Fair to and in the Best Interests of the Trust and Its Unit Holders

16. The factors to be considered in determining whether a settlement on behalf of a trust should be approved include the following:

(a) the probable validity of the claims;
(b) the apparent difficulties in enforcing the claims through the courts;
(c) the collectibility of any judgment recovered;
(d) the delay, expense, and trouble of litigation;
(e) the amount of the compromise as compared with the amount and collectibility of the judgment; and
(f) the views of the parties involved, pro and con.

Cogdell v. Fort Worth Nat'l Bank, 544 S.W.2d 825, 829 (Tex. Civ. App.—Eastland 1976, writ ref'd n.r.e.) (citing *In re Ortiz's Estate*, 26 Del. Ch. 240, 27 A.D.2d 368 (1942)).

B. Findings of Fact with Respect to the Court's Finding that the Settlement Agreement Is Fair to and in the Best Interest of the Trust and Its Unit Holders

17. The Court finds, based on the *Cogdell* factors, that the Settlement Agreement is fair to and in the best interest of the Trust and its Unit Holders. An analysis of each factor follows.

a. The probable validity of the claims. In addition to the evidence adduced, papers filed, and arguments made in connection with the Settlement Approval Hearing, the Court has reviewed the voluminous summary judgment briefing and other briefing filed in this action by all of the parties, including, without limitation, the briefs filed in connection with Plaintiffs' attempt to enjoin the sale of Trust assets and Pioneer's motions to exclude testimony offered by Plaintiffs' technical and non-technical experts. The Court finds that numerous significant legal and factual arguments were advanced by Defendants and Plaintiffs, and that the final determination and resolution of these issues would involve significant risk to all parties if the case went to trial. These disputed issues include, but are not limited to, the following:

* With respect to the Plaintiffs' wrongful farmout claim, Defendants argued that the Conveyance authorized Pioneer to pool or unitize the Subject Interests, *see* Conveyance at § 7.02; that the Farmout Agreement with Woodside was not an improper farmout under the parties' agreements; and that Plaintiffs and the Trust were not harmed by the Farmout, but rather were benefited by it.

* With respect to Plaintiffs' claim that Pioneer failed to drill or drilled in a grossly negligently manner, Pioneer argued that the agreements and documents accompanying the agreements between the parties did not impose any duty to drill and, in fact, stated that Pioneer had no duty to drill or develop the prospects. Furthermore, Pioneer argued that Pioneer did not owe Plaintiffs or the Trust a duty to prudently develop the Prospects, and that, in any event, Plaintiffs had failed to produce any evidence that Pioneer acted in a grossly negligent manner or otherwise failed to meet any applicable standard of care with respect to its drilling

decisions and operations. Pioneer also argued that Plaintiffs had failed to come forward with evidence that Pioneer conducted drilling operations in a negligent manner or of damages stemming from any alleged failure to drill or improper drilling. Finally, Pioneer argued that Pioneer did drill to the target depth, and that there are simply no oil and gas reserves to be tapped in the Prospects.

* With respect to Plaintiffs' breach of contract claim, Pioneer argued that Pioneer owed no contractual duty to Plaintiffs or the Trust under the Conveyance Agreement that could support a claim for breach of that agreement, because neither Plaintiffs nor the Trust were parties to that agreement.

* Defendants also argued that they were not liable based on the limitation of liability provisions in the Partnership Agreement and the Trust Indenture, which provided that Pioneer and the Trustee could "be personally or individually liable only for fraud or acts or omissions in bad faith or which constitute gross negligence . . . ." Trust Indenture § 6.01; First Amended and Restated Articles of General Partnership of Mesa Offshore Royalty Partnership ("Partnership Agreement") at § 5.09(a).

* Pioneer also argued that is was not liable, based on the business judgment rule provision in the Conveyance, which states that the Operator "will conduct and carry on the development, maintenance and operation of the Subject Interests with reasonable and prudent business judgment and in accordance with sound oil and gas field practices." *See* Conveyance at § 6.01.

* Pioneer argued that Plaintiffs have no basis for their claim that Pioneer owed a fiduciary duty to the Trust, and that there was no evidence that Pioneer had

breached any of the duties that it did owe: rather, Pioneer's actions were expressly authorized by both the Partnership Agreement and the Texas Revised Partnership Act.

* With respect to Plaintiffs' claim for civil conspiracy, Defendants argued that the Supreme Court has emphasized the requirement of a specific intent to injure the plaintiff, and that no such evidence exists in this case. Defendants also argued that none of them knowingly participated in another's breach of fiduciary duty, and that, in any event, no such breach of fiduciary duty occurred.

* With respect to Plaintiffs' claim for fraud, Defendants argued that there was no evidence of any material misrepresentations or omissions or that Plaintiffs and the Trust were harmed by any alleged misrepresentations. Pioneer also argued that it owed no duty to disclose.

* Pioneer argued that its conduct was permissible under § 11.02 of the Partnership Agreement, in which it "retain[ed] the right to engage in all business and activities of any kind whatsoever (irrespective of whether same may be in competition with the Partnership), and to acquire and own all assets, however acquired and wherever situated, and without in any manner being obligated to disclose or offer such business and activities or assets or compensation or profit to the other Partners or to the Partnership."

* The Trustee argued that there were numerous provisions of the Trust Indenture that limited or exculpated the Trustee's liability, including § 11.02, which permitted the Trustee to rely on experts, and that "the opinion of any such parties on any matter submitted to them by the Trustee shall be full and complete

authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of any such party."

* Defendants also challenged the ability of Plaintiffs' experts to offer competent expert testimony at the time of trial regarding the alleged hydrocarbon reserves located on the Subject Interests, as well as the damages associated with the alleged failure to recover these alleged hydrocarbon reserves.

* Defendants also generally challenged whether Plaintiffs have any competent evidence of any damages whatsoever.

* Defendants would have asserted at trial numerous affirmative defenses as well.

In sum, the Court finds that there are substantial legal and factual issues that make the likelihood of Plaintiffs ultimately obtaining a judgment uncertain, and that there is uncertainty about Plaintiffs' ability to prove liability and damages. By settling, Plaintiffs, the Trust, and its Unit Holders avoid the significant risks of losing their case on these or the other grounds asserted by Defendants.

b. The apparent difficulties in enforcing the claims through the courts. As set forth above, the Plaintiffs, the Trust, and its Unitholders in this action face risk to successfully pursuing their claims on the merits, which would have imposed difficulties to Plaintiffs' attempt to enforce these claims in this court.

c. The collectibility of any judgment recovered. There does not appear to be any impediment to collection of any judgment recovered in this case.

d. The delay, expense, and trouble of litigation. Continuing to litigate the claims in this case, rather than to settle them, would have resulted in significant delay, expense, and trouble. This is a complex case. The trial was estimated to last at least five weeks. It

would have involved thousands of exhibits; required the testimony of many witnesses, including costly experts; and required the time and expense not only of the parties' attorneys, but also of the parties and their representatives. Each of the parties to the settlement had indicated a willingness to take this case all the way to the highest court if they had lost, and the cost of briefing and arguing these appeals would have been significant.

ThoughPlaintiffs sought a continuance of the April 2009 trial date,the Court denied the motion without prejudice pending the mediation of the matter. Thus, the settling parties faced immediate and significant litigation expenses had they not reached this settlement. By settling, the parties avoided the expense of both such a significant trial as well as the appeals that would follow therefrom. Furthermore, by settling, Plaintiffs, the Trust, and its Unit Holders avoid the risk of losing at trial, which is of significant value.

Had the Court ultimately continued the cause, delay of the case presents another problem for the Trust and its Unit Holders: the Trust is out of money, yet continues to incur expenses. Continued litigation of the claims of this case will only result in increased expenses that will ultimately be deducted from whatever recovery the Trust obtains (if any). Furthermore, even if Plaintiffs ultimately obtained a judgment, the Trust might still have to pay substantial reimbursable expenses owed to the Operator and General Partner before the Unit Holders could receive any of the proceeds. Similarly, Pioneer and the Trustee would both be entitled to recoup substantial legal fees incurred in defending this suit if they successfully prevailed against such claims. Moreover, the Trust's $5 million credit facility loan from JPMorgan would have to be repaid. These recoupments would occur before any distribution would be made. *See* Partnership

Agreement § 5.10; Conveyance at 20. As such, any suggestion that the settlement in unfair because reached during an economic crisis is obliterated by (a) the unwillingness of the Court to wait for economic recovery to bring the case to resolution and (b) the crippling Trust expenses to the Unit Holders themselves by waiting.

e. The amount of the compromise as compared with the amount and collectibility of the judgment. The value of the settlement is substantial. The settlement consideration is at least $19 million in cash, plus the value of Pioneer's 50% interest in the Brazos Block A-39, the proceeds from the sale of which Pioneer has agreed to contribute to the Trust.

In addition, JPMorgan has agreed to forgive the repayment of the existing $5 million loan to the Trust. Finally, as part of the settlement, Pioneer has agreed not to pursue an indemnity claim against the Trust or Partnership that have would exceeded $5 million.

Because this case has not been tried, there is no "amount of the judgment" to compare to the amount of the settlement. However, Defendants argued persuasively that Plaintiffs were not harmed (and indeed, were benefited) by any of Defendants' actions, and that, in fact, Plaintiffs have never even quantified their damages. Indeed, at the time of the settlement, Plaintiffs had yet to delineate, through expert testimony or otherwise, a specific, competent damages figure. The settlement consideration is generous in light of the difficulties in proof of damages faced by Plaintiffs, as well as in light of the other impediments Plaintiffs faced on the merits of their claims.

f. Objections

2009 Unit Holders Group ("the Group) object to the proposed settlement in part. *See* Report of Agreement Regarding Attorneys' Fee and Expense Claim and Supplementary

Objections to Asset Liquidation Plan in Proposed Settlement. Originally, the Group, which is comprised of a sizeable number of active Trust unitholders, objected to several aspects of the Settlement Agreement; namely, the adequacy of the original notice provided the unit holders, the scope of the proposed releases, the amount of attorneys' fees, and the manner of liquidating the remaining oil and gas interests. The Group and the Settling Parties engaged in post-objection negotiation in an effort to satisfy the Group that the Settlement was in the unitholders best interests.

The sole issue raised in objection to the settlement by the Group, after such negotiation and a resultant modification of the Settlement Agreement outlined below, concerns the requirement that the oil and gas interests beneficially owned by the Trust be liquidated through a public auction process, without first affording the unit holders the opportunity to vote on whether they would prefer an alternative, commercially reasonable, method of disposing of those interests. Having considered this objection, in context with the totality of the settlement, the risks of losing the value brought by the settlement, and the lack of tangible, lawful, and workable methodology for affording the desired vote, the Court overrules the objection.

Gordon A. Stamper, also an Intervenor, objected to the proposed settlement. The basis raised appears to be directed to (a) the merits of the claims against the Defendants; (b) the authority of Plaintiffs to settle those claims; and (c) the concern that he has claims that are separate and distinct from those settled. The objections are overruled.

Other objections. Though the above objectors appeared at the hearing, there were others who placed objections on file with the Court. By far, the overwhelming tenor of these objections pertained to the loss of the Trust. However, the plain language of the Trust Agreement, not the claims pending in this litigation, is the driving force behind the liquidation of the Trust. While

the Settling Parties have vigorously debated throughout this litigation whether the Trust had already terminated by its terms, it is **undisputed** that the terms of the Trust envisioned a termination of the Trust under circumstances which have now occurred. This Court does not have the power to rewrite the terms of the Trust to avoid such termination; nor would it be in the Unitholders best interest, as the economic consequences of forestalling the termination would fall on the unitholders ultimately. These objections are overruled.

In conclusion, with the exception of one factor – the collectibility of the judgment – all of the *Cogdell* factors compel a finding that the Settlement Agreement is fair to and in the best interests of the Trust and its Unit Holders and should be approved subject to the following modifications agreed to by the Settling Parties and the 2009 Unit Holder Group:

> Settlement Agreement Section (B)(8) "Release of Plaintiffs" is modified so as to include the following language after the first reference to Plaintiffs in line 5: "in all of their capacities including on behalf of the Trust and/or the Partnership and/or the Unit Holders as authorized by the Trust Fund Doctrine or otherwise";
>
> Settlement Agreement Section (B)(11) "Release of the Trust and Partnership" is modified so as to include the following language after the third reference to Plaintiffs in line 6: "in all of their capacities including on behalf of the Trust and/or the Partnership and/or the Unit Holders as authorized by the Trust Fund Doctrine or otherwise";
>
> Settlement Agreement Section (B)(11) "Release by the Trust and Partnership" is modified so as to include the following language after the first reference to Defendants in line 6: "in all of their capacities."
>
> Settlement Agreement Section (D)(1)(c) "Minimum Bid/Right of First Refusal Agreements" is deleted in its entirety;
>
> Settlement Agreement Section (D)(1)(d) "Completion of Sale" is modified so as to delete the first (3) sentences and the first "conditional" ("if") clause and the disjunctive word "or" from the fourth sentence of said section.

The fact that a judgment – if obtained despite the serious impediments on the merits of the claims – may be collectible is far outweighed by the many other factors establishing that the Settlement Agreement is more than fair and in the best interest of the Trust and its Unit Holders.

VII. Other Potentially Applicable Fairness Considerations Support Approval

A. Conclusions of Law with Respect to Other Potentially Applicable Fairness Considerations

18. Although the Court concludes that *Cogdell* articulates the factors that must be considered when determining whether a settlement agreement is fair and in the best interests of a Trust, the Court out of an abundance of caution also addresses the factors set forth in determining whether a transaction between a fiduciary such as the Trustee and its beneficiary is fair:

(a) whether there was full disclosure regarding the transaction;
(b) whether the consideration (if any) was adequate;
(c) whether the beneficiary had the benefit of independent advice;
(d) whether the fiduciary benefited at the expense of the beneficiary; and
(e) whether the fiduciary significantly benefited from the transaction as viewed in light of circumstances existing at the time of the transaction.

Lee v. Hasson, No. 14-05-00004-CV, ___ S.W.3d ___, 2007 WL 236899, at *15 (Tex. App.—Houston [14th Dist.] Jan. 30, 2007, pet denied).

B. Findings of Fact with Respect to the Court's Finding that Other Potentially Applicable Fairness Factors Support Approval of the Settlement Agreement

17. As with the *Cogdell* factors, the Court finds that the *Lee* factors also compel a finding that the Settlement Agreement is eminently fair, as set forth below.

(a) Whether there was full disclosure regarding the transaction. The Court finds that there was full disclosure regarding the Settlement Agreement. As set forth above, the Unit Holders were given ample notice of all details of the Settlement Agreement. The Settlement Agreement and related documents were posted to the Trust's website www.businesswire.com/cnn/mesaoffshoresettlement.htm, and notice of the settlement terms and the posting was provided to the Unit Holders via U.S. mail, SEC filing, and

press release. In addition, Unit Holders were provided a phone number to call and request copies of the Settlement Documents.

(b) Whether the consideration (if any) was adequate. As discussed with respect to the *Cogdell* factors, above, the consideration to be paid in settlement is substantial, and more than adequate to compensate for the claims released.

(c) Whether the beneficiary had the benefit of independent advice. The beneficiaries of the Trustee's fiduciary duty – here, the Trust and its Unit Holders – had the benefit of independent advice from the skilled and experienced counsel for Plaintiffs MOSH Holdings, L.P., and Dagger-Spine Hedgehog Corporation, and were not required to rely on the advice of the Trustee with respect to the Settlement Agreement. Plaintiffs and their counsel have agreed that the settlement is fair and in the best interests of the Trust and its Unit Holders.

(d) Whether the fiduciary benefited at the expense of the beneficiary. There is no evidence that the Trustee (or, for that matter, any of the Defendants) benefited at the expense of the Trust in entering this Settlement Agreement; to the contrary, the Settlement Agreement requires the Defendants to pay substantial consideration to the Trust, in exchange for a release of claims that would have faced substantial impediments at trial.

(e) Whether the fiduciary significantly benefited from the transaction as viewed in light of circumstances existing at the time of the transaction. Although the Trustee and the Defendants benefited from the transaction, in that they received releases and did not have to go to trial, the benefit was not significant in light of the circumstances of the

transaction – specifically, in light of the substantial consideration the Defendants paid in exchange for the release of claims that faced significant impediments to success.

In sum, even when considered under the *Lee* factors, the Settlement Agreement is entirely fair to and in the best interest of the Trust and its Unit Holders.

VIII. The Attorneys' Fees Sought for Plaintiffs' Counsel Are Necessary, Reasonable, and Fair

A. Findings of Fact with Respect to the Court's Finding that the Attorneys' Fees Sought for Plaintiffs' Counsel and Necessary, Reasonable, and Fair

18. Plaintiffs MOSH and Dagger-Spine together with the 2009 Unitholder Group have pursued claims asserted in this lawsuit for the benefit of the Trust and the Unit Holders. As a result the attorneys for these forementioned parties are entitled to reimbursement of fees and expenses which they have incurred under the Trust Fund doctrine.

19. The nature of this case has required extensive funding of expenses by legal counsel. This case has been extraordinarily expert intensive, and extensive funds have been paid or are owed to expert witnesses. There have been numerous depositions in the case. There have been many hearings in the case, including those requiring presentation of evidence. In the course of this case, there have been at least three temporary injunction hearings, two settlement conference hearings, and appeals, including to the Supreme Court of Texas.

20. In addition to amounts spent on expenses, counsel have expended an enormous amount of time in the prosecution of this case. The time actually expended in the pursuit of the case and the value of this time are in the thousands if not 10,000 hour range with reasonably associated commercial fee rates.

The foregoing amounts represent the Lodestar amounts for the attorneys because the rates and time are reasonable.

21. This case has been one in which the financial burden and the time burden has been extensive and the means of meeting these demands has had to be readjusted repeatedly over the course of this case. For example, straight hourly rates have given way to blended rates and partial contingences. Other counsel have had contingent fee agreements which were then adjusted to accommodate other counsel. All of these changes have been necessitated by the enormous expense and difficulty of pursuing this case. The dedication of counsel to the case has been reflected in their willingness to make adjustments in their compensation arrangement and as well as to continue with the case in the face of difficulty being paid or compensated at times.

22. Accordingly, the parties on the Plaintiffs' side of the case have agreed that the following represent the fees and expenses earned by respective parties: $7,750,000. The parties on the Plaintiffs' side of the case have further agreed that $150,000 of this amount shall be paid to the 2009 Unitholder Group as reimbursement of its legal fees and expenses.

23. The Court has carefully reviewed the recommendations of the parties and heard testimony of counsel and reviewed the underlying data and finds that the fees and expenses are reasonable and should be born by the settlement proceeds which they have generated for the benefit of the Trust and the Unit Holders. Accordingly, it is ordered that these amounts be paid to the respective parties and their attorneys out of the settlement proceeds as set forth above.

24. In reviewing the foregoing fee application, the Court has considered the factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974). These factors are analyzed as follows:

(1) Time and labor. The paragraphs above document the time and labor involved. This case has been lengthy and the Court has been personally involved in many of the hearings and motions. The Court has reviewed numerous motions and after review of the record of

this case, the Court is convinced that the time and labor was actually spent and is reasonable for the case.

(2) Novelty and difficulty of questions. This case involves truly novel and difficult questions. There are many questions raised in the settlement hearings; discovery hearings; and summary judgment proceedings which can only be described as novel and difficult. Further, the defendants sought appellate relief from this Court's decisions on threshold, complex questions to both the Court of Appeals and Texas Supreme Court.

(3) The skill requisite to perform the legal services properly. This is a case in which some of the most esteemed counsel in Harris County have been present both for the Plaintiff and for the defense of the action. The complexity of the case required experienced counsel, and such experience is present in this case.

(4) Preclusion of other employment by the attorneys due to the acceptance of the case. Given the amount of time involved, it is clear that this case required a substantial commitment of time and involvement of this case. The parties were precluded to some extent from being involved with other cases. The senior counsel were often present.

(5) Customary fee. As indicated above, I have reviewed the fees and the fees in question are well within customary fees in the Harris County area.

(6) Whether the fees are fixed or contingent. As indicated above, this case has represented every combination of fee schedule possible including straight hourly rates, blended rates, partial contingent fees, complete contingent fees. All of these have been necessary at various times in the case to move the case forward and to obtain both time, labor and the financing necessary to pursue the case.

(7) Time limitations imposed by the client or the circumstances. In this case there have been several trial settings. Frequently the lawyers have been up against severe deadlines including filing of expert reports, challenging expert reports, motions and other matters. As a result because of the time deadlines, at times work was required to be done on a very intense schedule.

(8) The amount involved and the results obtained. This case originally was a claim in excess of $1 billion. As time has progressed, the Midway Well on Brazos Block A-39 has proven to be less productive than originally believed. Nonetheless, the Plaintiffs have vigorously pursued and attempted to prove the continued viability of Block A-39 as a drilling prospect. As a result, the case has involved very large potential amounts of money throughout. Notwithstanding the issues in the case as indicated above, Plaintiffs have obtained value and benefit to the Trust in excess of $30 million.

(9) Experience reputation and ability of the attorneys in this case. Counsel are all experienced attorneys with the reputations for trying cases.

(10) Political undesirability of the case. This case does not involve "political" undesirability, but the Court notes that some of the Defendants, in particular JPMorgan Chase, are prominent entities. At least one expert in the case declined to work for Plaintiffs and indeed went to work for JPMorgan Chase because of concerns over who was the Defendant in the action.

(11) Nature and length of the professional relationship with the client. For Boyer & Ketchand, the only relationship has been this case. Mr. Spagnoletti and Kim have represented principals of MOSH in other litigation. Mr. Buzbee has only represented the parties in this particular action.

(12) Awards in similar cases. This is not a case where all benefits flow to the counsel. Very substantial cash benefits are flowing to the Unit Holders which would not be obtainable otherwise. The Trust itself was insolvent and yet the Plaintiffs have obtained a positive cash value for the Trust. When the total value of the case to the Trust is viewed in terms of the contingency, the contingency is only about 20%. From the Court's experience, this is a low contingency, especially in cases in which counsel are required to expend large amounts of money for numerous experts. Suits over royalty trusts are rare, so the nature of this outcome needs to be evaluated by litigation experience in general.

25. Accordingly the Court approves as necessary, reasonable, and fair attorneys fees and expenses in the amount of $7,750,000 to be paid as set forth in these Findings of Fact and Conclusions of Law and in the Final Agreed Judgment.

IX. The Intervenors' Claims

A. Conclusions of Law with Respect to Interventions

26. An intervention may be stricken if (1) it is not "almost essential to effectively protect the intervenor's interest," or (2) if the intervention will "complicate the case by an excessive multiplication of issues." *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 653, 657 (Tex. 1990).

B. Findings of Fact with Respect to Interventions

27. Gordon Stamper, Robert Miles, Keith Wiegand, Michael Brown, and Benjamin J. Ginter ("the Intervenors") have intervened in this case. All claims well plead by those Petitions in Intervention appear to be addressed and resolved by this Settlement Agreement.

28. Motions to strike those interventions are on file with this Court. However, Intervenors do not appear to have been provided notice that, in addition to approval of the

settlement, the Court would consider such motions. Thus, the Court declines to resolve those motions absent (a) notice and an opportunity for Intervenors to be heard – which may be by oral hearing or submission or (b) authority for the Court to adjudicate such Interventions by approval of the Settlement.

X. Conclusion

In conclusion, the Settlement Agreement is APPROVED as fair to and in the best interests of the Trust and its Unit Holders.

All objections to the Settlement Agreement are hereby DENIED.

Signed on August 6, 2009. 8.6.09

The Honorable Sharon McCally

I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this November 2, 2011

Certified Document Number: 43325716

Chris Daniel

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

CAUSE NO. 2006-01984

MOSH HOLDING, L.P., Plaintiff,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
PIONEER NATURAL RESOURCES COMPANY, *et al.* Defendants.	§	334TH JUDICIAL DISTRICT

ORDER

Pending before the Court is the Motion to Approve Settlement Agreement and Petition for Instructions filed by JPMorgan Chase Bank ("JPMorgan").

This lawsuit arises from the operation of the Mesa Trust that was created in 1982 to (a) hold an interest in the Mesa Offshore Royalty Partnership ("the Mesa Partnership"); (b) discharge liabilities incurred in the operation of the Mesa Trust; and (c) distribute the remaining amounts to the beneficiaries of the Mesa Trust. Defendant JPMorgan is currently the trustee of the Mesa Trust.[1] Defendant Pioneer National Resources USA, Inc.("Pioneer") is the managing general partner of the Mesa Partnership.

In 2003, Pioneer entered into a farmout agreement with Defendant Woodside Energy (USA) Inc. ("Woodside") which is largely the basis of this suit. In 2005, MOSH Holding, L.P. ("MOSH"), a beneficiary of the Mesa Trust, brought this lawsuit alleging direct and derivative claims against Pioneer and Woodside. MOSH also sought an injunction to prohibit termination of the Mesa

[1] JPMorgan advised MOSH of its intent to resign as trustee in November, 2005. After MOSH sought appointment of a temporary trustee, JPMorgan withdrew its resignation.

Trust. JPMorgan declined to pursue the claims against Pioneer and Woodside on behalf of the trust, but authorized MOSH to do so at their own expense. MOSH then amended its suit to include claims against JPMorgan.

On January 26, 2007, JPMorgan executed the settlement agreement at issue (hereinafter "Mutual Release and Settlement Agreement") conditionally settling all of Plaintiffs' claims against Pioneer and Woodside. By the instant motion, JP Morgan asks this Court to approve the Mutual Release and Settlement Agreement and dismiss with prejudice the claims asserted in this lawsuit against Pioneer and Woodside. *See* Proposed Order Approving Mutual Release and Settlement Agreement and Dismissal with Prejudice, filed June 4, 2007, p. 1. Neither the motion nor the proposed order approving settlement purport to settle claims raised by the Plaintiffs against JPMorgan itself, though the settlement certainly compromises claims in which JPMorgan is alleged to be a joint-tortfeasor (i.e. claim against Pioneer for aiding and abetting *JPMorgan's breach of fiduciary duty*). Further, the majority of the provisions in the Mutual Release and Settlement Agreement pertain to the dissolution of the trust and sale of trust assets, though that relief is sought primarily against JPMorgan. Thus, it is clear that the settlement will impact the remaining claims against JPMorgan.

The Mutual Release and Settlement Agreement, as amended post-hearing, is an agreement between "the Parties" who are Pioneer and the Mesa Trust, through the Trustee. *See* Mutual Release and Settlement Agreement, p. 1.

Woodside is not a party to the agreement though, by promises between the Parties, Woodside receives a release of all claims.

Section 192 of the Restatement (Second) of Trusts permits a trustee to "compromise, submit to arbitration or abandon claims affecting the trust property, provided that in so doing he exercises reasonable prudence." Comment *d* to that section provides that "[i]f the trustee is in doubt whether he should compromise or submit to arbitration a claim, he may ask the instruction of the court or he may agree thereto conditionally upon the subsequent approval of the court." By its motion, JPMorgan invokes Comment *d* and asks this Court, *in equity*, to approve the settlement.

The Court determines that the Motion should be DENIED. Having viewed the Mutual Release and Settlement Agreement in the context of (a) the identity; interests; and alignment of the parties negotiating; (b) the nature of the claims pending; (c) the breadth of the claims compromised and released; (d) the consideration (or lack of consideration) for such releases; (e) the validity of Plaintiff's claims and the potential recovery therefor; and (f) the Trust's potential exposure should the claims proceed, the Court concludes that it cannot approve the settlement.

SIGNED this 19th day of June, 2007, at Houston, Harris County, Texas.

PRESIDING JUDGE