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

JOHN K. MEYER, ET AL
V.

IN THE DISTRICT COURT

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

BEXAR COUNTY, TEXAS
408TH JUDICIAL DISTRICT

OPENING STATEMENTS

On the 12th day of November, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE LARRY NOLL, Judge Presiding, held in the 408th District Court, San Antonio, Bexar County, Texas.

Proceedings reported by machine shorthand.

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1 **PLAINTIFFS' OPENING STATEMENTS**

2 MR. FLEGLE: May it please the court.

3 Ladies and gentlemen, good morning.

4 JURORS: Good morning.

5 MR. FLEGLE: As I mentioned to you in the
6 beginning of the voir dire, this is a big case. We are
7 talking hundreds of millions of dollars in value and you
8 will see what I mean by that as we go along, but it's
9 also a simple case, and I told you that in voir dire,
10 simple in the sense that we believe the evidence will
11 show you that the bank ripped us off. The bank entered
12 sweetheart deals with its commercial clients for our
13 mineral rights and the bank tried to cover it up, and I
14 believe those trial themes so seriously that I have
15 written them down in my trial notebook that I start every
16 trial with, and I will share these things with you at
17 closing and we will see if the evidence proves what I say
18 this case is about.

19 Let me digress just a little bit so you kind
20 of know what we are talking about. We are the South
21 Texas Syndicate Trust. About 132,000 acres. We are in
22 La Salle and McMullen counties. Those counties are south
23 of San Antonio, southwest. The map that I have put on
24 the board here -- on this monitor shows the Eagle Ford
25 play -- the Eagle Ford shale play in the green and it

1 shows how large it is; 260 miles by 60 miles wide north
2 to south and how the two counties that we are dealing
3 with with our trust are down southwest of San Antonio.

4 Let me tell you a little bit about our
5 history. I won't dwell on it. As I said in voir dire,
6 this is an old trust. The ranch was purchased by six
7 families in 1906 and that was the dirt and the minerals.
8 The trust was established in 1932. There were 30,000
9 shares that were issued and we had an individual who was
10 our trustee. He was a trusted person that the family
11 said this is the person who will take care of our trust.

12 In 1950, the families decided to sell the
13 land but made the decision to keep the mineral rights.
14 They also kept the water rights, and we are going to find
15 out about those in this case as well, and you are going
16 to find out that even those rights are worth 14 million
17 dollars or more because they were not managed prudently
18 by the bank for our trust. The trust was formed as it
19 currently exists by final decree by a court here in Bexar
20 County in 1951.

21 So here's where we were in 1951 and where we
22 are today. In 1951, we chose the Alamo National Bank.
23 Our beneficiaries chose them. The Alamo National Bank
24 said they would be willing to be our trustee and we were
25 fine for over 50 years.

1 In 2001, we ended up with the defendant in
2 this case, JPMorgan Chase, and we didn't have a vote. We
3 just got them. The way we got them is one of those
4 things that you probably watched in the banking industry.
5 We had the Alamo National Bank with us for over 40 years,
6 and then here comes Ameritrust Texas in 1990, then Texas
7 Commerce Bank in 1993, Chase Bank of Texas in 1998, the
8 Chase Manhattan Bank in 2000, and JPMorgan Chase Bank in
9 2001 and our beneficiaries didn't get a vote. We just
10 ended up with them. They were still our fiduciary, but
11 we ended up with them and we didn't choose them.

12 I told you there was a final decree. Here's
13 what the final decree looks like. It was entered here as
14 I said in Bexar County on February the 12th, 1951. It
15 sets a standard for what the trustee is supposed to do,
16 and I will only read a few of the words. These words are
17 important. The trustee may in the exercise of prudence,
18 and remember we talked about prudence a little bit in
19 voir dire, and its good judgment act for the purpose of
20 its fiduciary duties.

21 The bank has told us it understands what
22 fiduciary duties are in one of our meetings in October
23 2010 a couple of years after most of the stuff we are
24 complaining about had already occurred and our
25 beneficiaries didn't quite know how ugly the

1 circumstances were at the time. The bank said we are
2 your fiduciary. We owe you a duty and it's the duty of
3 loyalty and the duty of care. Actually more than one
4 duty. As the bank admitted, the duty of loyalty means
5 the trustee must act solely -- solely in the best
6 interest of the trust. Solely. And remember we had the
7 analogy in voir dire of you having your own checking
8 account. You can decide who to send the check to on your
9 checking account and who to benefit, whether to benefit
10 your neighbor or your brother or your uncle or your
11 father or yourself.

12 Well, the trustee can't do that because the
13 trustee can write checks on your checking account, and
14 the only thing the trustee can do is write checks that
15 benefit you solely in your benefit. It also has a duty
16 of care. The trustee must act with a high degree of
17 competence and thoroughness. JPMorgan understood this.

18 But they also understood that there's a law
19 in Texas called the Uniform Prudent Investor Act. It was
20 passed in 2003 by our legislature and it was effective in
21 2004, and you are going to hear the first witness in the
22 box here, Mr. Aymes, who was kind of the fiduciary
23 trustee guy above everything that was going on. Uniform
24 Prudent Investor Act applies.

25 If you notice, the standard of care in that

1 act in satisfying this standard, the trustee shall
2 exercise reasonable care, skill, and caution. And if you
3 remember my first slide in voir dire, we are complaining
4 that this trustee did not exercise reasonable care,
5 skill, and caution.

6 Now, it also requires the trustee to make a
7 reasonable effort to verify facts relevant. Okay.
8 That's going to become important in just a few minutes
9 because we are going to be accused of hindsight. You
10 heard it all the way through voir dire the other day for
11 the days that we were together. We are not in hindsight
12 mode here. We are in what was known or could have been
13 known at the time decisions were made, and I believe we
14 will show you that the trustee failed this duty to make a
15 reasonable effort to verify. The trustee also by statute
16 has a duty to use special skills or expertise.

17 So let's look at what JPMorgan was supposed
18 to be minding while it was there at the chicken coop. We
19 have got 132,000 acres of mineral rights. We have got
20 100 percent. That means this is not a tagalong deal
21 where somebody has got 40 percent or 80 percent and we
22 have only got two percent. We have 100. We run the
23 show. We are the lead dog in terms of our rights. We
24 have over 123 oil and gas fields. That's in addition to
25 the Eagle Ford. Oh, by the way, there's a whole

1 chocolate cake out there of mineral rights from the top
2 of the surface down all of which were given away we claim
3 imprudently in 2008 and 2009.

4 We also have water rights for mineral
5 management. We have got even what the mineral manager
6 who was assigned to our trust calls a most remarkable
7 asset. You are going to hear her say that this was the
8 most remarkable asset she had seen in 35 years of her
9 career.

10 Well, what did our trustee, JPMorgan, give
11 us to run and manage 132,000 acres of mineral rights.
12 You realize that's half the size the city of San Antonio,
13 almost the size of Chicago, and four times the size of
14 San Francisco. Here's what we got. One senior mineral
15 manager. You are going to hear from her. Her name is
16 Pattie Ormond, O-r-m-o-n-d. She was responsible for 139
17 other trusts on top of ours. You figure out a work
18 month. How many times a month can she look at 139 much
19 less ours, and she constantly complained that she was
20 swamped and she didn't get help. As a matter of fact
21 just to give you some context of her complaints, she was
22 hopelessly behind, Exhibit 76. She was swamped, Exhibit
23 81. Swamped, Exhibit 86. Perfect storm, extremely heavy
24 workload, Exhibit 117. All of our offices are
25 understaffed. Got swamped, Exhibit 174. Under water,

1 Exhibit 224. And swamped, Exhibit 259. And that's not
2 the end of it. Swamped, Exhibit 344. We are so
3 overloaded, Exhibit 344. And we are under water, Exhibit
4 371. You know what. You are going to hear the word
5 "Petrohawk" in just a minute. She even told the people
6 she was negotiating with, our mineral rights, that she
7 didn't have the hands and the staff to cover what needed
8 to be covered.

9 Now, we are going to be talking about 2008
10 here in just a minute as far as Petrohawk is concerned
11 and some activity in 2009 that deal with some leases with
12 Hunt Oil, but I want to put in context what the
13 circumstances were of our trust in 2008.

14 We weren't just bare with nothing going on.
15 Our trust had over 56,000 acres or 43 percent of it
16 leased and optioned in terms of the mineral rights. So
17 we had activity going on, and you are going to hear that
18 we had enough income coming in to pay the expenses and to
19 pay for the experts that JPMorgan didn't hire to get done
20 what needed to be done.

21 You are going to hear that our mineral
22 rights were before 2008 marketed at a place called NAPE,
23 the National Association of Petroleum Engineers. That's
24 a big deal and it's where a couple of deals were found.
25 In fact, that's where Petrohawk made contact with

1 Ms. Ormond and you will see what happens in 2008.

2 You will see that there was seismic being
3 shot and in progress, and you are going to hear from the
4 geologist and the people with special knowledge that that
5 was something important for a mineral manager with
6 132,000 acres to have because it gives you an idea of
7 what's under the surface and what our mineral rights
8 might be worth, and we had a lease size limit which meant
9 no big leases. Make them 2500 acres. You know, the
10 numbers in this case are so big that 2500 acres is going
11 to sound small by the end of this case. Go think about
12 the family farm and 2500 acres. That is a big lease, and
13 you are going to hear testimony from those with special
14 knowledge up here that it only takes 40 acres to even
15 drill a horizontal lease.

16 So here's what our property looked like in
17 terms of the leases as of 2008. So far from being
18 inactive, far from being not producing income, we had
19 rights that had been leased out and were there. Here's
20 what we claim now. Four things cover the case. We claim
21 there were fiduciary duty breaches with Petrohawk leases,
22 number one. There's six of them. 2008. 80,000 acres.
23 We say there's fiduciary duty breaches with Hunt Oil/
24 Broad Oak leases. There are four of them. 10,000 acres.
25 2009 is when we start complaining about that and there's

1 problems in 2010 and 2012. Water rights for all the
2 leases, and self-dealing which I will deal with at the
3 end meaning we claim that JPMorgan put its interest and
4 the interest of its commercial customers ahead of those
5 it owed a fiduciary duty.

6 So let's look at each of these four. The
7 first one is the Petrohawk story. As I told you, it's
8 between May and December 2008 when the activity occurred.
9 We have got 80,000 acres that are involved and we are
10 dealing with a JPMorgan commercial client. Petrohawk was
11 a JPMorgan commercial client. It was not just a
12 commercial client. Petrohawk was important in what's
13 called the shale industry now, the unconventional
14 industry of mineral production and exploration.

15 JPMorgan had an analyst up in New York that
16 followed Petrohawk. As a matter of fact, in March of
17 2008, and this is going to be important as this case
18 develops because March is about the first time that
19 Ms. Ormond and Petrohawk make contact, JPMorgan is
20 telling the public about Petrohawk. This is an analyst
21 report in March -- on March 13, 2008; "as we predicted
22 last week." So JPMorgan had already predicted to the
23 public. Petrohawk unveiled the Haynesville shale play at
24 its analyst conference.

25 Let me stop just a minute. There are

1 several shale plays that have developed in the United
2 States and they are all important, and the demarcation
3 line is about 2002ish when they figured out how to
4 explore through the shale plays with what is called
5 hydraulic fracturing. They have gotten real good at it.

6 Well, Petrohawk was a shale player and they
7 had told the public that all they were going to do was
8 shale plays. In this report, JPMorgan told the public
9 that what Petrohawk said this play -- this Haynesville
10 play was going to be were conservative and the economics
11 could rival the Barnett which is another shale play up
12 around Fort Worth and Dallas and the acreage could be
13 worth over \$40,000 an acre. All right. This is
14 information known in 2008.

15 Just so we know what we are talking about as
16 you can see on the screen, conventional production, you
17 have got to be able to put the straw right in the cup in
18 order to get the minerals out of the ground. That's the
19 way it works. In unconventional production which is
20 shale plays, you use horizontal drilling after you have
21 drilled the vertical and you go out into the shale which
22 as I showed you in the other slide can be as wide as 60
23 miles north-south and 260 miles long east-west. So it is
24 a totally different animal. When somebody knows that
25 somebody is in the neighborhood in the shale zone with a

1 horizontal permit, they know there is a shale play that
2 probably is developing.

3 Here's a map of the North American shale
4 plays that were prior to 2008. The Barnett shale was in
5 2002. You are going to hear that there were some
6 JPMorgan advisers that knew about the Barnett shale and
7 were active in it. The Bakken shale was in 2004. The
8 Fayetteville shale was in 2004. The Marcellus shale was
9 in 2007. These plays are important because -- and then
10 we have the Haynesville shale which I just told you about
11 that was in 2007 with the discovery wells talked about in
12 2008.

13 Why is it important to know about these
14 shale plays. Well, since 2004, here's what happens to
15 the value of the mineral rights. Right down here is when
16 that first discovery well is announced and the shale --
17 the bonus rights -- bonus prices for mineral rights and
18 leases go just like a Nike swoosh until all the mineral
19 acres have been leased. And you know what. The people
20 who knew that there were shale plays back in 2008
21 including JPMorgan knew that's the way they went.

22 Now, in addition to that knowledge in 2008,
23 as I said, Petrohawk was a JPMorgan commercial client.
24 JPMorgan was a participant in a 1.1 billion dollar line
25 of credit. You are going to hear that that line of

1 credit was reupped during 2008 to a billion, five, and
2 JPMorgan was lead underwriter for Petrohawk on hundreds
3 of millions of dollars in equity debt offerings.

4 So that kind of lays the stage for this
5 Petrohawk outfit that comes in to see Ms. Ormond and says
6 we are interested. Here's what she writes to her
7 geologist. You are going to hear from him by video,
8 Mr. Bob Buehler, in March of 2008. Look, this is a week
9 after that analyst report was sent out to the public.
10 Petrohawk comes in and here's what she writes Mr. Buehler
11 this was such an important meeting. They seem serious
12 and they tell me they have 900 million dollars to spend
13 on acquisition of drilling prospects.

14 In the context of our experts, you will hear
15 that this sets off a series of red flags that something
16 is up. And if you can't figure it out right now, you
17 need to use caution. Remember, caution is one of those
18 elements of ordinary care and the duty of care that they
19 had for us, but you are going to see we believe in the
20 evidence that caution was thrown to the wind for reasons
21 that you are going to have to figure out. We have got
22 some evidence of some things. There will be
23 circumstantial evidence of other things, but at any rate
24 after this e-mail and this amount of money in play,
25 here's what happens in May of 2008.

1 Ms. Ormond enters a letter of intent, and
2 the letter of intent is a commitment to recommend that
3 South Texas Syndicate execute two oil and gas leases in
4 favor of Petrohawk. Let me stop here for a second. You
5 are going to hear this testimony, I believe, that what
6 Ms. Ormond says by this letter is that Ms. Ormond
7 recommends to Ms. Ormond to enter these leases and
8 Ms. Ormond signs the leases. And, in fact, that's what
9 happened, but I digress.

10 Even Ms. Ormond admitted at the time that
11 what she was doing with Petrohawk was contrary to what
12 her own policies were. She wrote one of her
13 colleagues--his name is Greg Crow, you will hear about
14 him during the case--in May of 2008 before the first
15 leases. I have added some provisions to the lease form.
16 Quote, I violated my rule against big leases. Watch how
17 big she violated it. Remember I talked about 2500 acres.

18 The first two leases that went out in May --
19 on May 27, 2008 had more than 24,000 acres in them. And
20 you know what. This is something you need to know that
21 we will talk about a little bit later. The lease memo in
22 those leases was not filed at the time. That's an
23 important fact to know because the public didn't know
24 that Petrohawk was on our property. JPMorgan did.

25 We don't complain about the bonus prices for

1 these May 2008 leases. We are going to spot them 24,000
2 acres. All right. We are going to be accused of being
3 greedy. We are going to be accused of all sorts of
4 things, but let me tell you. We are spotting on these
5 24,000 acres. What we complain about on these leases is
6 the terms. The leases had a three-year primary term, but
7 they didn't have a 2500 acre per lease maximum or lease
8 terms requiring three wells per year per 2500 acres, and
9 they did not have a 90-day continuous drilling clause and
10 these were not in the Petrohawk leases, the three of
11 them.

12 What does that mean. What that means is
13 that Petrohawk, the commercial client of JPMorgan, can
14 keep our leases with doing only a minimal amount of
15 mineral development over the years. Instead of getting
16 the wells drilled in the first 10 years, they get drilled
17 in the first 60 years. Instead of getting drilled in a
18 pattern around the leases, they get drilled anytime
19 Petrohawk wants to drill. You are going to find out that
20 these leases, even the two 12,000-acre leases, were
21 connected so if you did something on one you held the
22 other one which we say was not prudent.

23 Now, you know what absolutely burns me here
24 is that not only was all of this going on, but guess
25 what. Petrohawk asked JPMorgan to keep it secret. They

1 couldn't even tell the public that Petrohawk was around,
2 and look at the e-mails we have for that. We have got an
3 e-mail in early June after the first leases that
4 Petrohawk is writing Ms. Ormond saying we are going to
5 have to flip around with something that we are going to
6 give one of your banks over in Fort Worth, a JPMorgan
7 Chase Bank in Fort Worth. They wanted a copy of the
8 lease and Petrohawk said we don't want them to see it
9 right now because, quote, we don't want anyone to know we
10 are out there now. Red flag. Prudent.

11 Here's what I asked -- And as a matter of
12 fact, in early July, Petrohawk wrote Ms. Ormond again
13 saying I am not happy with 24,000 acres. I need another
14 16 or 17,000 acres and, quote, I need to have some kind
15 of deal with you before the word gets out, and you know
16 what the big thing was at this point in time. Petrohawk
17 through a third company, a company called Little Rock,
18 had filed a drilling permit that was for horizontal, that
19 was for Eagle Ford level, but it didn't have Petrohawk's
20 name on it. So the only people on the planet that knew
21 that Petrohawk was behind that well was JPMorgan, our
22 mineral manager, our fiduciary, and Petrohawk, and the
23 rest of the world didn't.

24 And what Mr. -- what this Mr. Caddou at
25 Petrohawk was asking Ms. Ormond in July 2008 was give me

1 another 17,000 acres before the world knows we are out
2 here because we all know the Nike swoosh will take off
3 and we want the leases cheap.

4 As a matter of fact, I took Ms. Ormond's
5 deposition. Here's what she said when I asked her if you
6 told the clients, that means my clients, the
7 beneficiaries here, that JPMorgan had entered these two
8 leases with Petrohawk. No. I didn't tell them. Did you
9 tell them that JPMorgan had entered two leases for the
10 South Texas Syndicate. No. Here's what she said.

11 (Video clip).

12 Q. And did you tell the clients that JPMorgan had
13 entered two leases with Petrohawk?

14 A. No. No. That's confidential information.

15 Q. Did you tell the clients that JPMorgan had
16 entered two leases for the South Texas Syndicate?

17 A. No.

18 (End of video clip).

19 MR. FLEGLE: Wait a minute. We are accused
20 of using hindsight here. You heard it for two days last
21 week. Let's look at the facts at the time in July 2008.
22 JPMorgan knows that Petrohawk has got 900 million
23 dollars. JPMorgan has facts available that Petrohawk is
24 an unconventional shale player. JPMorgan has facts
25 available that Petrohawk hit it big in the Haynesville

1 shale play. JPMorgan certainly knows they are a big
2 commercial client. This is facts at the time. This
3 isn't hindsight.

4 They also know that Petrohawk doesn't want
5 anybody to know they are there, and they also know they
6 want all 80,000 available acres of our mineral rights.
7 You are going to hear evidence from one of the
8 geologists, actually he's a geophysicist, that Petrohawk
9 actually told JPMorgan in the first meeting that they
10 were after Eagle Ford shale and it was a shale play.
11 And, of course, JPMorgan, being all over the country,
12 knew what the playbook was for shale plays.

13 JPMorgan also knew that this seismic I was
14 telling you about was in progress, but it hadn't been
15 finished. It's something that you ought to look at and
16 analyze before you act. It was not analyzed until after
17 all the leases were entered with Petrohawk. It was a
18 fact that we already had almost 25,000 acres leased to
19 Petrohawk and, you know, I talked about that June
20 drilling permit. First Rock. Horizontal. No Petrohawk
21 listed, but it was in Eagle Ford shale depth which
22 confirms what geologists said was happening here.

23 And, oh, by the way, there were industry
24 inquiries to Ms. Ormond saying we are hearing that
25 there's a shale player out there. Can you kind of give

1 us some ideas, and she refused to respond to any of them
2 and abided by her agreement of secrecy.

3 So what happens to our mineral interests in
4 July 2008. We end up with another 16,900 acres going
5 out, lease memos not filed, and the terms are the same
6 problem terms. We say this is an imprudent lease. She
7 should have waited, she should have done her work, and
8 this is a part of the damages that we are asking for in
9 lost bonus. This lease, I believe the record will show,
10 went out for about 200 bucks an acre. Do you remember
11 what they were saying about the Haynesville and the tens
12 of thousands of dollars an acre.

13 After this lease in July -- It's remarkable
14 to me. They start drilling the first well. And by the
15 way, Eagle Ford shale play was discovered on our mineral
16 rights, and you will see -- you are seeing what happened
17 to our mineral rights by JPMorgan.

18 After the July lease, the wells being
19 drilled, guess what Petrohawk tells Ms. Ormond. They
20 have an internal e-mail and they say please ask Pattie
21 not to share this information, the drilling information,
22 with who, with the geologist that was hired with our
23 money for our mineral rights. And guess what Ms. Ormond
24 says. I have not and I'm well aware of a potential
25 conflict.

1 Now, of course, ladies and gentlemen, this
2 is all going behind the veil over here. None of my
3 beneficiaries know any of this. We don't even know
4 what's going on, but we do get a 2007 annual report.
5 It's delivered in August 2008. And, you know, in these
6 annual reports which, you know, December 31, 2007 is when
7 they end, they have kind of a tag-on at the end by the
8 mineral -- by the geologist that says since January 1,
9 2008, here's what we have done.

10 I want to show you how here's what we have
11 done was mentioned to my clients. They got their annual
12 report, but the Petrohawk lease was an unrecorded oil and
13 gas lease and they didn't give us the lessee name on
14 either one of the May leases. And, oops, I forgot. They
15 didn't mention the July Petrohawk lease.

16 It gets even worse. It gets even worse.
17 October of 2008, Petrohawk makes an announcement to the
18 public. New shale play. We have got a discovery well.
19 It's on the news wire. Significant new natural gas field
20 discovery in the Eagle Ford shale. Red flags going off
21 anywhere. Millions of cubic feet of natural gas
22 equivalent a day and as equally important a confirmation
23 well is being drilled, and guess where that confirmation
24 well is. Fifteen miles from our property. Okay. This
25 has been told to the public by Petrohawk.

1 So what does Ms. Ormond do and JPMorgan, our
2 trustee. Work. Figure out what's going on. Let's go to
3 the next day, October 22. Guess who knocked on our door
4 in San Antonio. Two of the Petrohawk guys. And guess
5 what they walk out with. A letter of intent for the
6 other 40,000 acres we had. Out the door.

7 Ms. Ormond had one of her buddies send to
8 her the announcement because she may or may not have seen
9 it. It was sent to her at 8 o'clock in the morning on
10 October the 22nd. She responds to his e-mail at 5
11 o'clock that afternoon, and it's conceivable she didn't
12 know about the -- she didn't see the e-mail and she
13 didn't see the attachment that said on the first page of
14 the Houston Business Journal that this discovery had
15 occurred, but here's what she told him. She said he's an
16 angel and then she said they, that's Petrohawk, were here
17 today and told me about it. So they said we have a
18 discovery well. We have a confirmation well in the
19 process. Oops, and here comes 37,000 acres out the door.

20 Well, it didn't quite get out the door in
21 October. The leases were in December. And importantly,
22 between October and December, something else happened and
23 that is the second discovery -- the second confirmation
24 well was spudded and in process. And look at that proof
25 of concept. Right down the fairway of our 132,000 acres.

1 So let's look at the conduct for the
2 December leases. Hindsight. Facts at the time.
3 December 2008. JPMorgan knows that the drilling reports
4 were kept from the geophysicist. They didn't have
5 anybody to look at them and analyze them for us. There
6 was an announcement of the discovery well. There was a
7 letter of intent the very next day which even the
8 JPMorgan experts are saying was too quick. There were
9 two confirmation wells in process. We still didn't have
10 the seismic that Ms. Ormond had gotten going in 2007 so
11 we could analyze what was on the property, and they all
12 knew by then that the Eagle Ford formation was under all
13 132,000 acres of our mineral rights.

14 So what happens after the little letter of
15 intent for only 40,000 acres. Ms. Ormond writes her
16 boss, Mr. Hayes-Davis, on October 22 and says we are
17 going to get this bonus and, oh, by the way, we are going
18 to get ten percent in fees. And then as you can see in
19 there, I have figured out through the FO, which is front
20 office, to get those fees to flow through our side.
21 There's a little benefit to Ms. Ormond and the oil and
22 gas group, and here's what her boss says the next day.
23 Great job in this time of falling prices. It's important
24 to act as you have for the benefit of our clients,
25 undefined here. That was a great negotiation both with

1 the company, that's Petrohawk, and the internal lines of
2 business which we believe you will hear is a code word
3 for the commercial bank, special assets side, the credit
4 card side, the various big lines of banks, and one of
5 those big lines is the commercial side where Petrohawk
6 was a customer. I asked Ms. Ormond did your boss
7 encourage you to complete these Petrohawk transactions,
8 and she said he encouraged me.

9 (Video clip).

10 Q. Now, Mr. Hayes-Davis had told you before you
11 entered this letter with Petrohawk to complete these
12 transactions with dispatch, had he not?

13 A. He encouraged these transactions.

14 (End of video clip).

15 MR. FLEGLE: Now, in addition to all of
16 this -- You are going to hear a lot that says our
17 mineral -- our beneficiaries loved Ms. Ormond. Well, we
18 are going to give you the opportunity hopefully to see
19 what she told our beneficiaries. We had two meetings or
20 one meeting and one phone call. One is an October 2010
21 beneficiary meeting. She made statements at this meeting
22 that were recorded, and you may or may not hear them.
23 They may or may not be admitted at trial. And then there
24 were statements made in a January 2011 conference call
25 with Ms. Ormond that we believe will be introduced at

1 trial, but they may not be admitted.

2 So at the end of the day, we have lost all
3 control over all the mineral rights. I say we. Our
4 trustee did because they let the 80,000 acres out the
5 door. We claim that was not prudent mineral management.
6 You heard the "w" word the other day by JPMorgan that we
7 are using hindsight and we are supposed to wait until
8 sometime in the future. That's not what we are saying.
9 We are saying you have got to work. You are our mineral
10 manager. Things are coming up out of the ground that say
11 something is going on here. You guys have got to get on
12 the ball, and we have got an expert who will testify what
13 a prudent mineral manager would do when somebody like
14 Petrohawk knocks on your 132,000-acre door.

15 This is a partial list of a timeline from
16 Robert Lee, partial of the things a prudent mineral
17 manager would do. I'm not going to bore you with all of
18 them right now. We will have plenty of time when he is
19 in that chair. Suffice it to say, there's a bunch. You
20 don't sit there waiting for a cab. You work it. And as
21 a result of that timeline that we believe is prudent,
22 extra acres should not have gone out any earlier than
23 October the 1st, 2009.

24 And we are saying of the 60,000 acres at
25 play here, 30,000 acres go out no earlier than October

1 2009 and the other 30,000 acres which are the last chips
2 we have on the table, ladies and gentlemen, last acres,
3 last control should have gone out no earlier than May
4 1st, 2010.

5 What does that mean in terms of the
6 evidence. You are going to see a bonus market value
7 chart by one of our experts, Mr. Graham. Mr. Graham is
8 going to tell you why on October 1st, 2009 those mineral
9 acres were worth \$1200 an acre, and he's also going to
10 tell you why on May the 1st, 2010 those mineral acres
11 were worth \$10,000 an acre with a comparable at ten
12 thousand, five. He's going to show you a comparable of
13 another transaction involving another ranch, and it's
14 evidenced in blue there on the screen, and tell you how
15 that informs us on values. So that's the Petrohawk
16 story.

17 Let me tell you about the Hunt/Broad Oak
18 story. It goes a little bit further down the road in
19 terms of time. There are four leases involved. Two
20 commercial clients of JPMorgan. I'm going to tackle this
21 a little bit differently. I have got a timeline that I
22 would like to go through with you.

23 What you will see we believe the evidence
24 will show is that there were four leases to Broad Oak
25 which is the first company in 2006 and '7 for about

1 10,000 acres; 10,350. In March of 2008, one of those
2 leases was expiring and it just got extended. JPMorgan
3 said, okay, we will extend it for you, and it just so
4 happens a month later that JPMorgan enters a credit
5 facility with Broad Oak. And, oh, by the way, three of
6 the Broad Oak leases are security for the credit
7 facility. It seems like there's a pattern starting here.

8 In this timeline, everything is kind of
9 sitting static in these Broad Oak leases because they
10 have got primary -- they have got terms that don't
11 require drilling for a while so nobody is doing anything
12 much. We get the October 2008 Petrohawk announcement of
13 the discovery well, and you are going to hear evidence
14 that the bonus prices went double overnight and then kept
15 going on that swoosh into 2009.

16 Here's the first fly in the ointment. Okay.
17 Broad Oak comes to its bank and says we want to extend
18 our leases and Ms. Ormond says, sure, I will extend them.
19 She's, by the way, going out the door because the San
20 Antonio office here is being downsized, but she still had
21 enough time to sign up these four leases with Broad Oak
22 extending their primary terms, one for \$0 and the other
23 three for a \$50 increase in delay rental payments.

24 What were the facts at the time. Well, we
25 know there was a Petrohawk discovery well. There were

1 two confirmation wells. Broad Oak had not drilled per
2 the lease terms. And if they weren't extended, we got
3 the property back. We got our mineral rights back which
4 is what we should have done and what we claim was the
5 prudent thing to do.

6 Broad Oak was not a shale player. We know
7 that because Broad Oak was drilling a lot out in Permian.
8 They were doing vertical stuff so this was not in their
9 tool kit, and we knew at the time in July 2009 that the
10 bonus market rate was climbing fast. And nonetheless,
11 you saw zero for one lease, \$50 delay rental increase for
12 the other three, and the extensions were granted.

13 Well, what did Broad Oak do. You know, I
14 just told you they weren't a shale player. Three months
15 later, they sell the leases to Hunt Oil, and we will get
16 into that in more detail with those who are familiar with
17 that transaction. They have had the leases for a little
18 bit over a year or right at a year, and Hunt Oil comes to
19 us and says -- comes to JPMorgan and says we want lease
20 amendments.

21 Look at what the facts were at the time in
22 October 2010. Eagle Ford bonus values -- This is Eagle
23 Ford now. October 2010. Over \$10,000 an acre. The
24 lease amendment terms were favorable to Hunt Oil and not
25 favorable to us as mineral right owners. Hunt Oil was a

1 commercial bank client of JPMorgan and, oops, there was
2 pressure from Hunt Oil management to get these leases
3 done by the trustee and, ah, pressure from the JPMorgan
4 commercial bank which you are going to hear from
5 JPMorgan's own people is a no-no.

6 We have got e-mails. Here's from Hunt Oil
7 an e-mail on September the 7th, 2010. The senior level
8 management of Hunt Oil Company has instructed me that
9 they are prepared, willing, and anxious to make requests
10 to their counterparts at JPMorgan with whom we do a great
11 deal of business. This is a threat e-mail to the trustee
12 that's in charge of our mineral rights. You bet they did
13 a lot of business with Hunt Oil. Revolving line of
14 credit, lines of credit, placement agent for Hunt Oil
15 debt offerings.

16 So what happens. The next day, the
17 commercial bank -- You are going to hear from this man,
18 Paschall Tosch. I think he's in the New York office.
19 He's going to testify up here and he's going to tell you
20 that these kind of e-mails never happen and I have never
21 done one in my life. He's writing back to Hunt. Guess
22 what he said. I just spoke with H. L. Tompkins in our
23 Oil and Gas Trust Group. Oh, I thought that was a
24 violation of the rules and regs they have got over there
25 in the big bank.

1 And then he says to his counterpart at Hunt
2 Oil I am happy to resolve the situation if I can better
3 understand Hunt's position on the matter. So what
4 happens. We have the Hunt pressure to the trustee, the
5 commercial pressure, call the trustee, and guess what
6 happens to the lease amendment.

7 Now, JPMorgan is likely going to tell you,
8 well, we did a little bit of negotiating on the lease
9 amendments and all and it's not quite that onerous. Our
10 folks didn't even know there were amendments at the time.
11 So we have 2009 problems, 2010 problems, and then we have
12 got 2012 problems, and that's additional amendments that
13 Hunt comes back to enter in the mineral rights and the
14 leases on our property.

15 JPMorgan did a little bit more due diligence
16 this time. They had a big investment banking firm that
17 was consulting them on our asset now in part on a little
18 piece of the problem, and they went to their consultant
19 and they said, hey, we have got these leases that are
20 being amended. We kind of want to know what the market
21 rate is. Can you kind of give us some help and put this
22 into our committee. By the way, by this time there was a
23 committee that was looking at these things. There were
24 no committees back in 2008 with Petrohawk.

25 So we have got a committee now and the

1 consultant says these leases -- these lease transactions
2 were in the values of 1700 to \$5,000 an acre. Now, one
3 would think our fiduciary trustee would pick a number
4 between those two values, don't you think, and we might
5 be arguing about a value that's on the low end of what
6 the consultant said. That would be a different argument
7 than what we have got today because the agreement to
8 extend on August the 24th was for 700 bucks an acre on
9 some of the acres, not even on all of the acres. The
10 rest of the acres were not charged for the extension.

11 What was going on in August 2012. We knew
12 that the Eagle Ford mineral rights were going like red
13 wine, the corn dogs at the fair. There weren't enough
14 mineral rights to go around for the market. We also know
15 from the geologist who didn't really tell us this but he
16 told JPMorgan in early 2012 that there was another zone
17 from the Eagle Ford that had a finding -- a discovery and
18 it was on -- that discovery, Pearsall shale, is under our
19 property as well and we knew what the consultant said.
20 So there you have it, the Hunt Oil story. Imprudent
21 lease extensions, imprudent lease amendments,
22 below-market compensation for what, in fact, occurred.

23 Our third story is water rights and it's a
24 very simple story. Very simple story. When the
25 grandfathers and the fathers negotiated the sale of the

1 land, the dirt, in 1950, they kept the water rights for
2 drilling. That was a smart -- it was a smart decision.
3 No question about it. The trust owned the water rights
4 for drilling so we could go out on the surface and drill
5 wells to produce the water and so can Petrohawk and Hunt
6 Oil now that they have got the leases from us.

7 JPMorgan you will hear used lawyers to look
8 at the leases that were entered with Petrohawk and Hunt
9 to review the water right clause, but guess what. They
10 didn't ask for payment for the water rights, and we claim
11 through the testimony of two experts damages of 14
12 million dollars over the lifetime of these leases which
13 could go on for decades.

14 The fourth area that we have is
15 self-dealing. That means that the trustee is doing
16 something to benefit itself and/or its customers ahead of
17 what it did for us. We say there's evidence of
18 substantial commercial relationships with Petrohawk, Hunt
19 Oil, Broad Oak. You have heard the overview. We say
20 there's below-market consideration for the leases and the
21 lease extensions. You heard that in the overview. If
22 there were any due diligence, and I will spot them a
23 little bit, it was token and it was nowhere near what
24 needed to be done under what our experts say prudent
25 mineral management is and the Uniform Prudent Investor

1 Act, and there's a benefit there for JPMorgan and its
2 commercial clients including these valuable mineral
3 rights for cheap and fees for JPMorgan plus the client
4 relationships for Morgan.

5 Now, just so the bank doesn't get up here
6 and claim poverty, we didn't have anything to pay for all
7 this work that Flegle says we should have been doing,
8 here's what their fees were during this period of time.
9 In 2008 and '9 when we complained, their fees are over a
10 million, eight. I think that would take care of more
11 than one Pattie Ormond, but all we got was one, and then
12 you can see the fees for the other years. They have been
13 handsomely compensated for the damage they did to our
14 mineral rights.

15 So I told you there were big numbers and
16 here I am talking about damages now. We claim the lost
17 bonus damages, that is, the bonus payment on the front
18 end of the lease, that is, to make the lease and enter it
19 with the Petrohawks and the Hunt Oils of the world, were
20 322 million dollars and here's the way we calculate it.
21 We don't even take all the acres that are in play. We
22 only take 60,000 out of the 62,500 we claim are in play
23 and we split them letting 30,000 acres out early and
24 30,000 acres out later which is in May of 2010. We
25 subtract the bonuses we received which is 14 million

1 dollars and the difference is 322 million dollars.

2 Delayed drilling. This means not drilling
3 now but drilling way off in the future 20, 30, 40 years
4 from now. Eighty million dollars. We have got experts
5 that will come in and tell you and explain to us what the
6 fair market value of prudent drilling lease terms are
7 versus the actual lease terms in our mineral rights.

8 Now, ladies and gentlemen, let me just back
9 up just a second. These lease terms -- these drilling
10 terms that I'm talking about this morning not only affect
11 this income stream here, but if by chance somebody wanted
12 to sell the rights to our mineral rights today, those
13 rights are burdened by these lease terms. They can't get
14 changed unless there's an amendment which, as I said,
15 while JPMorgan was our trustee it seemed to be willing to
16 give to its commercial client.

17 They lost water rights. Fourteen million
18 dollars. How were those rights calculated. Fresh water
19 market is about \$1.50 a drilled foot. That's the
20 vertical part. You need fresh water for drilling.
21 Hydraulic fracturing water is 50 cents a barrel used. We
22 got the guys to do the calculations that say this is how
23 many -- this is how many wells are going to be drilled,
24 this is how much water needs to be per well, this is
25 about how far they need to go, and that gets us to 14

1 million dollars with a total damages number of 416
2 million dollars.

3 Now, we also have attorneys' fees on that.
4 I'm not going to burden you with that number today, but
5 it's a lot. It took a lot to fight JPMorgan once we knew
6 what was going on. There's no question. No question.
7 Your Honor, do I have just a little bit more time?

8 THE COURT: Yes, you do.

9 MR. FLEGLE: Thank you, Your Honor. I just
10 wanted to end with something that I started with in voir
11 dire the other day. I have already dealt with one of the
12 bank's defenses. You remember I told you there was going
13 to be a "yeah but" out there and it's hindsight. I have
14 dealt with that. We are dealing with facts at the time.

15 There's also this lot of money defense.
16 They say we are asking for a lot of money and they say
17 our beneficiaries have made a lot of money. Well, you
18 know, I think y'all have got people in town that have
19 been successful in their life. They have made a lot of
20 money. Does that mean there shouldn't be -- does that
21 mean they are not entitled to recover damages if they
22 were ripped off. I don't think so.

23 THE COURT: Ten minutes, counsel.

24 MR. FLEGLE: Thank you, Your Honor. We have
25 got a big asset. 132,000 acres is big. 100 percent

1 mineral rights is big. We have got multiple oil and gas
2 formations that are big that we are not even talking
3 about in this case primarily. They are all focused right
4 here on this Eagle Ford slot, but there's all sorts of
5 other layers of the cake that JPMorgan let out the door
6 in its extensions and its leases. We have got 285
7 beneficiaries. I looked at that the other day. That's
8 40 more than I had in my high school when I graduated.
9 We could fill up a basketball stadium with 240 people.
10 We could fill up a basketball stadium with the number of
11 beneficiaries we have got.

12 We had imprudent leasing in 2008. 80,000
13 acres out the door. Imprudent lease extensions and
14 amendments in 2009, 2010, and 2012. And regardless of
15 what you look at for the income the beneficiaries make in
16 this case, ask yourself even at that level was it right
17 for them to be cut off of the value of the mineral rights
18 that had been in their trust for 100 years.

19 They are going to tell you that our people
20 liked the mineral manager. Do you remember that was one
21 of those little things I had up on my "yeah but" list.
22 Well, they didn't know the whole story. She didn't tell
23 about Petrohawk at the time of the first three leases.
24 It's kind of confusing when she finally ended up telling
25 them, but along towards the end of 2008, there is

1 something in writing that she said, oh, by the way, it
2 was Petrohawk and the discovery well was on your mineral
3 rights.

4 She didn't tell the beneficiaries about
5 lease terms. You are going to hear testimony, ladies and
6 gentlemen, that some of these beneficiaries here asked to
7 see the leases. These are leases of their mineral
8 rights. Leases of their mineral rights. You know what
9 the bank's response was. No, no, no, no, no. You can't
10 see it because our lease terms are proprietary. Your
11 rights. Our leases. You can't see them.

12 JPMorgan didn't tell the beneficiaries about
13 the bonus market increases, and there was a lot of stuff
14 going on in South Texas before the beneficiaries found
15 out, and she didn't explain to the beneficiaries about
16 the options that even she had. You are going to hear
17 about those because there were people knocking down the
18 door to get mineral rights once they figured out Eagle
19 Ford was in play.

20 She didn't tell the beneficiaries she was
21 swamped and short staffed. She didn't tell the
22 beneficiaries she had another 140 trusts she was
23 juggling, and she didn't tell the beneficiaries that the
24 one geophysicist that she hired she couldn't use to deal
25 with the information she got from Petrohawk.

1 So this leaves one defense. It's what I
2 call climb to the top of the building and jump defense,
3 the 2008 economy defense. You are going to hear this
4 plastered all over this case. You are going to see all
5 those newspaper articles that you saw back in 2008. You
6 are going to see what the market did and it's going to
7 gyrate down like that in 2008.

8 Well, guess what. I don't think anybody in
9 this room jumped, thank God, and look at what was
10 confronting our mineral rights. In 2008, there were no
11 loans to our trust. In 2008, there were no debts owed by
12 our trust. In 2008, our income exceeded our expenses
13 even with JPMorgan's fees. And by the way, we didn't own
14 any stocks and bonds. We weren't on the margin. We were
15 there. And, you know, before these great leases went out
16 the door in 2008 with that economy just tanking out to
17 the outside, it's hailing all over the place, I want you
18 to listen to how many times the bank surveyed our 285
19 beneficiaries to see if any of them needed an extra lease
20 of 37,000 acres in December 2008. I want you to listen
21 to how many beneficiaries were demanding action in 2008.
22 If there is one, I don't know him or her.

23 THE COURT: Five minutes, counsel.

24 MR. FLEGLE: And you know, ladies and
25 gentlemen, as importantly as anything else, our minerals

1 have been there for hundreds of millions of years and
2 they weren't moving, and a market correction in New York
3 where JPMorgan Chase Bank is located shouldn't move them,
4 either, and shouldn't have moved our mineral rights.

5 We think we have a compelling case. As I
6 have said before, I think it can be boiled down simply.
7 I'm looking forward to presenting the evidence to you and
8 having a mutual understanding and knowledge of what comes
9 out of the witness box. Thank you very much, Your Honor.

10 THE COURT: All right, counsel. Mr. Gall,
11 are you going to be using the PowerPoint?

12 MR. GALL: Yes, Your Honor.

13 THE COURT: All right. Is that Defendant's
14 2? All right. Tell me when you get mic'ed up and when
15 you are ready to start and I will tell you -- keep count
16 on the time.

17 MR. GALL: Easier said than done.

18 THE COURT: No. Take your time. All right.
19 Just tell me when.

20 **DEFENDANTS' OPENING STATEMENTS**

21 MR. GALL: May it please the court. Ladies
22 and gentlemen of the jury, my name is Chuck Gall and it's
23 my privilege to present JPMorgan's view of what the
24 evidence will show here in this case. Mr. Flegle told
25 you that the evidence is going to show that we ripped his

1 clients off. Ripped his clients off. I want you to
2 remember that and I want you to see if there's evidence
3 that these clients were ripped off. That's a serious
4 charge and I want you to really pay attention to that and
5 hold him to that. See if the evidence shows that. See
6 if the evidence shows there was self-dealing. We say
7 that what you are going to see is an entirely different
8 picture of these transactions.

9 I've got a little PowerPoint I'm going to
10 play you can follow along with. What you are going to
11 see rather than these beneficiaries being ripped off is
12 you are going to see that there were hard-working people
13 who did a really good job for these folks and who have
14 made them hundreds of millions of dollars because of the
15 leases that were entered into. They did this based on
16 the facts and circumstances that they were confronted
17 with at the time.

18 This case is about hindsight and it's about
19 them using hindsight to second-guess decisions made by
20 the hard-working people of JPMorgan. He says he's not
21 using hindsight, but you can call a cat a dog and it
22 doesn't make it a cat or a dog. The point is he protests
23 too much. This is all about hindsight.

24 What the evidence is going to show is that
25 we were prudent and cautious based on the facts and

1 *circumstances that existed at the time. We have talked*
2 *about hindsight. The judge will be the person who*
3 *determines what instructions about the law you receive,*
4 *but I'm confident he's going to tell you in the jury*
5 *instructions you receive at the end that a trustee's*
6 *duties and responsibilities are not to be judged by*
7 *hindsight. So that ought to be a base point we all agree*
8 *on. I think even Mr. Flegle agrees with that. You are*
9 *not to use hindsight in judging our conduct. It's just*
10 *another way of saying no Monday morning quarterbacking.*
11 *You can't use hindsight because hindsight is always*
12 *20-20. None of us would make a mistake if we could*
13 *always look back. We would all change things we have*
14 *done at one time or another. So baseline point, you have*
15 *got to focus on the facts and circumstances that were*
16 *confronting JPMorgan at the time.*

17 *Now, another thing that you have got to keep*
18 *in mind is that as a fiduciary -- and let me just say we*
19 *embrace the fact that we were a fiduciary. We understand*
20 *what being a fiduciary is. And interestingly, none of*
21 *these experts they are going to bring in, Mr. Lee and*
22 *Mr. Graham, they have never served as fiduciaries*
23 *managing minerals. We understand what our*
24 *responsibilities are as a mineral manager for a trust and*
25 *that we have to exercise care, skill, and caution. That*

1 "caution" word is very important here because, as
2 Mr. Flegle explained to you, we are acting in a fiduciary
3 capacity for others. We are not using our own money.
4 Your own money you can go to Vegas and you can put it all
5 on red seven and hope for the best, but as a fiduciary,
6 you can't do that. You have got to be cautious. You
7 can't gamble. This is just lawyer or legislature
8 language for you can't gamble with the assets of a trust.
9 So keep that in mind. Those are the fundamental
10 principles we think should govern your deliberations in
11 this case.

12 Now, I like to think of lawsuits as a little
13 bit like television shows. There's characters. There's
14 plots. There's sub plots. You are going to have this
15 all play out in front of you kind of like a television
16 show. A wide television show. A reality show, let's
17 say. And in this case, there are I think four main
18 characters; the plaintiffs, the beneficiaries of the
19 trust, the Eagle Ford shale itself, Ms. Ormond who he's
20 talked about, and a fellow named H. L. Tompkins who
21 succeeded Ms. Ormond after she left the bank. I want
22 to -- and my way of introducing this is to introduce
23 these characters.

24 The beneficiaries, there's 295
25 beneficiaries. When Mr. Flegle was doing his voir dire,

1 he was careful to say that he only represented some of
2 the beneficiaries. He didn't mention that in his
3 opening, but here's the thing. There's 295 beneficiaries
4 in this trust. Maybe 285. The numbers are a little bit
5 hard to get around, but around 295 beneficiaries. 132 of
6 those have asserted no claim against JPMorgan. 132, 45
7 percent, do not claim that JPMorgan did anything wrong,
8 and that is despite the fact that these plaintiff
9 beneficiaries and these lawyers have solicited them to
10 join this suit repeatedly. That's what the evidence will
11 show. Those beneficiaries have been asked to join this
12 suit repeatedly and 45 percent of them have said they
13 don't want any part of it. That's important. Those are
14 people with an interest in the transaction who made a
15 judgment and their judgment is that they don't want any
16 part of this.

17 Now, let's go to the Eagle Ford. The Eagle
18 Ford is a well-known formation. It's been known for
19 years. This is not some new thing that was discovered in
20 2008 all of a sudden. The Eagle Ford formation has been
21 known about for years. It comes from -- it outcrops
22 south of Dallas and it goes all the way to the Gulf of
23 Mexico. So it's no new discovery.

24 The problem was that nobody could figure out
25 how to get oil and gas out of it because it's shale.

1 Shale -- You know what shale is. People put it on their
2 floors. They build buildings out of it. Shale is
3 impermeable. Gas and oil won't run through it. It holds
4 water and nobody could make it productive. Nobody could
5 successfully develop it and efforts had been made.

6 This map you see in front of you is a map of
7 drilling attempts that had been made to drill into the
8 Eagle Ford prior to 2008. There had been 23 vertical
9 wells, 13 horizontal wells, and none had been successful
10 before 2008. As a consequence, their own experts will
11 tell you that there was absolutely no interest in the oil
12 and gas industry and leasing rights to the Eagle Ford.
13 It is a layer cake and there were other stratas that
14 people drilled into on our property and other property,
15 but the Eagle Ford was not anything of interest.

16 Mr. Flegle talked about all of these other
17 shale plays, but all shale plays are different and the
18 presence of shale underneath your property doesn't mean
19 big dollars because all shale plays aren't created equal
20 and even all parts of the Eagle Ford, the evidence will
21 show, are not created equal. Some parts of the Eagle
22 Ford have been successful. Some parts haven't. You
23 know, nobody talks about -- You know, nobody talks about
24 the parts that didn't work. Nobody talks about the shale
25 plays that didn't work. That's going to be what the

1 evidence shows is that there's good parts of -- there's
2 good shale plays, there's bad shale plays, there's good
3 parts of the Eagle Ford, there's bad parts of the Eagle
4 Ford.

5 Now, let's talk about Ms. Ormond. She was
6 the woman who negotiated these Petrohawk leases and these
7 Broad Oak leases that they say ripped them off. This is
8 the woman they are saying ripped them off. Let's talk
9 about it. She worked in the oil and gas industry for
10 over 40 years for banks and others. She was a certified
11 petroleum landman for 30 years. The evidence is going to
12 show she was experienced, she worked hard, and she put
13 these beneficiaries' interests forefront in her
14 activities.

15 Ms. Ormond left the bank in late 2009 when
16 we closed the San Antonio mineral management office. She
17 doesn't work for us anymore. We don't control her. We
18 hope and expect that she will come here and testify live
19 in our case, but we can't make her. She's beyond the
20 subpoena range. There's a distance limit where you can
21 serve people with a subpoena and make them appear. Well,
22 we can't make her appear, but we expect her to be here
23 for you to judge her conduct, and she will explain to you
24 why she did what she did and why it was in the best
25 interest of the beneficiaries and she doesn't work for us

1 anymore. We fired her effectively. I mean, we closed
2 the office, we downsized her, and she's going to come
3 back and tell -- not because of any conduct, but because
4 of a reduction in force. We closed that office and she
5 left our employment. Yet she's going to come back and
6 she's going to tell you why what she did was in the best
7 interest of these beneficiaries.

8 Now, they suggest to you that she was
9 overworked, understaffed, and put upon and she did write
10 a lot of e-mails complaining about, you know, I'm under
11 water. That's true. But if she was under water, she was
12 working awfully hard for these beneficiaries.

13 Let me tell you what the evidence is going
14 to show. She marketed this property extensively. This
15 is a list of companies that she went to or Mr. Buehler,
16 the geophysicist, went to and solicited leases, tried to
17 get them interested in the property. It's a Who's Who of
18 American oil and gas exploration companies. None of them
19 made an offer for a lease on this property. She hired
20 Bob Buehler, this geophysicist, to help her analyze the
21 property and develop ideas that might get people
22 interested. She went to this convention called NAPE,
23 National Association of Petroleum Exploration I believe
24 is what it stands for, twice. She went at JPMorgan's
25 expense, not at the expense of the trust, at JPMorgan's

1 expense, rented a booth, and marketed this property to
2 try to find people that were interested in leasing it.

3 After those efforts, she got really two
4 people that were interested in all her efforts, Broad Oak
5 and Petrohawk, and she negotiated lucrative leases with
6 those two companies that have generated millions of
7 dollars.

8 Here is a graph showing you the result, and
9 our defense isn't that they made a lot of money. Our
10 defense is that we negotiated prudent leases that have
11 generated millions and millions of dollars to them and
12 will continue to generate millions and millions of
13 dollars to them. This graph shows the progression.

14 Before these ripoff leases -- before these
15 ripoff leases, they were getting about a million dollars
16 a year from the trust. Now, 75 million dollars --
17 between 75 and 80 million dollars. This is an annualized
18 number. Somewhere in that range is what is going to be
19 distributed to these beneficiaries as a result of this
20 ripoff.

21 They also say, well, poor Pattie Ormond.
22 She didn't have anybody helping her. How could she do a
23 good job. Well, the evidence is going to show she had a
24 junior land person. They call these people landmen. I
25 don't know why, but they call them landmen. She had a

1 junior land person that worked for her, she had two
2 assistants that worked for her, and there was a whole
3 group of mineral managers in addition to Ms. Ormond who
4 worked for JPMorgan, and those mineral managers met by
5 phone weekly, discussed the transactions, discussed the
6 market, talked to each other about what was going on, and
7 her managers were involved as well. They knew what was
8 going on and they approved.

9 Here is the e-mail that came from her boss,
10 Bert Hayes-Davis, the morning after she agreed to the
11 last group of leases with JPMorgan -- I'm sorry, with
12 Petrohawk. Great job. In this time of falling prices,
13 it's important to act as you have for the benefit of our
14 clients. There's no ambiguity there. He's saying
15 congratulations. You did a great job for the
16 beneficiaries of STS and she did. She had.

17 Now, Mr. Flegle characterized our defense --
18 one of our defenses as the beneficiaries liked Pattie
19 Ormond. Well, that's true. They liked her, but that's
20 not our defense. Our defense is that she did a good job
21 and they knew it and they recognized it.

22 After the money started rolling in, some of
23 the beneficiaries actually offered to give some of their
24 interests in the trust to Ms. Ormond. She couldn't
25 accept it because she was an employee of the bank and

1 that was against the rules, but they were grateful enough
2 that they actually offered her some of their interests in
3 the trust. When she left JPMorgan, they were very
4 unhappy. They complained to JPMorgan about that and they
5 actually wanted us to hire her on a contract basis to
6 manage these minerals for the trust and that actually
7 happened. For about 90-120 days, we had an independent
8 contract with her to let her manage these minerals. It
9 wasn't working. It didn't work out for either side and
10 so that contract was canceled.

11 So what did they do. The beneficiaries
12 hired Ms. Ormond, the person they say ripped them off, to
13 consult with them about these very same minerals. You
14 will see plenty of evidence of the praise that they put
15 on Ms. Ormond for her efforts. These people have a blog
16 where they can communicate with each other and they all
17 have each other's e-mails and things. So there's going
18 to be plenty of evidence of what they thought of the job
19 Ms. Ormond did before these lawyers got ahold of them.

20 This is just one example. I have actually
21 missed something. I'm going to tell you that's not what
22 is supposed to be there, but -- This is it. This is a
23 letter from some of the beneficiaries to the other
24 beneficiaries in May of 2011; William Piper, John Carter
25 Piper, John de Q Piper, Catherine Masucci, Michael

1 Washburn, and Tom Warner. All of those in red there are
2 now plaintiffs, but in May 2011, here's what they were
3 saying. The lawsuit had been filed by some of the
4 beneficiaries by this time, by May 2011. Mr. Meyer had
5 already filed the lawsuit. So this is not when they
6 didn't know what was going on.

7 They say, Dear fellow beneficiaries, there
8 has been a significant increase in leasing rights,
9 drilling activities, and the extraction of the trust's
10 minerals. These increases can be directly linked to two
11 developments: the advancement of drilling technologies,
12 that's horizontal drilling he's referring to, and the
13 hiring of Pattie Schulz-Ormond by JPMorgan Chase to
14 oversee the trust and its resources. Does that sound
15 like a ripoff? Ms. Schulz-Ormond developed a plan to
16 market the property.

17 Now, it's clear that these people were also
18 informed about what was going on. They got bi-monthly
19 reports and monthly reports about activity. There's one
20 in November of 2008 that actually describes the Petrohawk
21 leases by name mentioning Petrohawk. It also describes
22 the discovery well. It tells the beneficiaries before
23 the December leases are signed exactly what's getting
24 ready to happen and that there's been this big discovery.
25 They knew what was going on as it was occurring.

1 In addition, these monthly reports gave
2 Ms. Ormond's phone number and contact information. If
3 they needed information from Ms. Ormond, they could get
4 it. They got annual reports that described the
5 activities, what new drilling, what new leasing, what was
6 going on. There were beneficiary meetings in 2006 and
7 again in 2009 where they were invited here to San Antonio
8 for presentations about what was going on with the trust.
9 This is 2009. This is after these leases had been
10 executed after the events in question.

11 And here's Mr. Piper, again, one of the
12 plaintiffs, writing to the team of people that was
13 working on the trust at the time; Bert Hayes-Davis,
14 Colleen Dean, Gary Aymes, H. L. Tompkins, John Minter,
15 Patricia Ormond. Thank you very much for an interesting
16 and informative meeting. I understand the meeting
17 required a lot of effort and there were some changes made
18 down to the very last minute. The meeting was very
19 helpful in understanding the bank's position and what we
20 can expect in the future.

21 On top of that, we arrange for them to meet
22 with Petrohawk. Petrohawk came to the meeting and made a
23 presentation and talked to them and here they are. Thank
24 you for arranging the opportunity to hear from Petrohawk.
25 These people knew what was going on with their asset.

1 Mr. Flegle suggested to you that there was
2 some kind of top-secret deal going on, that we were
3 keeping secrets from the beneficiaries or keeping secrets
4 from the industry. What the evidence is going to show in
5 that regard is that as an industry practice oil and gas
6 lessors and lessees consider the terms of their leases
7 confidential; the royalty terms, the bonus terms, that
8 kind of thing. In fact, some of them -- we have been
9 trying to subpoena them, and some of the operators have
10 actually come into court and said that those are all
11 trade secrets, something that nobody is entitled to know,
12 that we have to seal the courtroom if we are going to
13 talk about it.

14 So as a result of this sensitivity about
15 this information, these lessees, the oil and gas
16 companies don't want that to be out, they commonly lease
17 through lease brokers like First Rock who Mr. Flegle
18 mentioned. They commonly file what are called lease
19 memoranda. In order to give the world notice of a lease,
20 you have to file it in the public record. You have to
21 file somewhere notice of the lease.

22 Well, people don't go file the whole lease
23 with all the terms in it. They write what's called a
24 lease memoranda. The lease memoranda only discloses who
25 the lessor and lessee is, the length of the lease, and

1 the property that's covered. That is a routine practice
2 in the industry because the other terms are considered
3 confidential.

4 What Mr. Flegle and the plaintiffs are
5 trying to do is criticize and criminalize in a way the
6 normal leasing activities and the normal practices in the
7 industry. The evidence will show that those are common
8 practices and, in fact, a lot of leases have
9 confidentiality provisions in them. One of the leases
10 they are going to rely on as a comparable lease,
11 something that we should have done, has a confidentiality
12 provision right in the lease. So that's kind of the
13 story of Ms. Ormond's role in this.

14 H. L. Tompkins is the fellow that replaced
15 her. He is involved in the Hunt amendments in 2010 and
16 2012. The evidence will show he was involved in the oil
17 and gas business since, I think, 1980. He's also a
18 certified petroleum landman and he's been managing
19 minerals for trusts for 30 or 40 years. Highly
20 competent, highly experienced man that you also will hear
21 testify and can judge for yourself. So that's our cast
22 of characters.

23 The next thing I want to talk about is what
24 the situation was at the time, what JPMorgan knew at the
25 time of these transactions. To avoid using hindsight,

1 you have got to put yourself -- try to understand the
2 situation and see what the evidence is going to show
3 about the situation in 2008. What the evidence is going
4 to show was there was declining production despite rising
5 oil and gas prices, declining drilling, declining
6 leasing, numerous dry holes, and absolutely no new
7 discoveries to sustain the trust.

8 So let's put some meat on those bones.
9 Here's a chart showing you what was happening to gas
10 production. Gas production was falling from the property
11 at a time when prices -- when gas prices were rising.
12 You would expect just the opposite. You would expect gas
13 production to increase, but there was no -- there was no
14 interest in the property. Gas production falling despite
15 rising prices.

16 Drilling declining. This is not something
17 we control. This is what lessors, the people that had
18 leases on the property and there were some, were doing.
19 This is the ten-year period leading up to 2008. This is
20 what JPMorgan knew at the time. There had been no wells
21 drilled in '98, five in '99, two of which were dry holes.
22 Just right on down the line if you look at this. No
23 wells drilled in 2004. No wells drilled in 2005. No
24 wells in 2006. Three in 2007, one of which was a dry
25 hole. That's what JPMorgan knew about this property,

1 this remarkable asset. It was remarkable that it was a
2 big property under one point of control, but its history
3 as a productive oil and gas property was not remarkable.
4 In fact, if it was remarkable at all, it was remarkably
5 poor.

6 There had been 341 dry holes drilled on the
7 property through the years in various places. Sixty-two
8 percent of the wells drilled had been dry. There had
9 been limited leasing activity in the years leading up to
10 2008. In 2003, no leases. 2004, no leases. 2005, no
11 leases. 2006, six leases with an average bonus of \$158
12 an acre. 2007, two leases, average bonus of \$186 an
13 acre. Overall, the average bonus in 2006 and 2007 was
14 \$162 an acre.

15 I can show you where these leases were.
16 This is the leases in 2006 and 2007. These three that
17 are X's are all leases that expired with little or no
18 production on the property. The others are almost all
19 the Broad Oak leases. This Texas Lone Star Petroleum
20 lease that's marked there was acquired by Broad Oak. So
21 the four leases up in the north part that were still
22 active in 2008 were Broad Oak leases. This little lease
23 down here in the corner -- the southeast corner is a
24 Lakewood Exploration lease, 160 acres. Lakewood had shot
25 seismic, and I will explain to you about seismic here in

1 a minute. They had shot seismic on 4,000 acres and
2 chosen to exercise their option on 160 acres out of
3 4,000. Not exactly a reassuring endorsement of their
4 view of the property.

5 So here's the thing on seismic. You are
6 going to hear a lot about seismic. I have a political
7 science degree. I do not have a geology degree so I will
8 do my best to try to explain what seismic is. A
9 geologist would probably hate this description, but I'm
10 going to do it anyway. It's kind of like shooting radar
11 down in the ground. You are trying to figure out what
12 formations are and it generates a report and geologists
13 and geophysicists know how to read that and determine
14 exactly where the formations are, how many feet down they
15 are, and what are the faults.

16 So what JPMorgan did is we would grant
17 options to people to shoot seismic because it was a way
18 of exploring the property without the expense of drilling
19 a well. The best analogy I can give you for it is it
20 would be like if you had a used car you were thinking
21 about buying. You took it to the mechanic and let him
22 lift the hood and kick the tires and do all the things
23 that a person with a political science degree would do,
24 not what an automobile mechanic would do. I don't know
25 what they would do. Whatever it is they do. Well, a lot

1 of people had opened the hood, kicked the tires, taken
2 the test drive, and said no thanks. Not interested.

3 This chart shows you that between 1997 and
4 2007 there was test drives on 119,341 acres. All of that
5 wasn't shot. They had the right to shoot seismic on
6 that. Sometimes they didn't even shoot all the seismic
7 they had the right to shoot. 119,000 acres were optioned
8 under seismic agreements. Out of that 119,000 acres,
9 they basically said you can keep it all but 7,000 acres.

10 Let's put a little fire point on that. In
11 2006 and '7, we granted seismic options on 29,341 acres.
12 By 2008 when Ms. Ormond was making her decisions, the
13 only one that had been exercised was 160 acres down in
14 the corner by Lakewood out of 29,000 acres. Again, not
15 exactly reassuring. Everybody is saying bring the car
16 back. Bring the car back. Bring the car back.

17 So let's look at what the situation was
18 Ms. Ormond was confronted with in May of 2008 as she
19 considered this first set of leases. And, again, they
20 don't dispute that the bonus on these leases was prudent.
21 They don't suggest that we shouldn't have exercised these
22 leases. I will talk about the lease terms later -- the
23 lease terms and size and all of that later, but they
24 really look back and say this is good judgment.

25 So let's see what she was faced with. She's

1 got this declining production, declining drilling,
2 declining income, no other offers, lease covered acreage
3 that hadn't been leased in years. She's got one of those
4 leases I talked to you about had just expired without
5 anything happening. There were no new discoveries in
6 years. Seismic options had not been exercised. This is
7 wildcat acreage which means it's unexplored. They are
8 offering a 25 percent royalty.

9 And so that you understand what the royalty
10 is, royalty is out of every -- what that means is out of
11 every \$100 of oil and gas income, we get \$25 right off
12 the top expense free. It's a big deal because a lot
13 of -- the evidence is going to show that a lot of these
14 leases wanted -- a lot of them wanted 25 percent, but
15 that was the top of the market. Most of them wanted
16 22-23. We got 25 percent. We got four million dollars
17 in bonus. We got a company, Petrohawk, that was
18 experienced and well funded, and they made a commitment
19 to her to start drilling immediately. So all of that is
20 what she's faced with, plus the fact she knows that the
21 Eagle Ford has never been productive. The property has
22 not been productive in recent years. They talk about all
23 of these formations. Well, those formations played out.
24 This is basically a property that was declining and
25 barely able to cover its own expenses. So here's the

1 leases in May 2008. The bonuses they are happy with.
2 That's the configuration of the leases.

3 Now, let's look at the July 16 leases. Now,
4 let's remember this is 50 days later. Just 50 days
5 later. They get on board by May and they say, oh, you
6 shouldn't have done that. You ripped us off in July 50
7 days later. Let's look at the situation.

8 Petrohawk has begun to drill its well --
9 first well. Just begun. That's it, but that's a good
10 thing because they kept their promise to her. They told
11 her they were going to go out and drill property. She's
12 pleased with that. This is a company that's doing what
13 they said they were going to do. This time they are
14 offering more bonus, \$200 an acre. It's 3.3 million
15 dollars, again a 25 percent royalty, but she negotiates
16 another term in this lease that they don't talk about and
17 that is what's called delay rentals. It's a little hard
18 to understand, but it basically is a payment by the oil
19 company to put off its obligation to begin drilling.
20 They have either got to begin drilling or they have got
21 to make this payment. It's just that simple.

22 So they had to begin drilling on the whole
23 property within the first year or they had to pay this
24 money, and the money that was being negotiated was 1.6
25 million dollars. So she's got a better more favorable

1 delay rental provision, she's got no other offers, and
2 she's got a high risk that this well is not going to be
3 successful. They want to say, oh, you should have
4 stopped, but that well could have been completely
5 unsuccessful.

6 So what happens next. She exercises these
7 leases. There's not going to be any evidence, I submit
8 to you, that that bonus wasn't the market bonus at the
9 time, that that wasn't a fair market bonus at the time,
10 particularly in light of the delay rental provisions.
11 That was a fair deal done at market. There won't be any
12 evidence to the contrary.

13 What happens next. The economy begins to
14 tank. Mr. Flegle wants to minimize this, but it's
15 something that can't be minimized. It's a very important
16 factor in this case because it was happening as these
17 negotiations were occurring.

18 Put yourself back, if you can, in the
19 situation. Mr. Flegle advertised this as a Wall Street
20 problem. USA Today is not exactly a Wall Street
21 newspaper. There's the front page of the USA Today on
22 September 30th, 2008. Not exactly a reassuring
23 situation. It's an extremely worrisome situation is one
24 of the headlines. Politics and fear spell doom.

25 Here's some more headlines. People were

1 talking about a depression. For a lot of people, it was
2 a depression. For a lot of people, it was a depression.
3 A lot of people still haven't recovered. So what happens
4 at the same time. Oil and gas prices fall through the
5 floor. They dropped about in half. About in half.

6 What does that do. That affects the oil
7 company's willingness to drill. It affects their
8 willingness to lease. It affects their ability to borrow
9 money. It affects all of their activities. It's like if
10 you ran a tomato store and tomatoes went half price. It
11 affects what you can do. Same situation. These oil and
12 gas companies were faced with a crisis both of the
13 economy and of the price of the commodity that they were
14 trying to drill for.

15 So under those circumstances, what happens.
16 Ms. Ormond has got to make a judgment. That's what this
17 is. It's all about judgment. She's got this new
18 development -- a positive development. It's a good
19 thing. This first well looks like it's a winner, but the
20 testimony is going to be that it wasn't stabilized, that
21 there was not any assurance that it was going to continue
22 to produce the way it had in the beginning, that there
23 was still risk associated with whether that well would
24 even be stable and productive, but it's a positive.

25 So she negotiates better delay -- even

1 better delay rental provisions. The old one was \$50 an
2 acre. Now she's gotten better bonus, better delay
3 rentals. So she's being offered 7.5 million dollars in
4 bonus and a delay rental provision that will generate as
5 much as 11 million dollars. She's got the economy
6 collapsing. She's got oil and gas prices collapsing.
7 One of the lease options that she granted expires because
8 the people don't want to lease, and another company she
9 had been in negotiation with tells her -- the company,
10 Petrohawk, tells her they are not interested.

11 So what does she do. She leases another 200
12 -- about 30,000 acres for \$200 an acre rather than roll
13 the dice on what's going to happen in the future based on
14 this one well in light of what's going on in the economy
15 at the time. She made a very good decision.

16 Look at the results. In 2008 alone, we
17 generated 14 -- well, basically 15 million dollars in
18 bonus compared to 7.3 million dollars in the 10 years
19 before that. That's a ripoff? The delay rental
20 provisions have already resulted in 7.4 million dollars
21 being paid to these beneficiaries.

22 Here's what the royalties have done. 148
23 million dollars in royalties versus 10 million in
24 royalties the decade before. Distributions to the
25 beneficiaries show the same thing. 17 million dollars in

1 2008 versus 3 million in 2007, and the beat keeps going
2 on. More and more money rolling in as a result of this
3 ripoff. 75, 80, 100, 200? How far is that line going to
4 go up because drilling is going on as we speak.

5 Now let's talk quickly about the Broad Oak
6 amendments. That's the Petrohawk story. The Broad Oak
7 amendments in 2009. We have got \$100 an acre, we have
8 got an increase in the delay rental provision, and we
9 gave them a three-year extension. They say it shouldn't
10 have happened.

11 Here's what Pattie Ormond is going to tell
12 you. Pattie Ormond is going to tell you that Petrohawk,
13 who was the only logical lessor given the configuration
14 of these leases, the only other party it was logical to
15 be interested wasn't willing to pay a penny for it. They
16 wanted to just to roll it into their existing leases for
17 nothing.

18 Mr. Braddock, who is the CEO of Broad Oak,
19 will testify that he invested millions of dollars in the
20 property drilling a well and studying the seismic and
21 that kind of stuff so he was in the best position to
22 understand the property and try to develop it. He will
23 tell you it's high-risk acreage. The reason for that is
24 it's at the top of what's called the Edwards reef.
25 There's a reef that -- it's underground, but there's a

1 reef there that makes this different from the rest of the
2 property because somehow -- I don't understand all the
3 geology, but the geology is different where the reef is.

4 So it was high risk. No sure thing. He
5 will testify that he considered \$100 an acre to be fair
6 due to the uncertainty, and he also will tell you he made
7 attempts to sell his lease to other people and he hadn't
8 been able to do it. Now, he eventually did afterwards,
9 but he hadn't been able to do it up to that point.

10 So we think that was a prudent decision, a
11 decision that was well within her discretion to make, and
12 that, you know, it looks -- Really if you think about it,
13 these people are challenging every decision we made from
14 2008 to the time that we resigned as trustee.

15 The next thing I want to talk about is this
16 assertion of self-dealing. There is no doubt that we had
17 banking relationships with Petrohawk, Broad Oak, and --
18 Broad Oak, Petrohawk, and Hunt in the commercial side of
19 the bank, but what's also true -- and, again, the judge
20 is going to be the one that makes the decision of what
21 you are going to be instructed about the law, but I think
22 what he's going to tell you is that there's nothing wrong
23 with that. That's typical normal practice, but what's
24 not permitted is for the commercial bank to try to
25 influence the -- or to influence the trustee and put the

1 bank's -- the customer -- commercial customers' interest
2 in front of the trust customers. You are not going to
3 see any evidence that that occurred. There's a reason
4 for that. These were kept separate. The trust
5 department and commercial department were kept separate.
6 They didn't communicate with each other and they
7 respected the role that they each had. What really the
8 plaintiffs are claiming is that Pattie Ormond and H. L.
9 Tompkins intentionally acted against the interest of
10 these beneficiaries, and I want you to see if you think
11 that that happened.

12 Let's look at the Petrohawk story. Pattie
13 Ormond will testify that she had no idea one way or the
14 other whether Petrohawk was a commercial banking customer
15 of JPMorgan. Cusack and Caddou, the two people -- the
16 landmen that negotiated with Petrohawk didn't know
17 whether JPMorgan had a banking relationship, and it's
18 important that maximizing bonus was to the benefit of the
19 trust department because our income is a percentage of
20 the royalty. We got a percent of the -- you saw my
21 chart. The higher it goes the bigger our fee is. So it
22 would kind of be counterintuitive to get less fee if
23 there was a higher bonus to be had.

24 The evidence is going to show Petrohawk
25 didn't run over us. They didn't get their way. We made

1 the lease terms progressively harder on them, and their
2 own witnesses will testify that this was a hard-fought
3 deal. It's not often that in a case you have both sides
4 of the deal come in and tell you that it was fair and it
5 was hard fought. Ms. Ormond and the Petrohawk people
6 will tell you that.

7 Their only evidence is this e-mail that
8 Mr. Flegle talked about about referencing her negotiation
9 with the internal lines of business. They read that
10 completely out of context because when you put it in
11 context with this e-mail that it responded to, it's clear
12 that she was negotiating with the front office to get the
13 two and a half in front office fees to run through the
14 oil and gas department.

15 And so he's telling her great job. You got
16 a good lease for the company and you did a good job
17 negotiating with the front office to get that last two
18 and a half percent credited to the oil and gas account.
19 So this is clearly something that they are taking out of
20 context and it doesn't show any evidence of self-dealing.
21 The truth is those deals between Petrohawk and JPMorgan
22 on behalf of the STS trust were fair and were beneficial
23 to the trust. I didn't say this, but the evidence is
24 also going to show that the bonus that we got in December
25 was fair market at the time. So we didn't give anybody

1 any special sweet deal. We got fair market value based
2 on the circumstances at the time.

3 Broad Oak. Again, this is the July 2009
4 leases. Ms. Ormond had no knowledge of the commercial
5 banking relationship with Broad Oak one way or the other.
6 Now, granted, the CEO of Broad Oak obviously knew that
7 JPMorgan was one of his bankers, but he will testify that
8 he never discussed that with Ms. Ormond, it never came
9 up, and he never put any pressure on her about that.

10 THE COURT: Ten minutes, counsel.

11 MR. GALL: Thank you. Hunt Oil. There was
12 a contact by Paschall Tosch, the Hunt Oil banker. He
13 called H. L. Tompkins, a man he didn't know, and said,
14 Look, what's going on. How come we can't get these
15 amendments done with the Hunt folks. He doesn't recall
16 that call, neither does H. L. Tompkins. Neither one of
17 them recall it.

18 This e-mail tells you what occurred. I just
19 spoke with H. L. Tompkins. It sounds like we have
20 reached an impasse. Per my discussion with H. L., he is
21 trying to protect the interest of his client by enforcing
22 the pooling restriction provided in the lease agreement.
23 Does that sound like somebody who is ripping off his
24 clients who is succumbing to pressure?

25 So this is the report from Tosch to the

1 people in Hunt. I can't do much for you. He's trying to
2 protect his clients. The next day, Hunt says, Through
3 previous correspondence we have requested the STS leases
4 be amended as to pooling and other provisions. You have
5 advised me you would only be in a position to review that
6 on a case-by-case basis.

7 What's Tompkins' response? Yeah. You have
8 made a lot of efforts to address it and I continue to be
9 concerned about it. What's the result? No pooling
10 provision. There were some minor terms to the leases
11 that nobody is really quarreling about. What they wanted
12 was a pooling provision, and what H. L. Tompkins
13 steadfastly refused to ever give them was a pooling
14 provision. He didn't succumb to pressure. He wasn't
15 subject to self-dealing. He didn't rip off the
16 beneficiaries of STS. He did his job. He put their
17 interests first.

18 There's these 2012 amendments I'm going to
19 have to quickly go through. On those amendments, we got
20 3.9 million dollars and we only gave them 10 months to
21 drill new wells and they released most of the depths.
22 Remember talking about the cake. Well, the only part
23 that they got to keep was the Eagle Ford. They didn't
24 keep the Pearsall. Remember he was talking about
25 Pearsall, but they released that and they released

1 everything below. So they released really effectively
2 most of the acreage and they promised to drill within 10
3 months.

4 We think these were prudent because Hunt had
5 spent even more money than Broad Oak had and knew the
6 property was in the best position to develop it. We had
7 an independent petroleum engineer look at the situation
8 who endorsed the plan that Hunt had. And as a result of
9 these extensions, they did do a lot. Twenty-one wells
10 were drilled on that property generating millions of
11 dollars to the beneficiaries.

12 Quickly I'm going to talk about damages.
13 Damages are -- this bonus damage thing is entirely based
14 on hindsight. This is where hindsight -- Hindsight rears
15 its head throughout this case, but the most obvious is as
16 it relates to bonus damages. They want 321 million
17 dollars saying, well, you should have waited until -- oh,
18 just right here. November. And, oh, oh, here. This
19 would be good. May of 2010, but it peaked just like
20 this. They picked those dates out of the sky.

21 They know now that the economy has
22 recovered. They know that the bonuses went up. Nobody
23 knew that in 2008. Nobody knew what was going to happen.
24 So it's clear use of hindsight. It's also speculation
25 because of what I said. They are saying that we should

1 have gambled what we had, millions of millions of dollars
2 gambled in the hope that we throw those dice and
3 Petrohawk's other two wells would be successful. This
4 well would stabilize and it would be okay, that the play
5 would work, but with the economy in the shape it was,
6 that would have been gambling, not cautious.

7 Then they are asking you to guess again when
8 these hypothetical leases -- You will hear a lot about
9 hypothetical leases during this. These hypothetical
10 leases they said should have been signed in November of
11 2009 and May of 2010 should have been signed, but those
12 dates are pure speculation.

13 I want you to listen about the comparables
14 that they offer. They have got these two leases that
15 they say are the comparables that should have been used.
16 Well, you see if they are comparable to what they say we
17 should have done and what we did.

18 They also have this royalty damages model
19 which is we want our money now, not later. We don't want
20 our kids to get this money. We want the royalty quicker.
21 You know, we don't want it to be paid out over time. We
22 want it now.

23 THE COURT: Five minutes, counsel.

24 MR. GALL: What they are ignoring is that
25 these leases are the product of negotiation. You can't

1 just dictate terms. This was wildcat acreage. They are
2 also going to tell you that -- I'm going to quickly go to
3 these terms. They are going to suggest that we should
4 have had 2500-acre terms, 90-day CDO provisions, and
5 three-year primary terms. They will not point you to
6 another comparable ranch, big ranch, that was leased on
7 those terms.

8 Their two comparables, one of them is
9 105,000 acres -- one lease for 105,000 acres. The others
10 are 20,000-acre leases. Their experts have had to
11 admit -- They say we should have done "X," but they can't
12 find anybody else that did "X" anywhere in the Eagle
13 Ford. So, again, it's all hypothetical. It's all
14 speculation. It's inconsistent really with what's
15 happened with other leases and other properties that are
16 similar to this. It's simply -- they are simply wrong
17 about those lease terms and that means that their whole
18 royalty damage model falls apart.

19 So where are we? I'm not going to get a
20 chance to talk to you at more length. The rules are I
21 have got what time I have got. I hope you will keep in
22 mind what I told you about caution and about hindsight.
23 Those are fundamental principles. I hope you will keep
24 in mind the situation and evaluate this case based on
25 what was known in 2008, not what has occurred in the five

1 years since. Focus on 2008. That's what the law
2 requires. That's what the trustee's duties are judged
3 by.

4 And when you do that, you are going to see
5 that we negotiated these leases for the benefit of STS,
6 not for anyone else. You are going to see that those
7 leases were in the best interest of the beneficiaries and
8 that the beneficiaries recognized that until they were
9 solicited to join this lawsuit years later.

10 In our view, the beneficiaries should be
11 thanking Pattie Ormond, JPMorgan, and H. L. Tompkins for
12 a job well done. They shouldn't be using hindsight to
13 condemn them and second-guess them because that's wrong.
14 And at the end of the day, we think it's again important
15 for you to remember that 45 percent of their brethren --
16 45 percent of the beneficiaries of this trust see our
17 way, not their way.

18 We think at the end of the day after you
19 listen to all the evidence, after you consider all of
20 these witnesses, that you are going to come to the same
21 conclusion that those 45 percent did and that we have
22 that we did an excellent job for their people that have
23 made these people wealthy, made millions of dollars, and
24 will continue to make them hundreds of millions of
25 dollars. We shouldn't be condemning. We should be

1 *congratulating.*

2 *Thank you for your time. I appreciate you*
3 *listening to me. We will do our best, along with*
4 *Mr. Flegle, to make this as pleasant an experience as you*
5 *can have and be efficient as we can. Thank you for your*
6 *time.*

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1 STATE OF TEXAS)

2 COUNTY OF BEXAR)

3 I, CRAIG CARTER, Official Court Reporter in
4 and for the 408th District Court of Bexar County, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions
7 of evidence and other proceedings requested orally or in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that the total cost for
13 the original and/or a copy of this Reporter's Record is
14 \$375.00 and was to be paid by Mr. Jim Flegle.

15 WITNESS MY OFFICIAL HAND this the 8th day of
16 December, 2014.

17
18
19 /s/Craig Carter

20 E-mail: libmr2@yahoo.com
21 408TH DISTRICT COURT
22 SAN ANTONIO, TEXAS 78205

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