

1 CAUSE NO. 2010-CI-10977  
2 JOHN K. MEYER, ET. AL. ) IN THE DISTRICT COURT  
 )  
3 VS. )  
 )  
4 JPMORGAN CHASE BANK, N.A. ) 225TH JUDICIAL DISTRICT  
 )  
5 INDIVIDUALLY/CORPORATELY )  
 )  
6 AND AS TRUSTEE OF THE )  
 )  
7 SOUTH TEXAS SYNDICATE )  
 )  
8 TRUST ) BEXAR COUNTY, TEXAS  
 )

9  
10 REPORTER'S CERTIFICATION  
11 ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL D. JONES  
12 AUGUST 29, 2014

13 I, Stephanie M. Harper, a Certified Shorthand  
14 Reporter in and for the State of Texas, hereby certify  
15 to the following:

16 That the witness, MICHAEL D. JONES, was duly sworn  
17 by the officer and that the transcript of the oral  
18 deposition is a true record of the testimony given by  
19 the witness;

20 That the deposition transcript was submitted on  
21 9-10, 2014, to the witness, or to the attorney  
22 for the witness, for examination, signature, and return  
23 to U.S. Legal Support, Inc., by 10-03, 2014;

24 That the amount of time used by each party at the  
25 deposition is as follows:

26 MR. MICHAEL S. CHRISTIAN - 00:07  
27 MS. SHARON C. SAVAGE - 00:00  
28 MR. JAMES L. DROUGHT - 00:00

1 MR. IAN T. BOLDEN - 00:00

2 MR. KEVIN M. BEITER - 04:18

3 MS. SUSAN PAUL KRAVIK - 00:00

4 That pursuant to information given to the  
5 deposition officer at the time said testimony was  
6 taken, the following includes counsel for all parties  
7 of record:

8 MR. MICHAEL S. CHRISTIAN,

MS. SHARON C. SAVAGE,

9 MR. JAMES L. DROUGHT,

MR. IAN T. BOLDEN,

10 ATTORNEYS FOR PLAINTIFFS.

MR. KEVIN M. BEITER,

11 MS. SUSAN PAUL KRAVIK,

ATTORNEYS FOR DEFENDANT.

12 I further certify that I am neither counsel for,  
13 related to, nor employed by any of the parties or  
14 attorneys in the action in which this proceeding was  
15 taken, and further that I am not financially or  
16 otherwise interested in the outcome of the action.

17 Further certification requirements pursuant to Rule  
18 203 of TRCP will be certified to after they have  
19 occurred.

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Certified to by me this 10 of SEPTEMBER, 2014.

*Stephanie M. Harper*



STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-14

JOB NO. 166627 [JONES]

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was ✓ was not  
3 returned to U.S. Legal Support, Inc., on September 22,  
4 2014.

5 If returned, the attached Corrections and Signature  
6 page contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered  
8 to MR. KEVIN M. BEITER, Custodial Attorney;

9 That \$ 1,843.20 is the deposition officer's charges  
10 to the Attorney for Defendant, MR. KEVIN M. BEITER,  
11 Texas Bar No. 02059065, for preparing the original  
12 deposition transcript and any copies of exhibits;

13 That the deposition was delivered in accordance  
14 with Rule 203.3, and that a copy of this certificate  
15 was served on all parties shown herein on 10/17/14 and  
16 filed with the Clerk.

17 Certified to by me this 16<sup>th</sup> day of October,  
2014.

18 Stephanie M. Harper *BPAE*  
19 STEPHANIE M. HARPER  
20 TEXAS CSR NO. 7433  
21 Expiration Date: 12-31-14

22 U.S. Legal Support, Inc.  
23 Firm Registration No. 122  
24 363 North Sam Houston Parkway East,  
25 Suite 1200  
Houston, Texas 77060  
(713) 653-7100

JOB NO. 166627

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE                      CORRECTION                      REASON FOR CHANGE

page 7, line 19                      sans (instead of Saults)                      misspelling

page 23, line 24                      Its a list of leases                      misquote

(Confidential portion - see separate errata sheet)

page 79, line 20                      Kramer                      misspelling

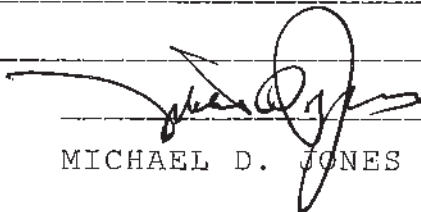
page 127 line 11                      Cullen                      "

page 127 line 12                      Cullen                      "

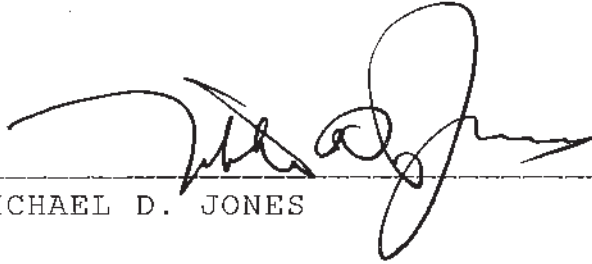
pg. 141, line 20                      Cullen                      "

pg. 163, line 6                      goes                      Wrong verb tense

pg. 203, line 20                      they are                      misspelling

  
MICHAEL D. JONES

1 I, MICHAEL D. JONES, solemnly swear or affirm  
 2 under the pains and penalties of perjury that the  
 3 foregoing pages contain a true and correct transcript  
 4 of the testimony given by me at the time and place  
 5 stated herein, except as noted on the previous  
 6 correction page(s), and that I am signing this before a  
 7 Notary Public.

8 

MICHAEL D. JONES

9 STATE OF T E X A S \*  
 10 COUNTY OF Harris \*

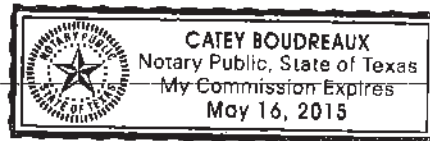
11 Before me, Catey Boudreaux  
 12 on this day personally appeared MICHAEL D. JONES, known  
 13 to me, or proved to me under oath, to be the person  
 14 whose name is subscribed to the foregoing instrument  
 15 and acknowledged to me that they executed the same for  
 16 the purposes and consideration therein expressed.

17 Given under my hand and seal of office on  
 18 this, the 22 day of September, 2014.

19 

NOTARY PUBLIC IN AND FOR THE  
 STATE OF TEXAS

20 My Commission Expires: \_\_\_\_\_



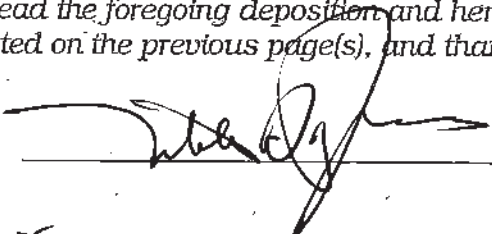
21  
22  
23  
24  
25 JOB NO. 166627

Page	Line	Correction	Reason for Change
52	21	"Yes. Per year"	clarification of testimony
59	20	"To derive the value"	the word "at" should not be there

Witness Signature

Date

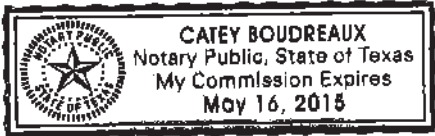
I, Michael D. Jones, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the previous page(s), and that I am signing this before a Notary Public.



STATE OF Texas, COUNTY OF Harris

Before me, Catey Boudreaux, on this day personally appeared Michael D. Jones, known to me, or proved to me under oath or through \_\_\_\_\_ (description of identity card or other document), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this, the 22 day of September, 2014



Catey Boudreaux  
 NOTARY PUBLIC IN AND FOR THE  
 STATE OF Texas

My Commission Expires: \_\_\_\_\_



CAUSE NO. 2010-CI-10977

JOHN K. MEYER, et al.

Plaintiff,

v.

JPMORGAN CHASE BANK, NA,  
Individually/Corporately and as Trustee  
of the South Texas Syndicate Trust, and  
GARY P. AYMES

Defendant

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

FILED  
DONNA KAY HEKINNEY  
DISTRICT CLERK  
BEXAR COUNTY  
2014 OCT 20 PM 12:49  
DEPUTY  
BY Albert Chavez

**MOTION TO SEAL RECORDS**

TO THE HONORABLE COURT:

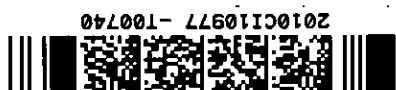
COMES NOW non-party Newfield Exploration Company ("Newfield), and moves the Court to seal the records specified below in the above-entitled case, and respectfully shows the Court the following: <sup>1</sup>

**I.**

1. On November 14, 2011, the Court granted an Agreed Protective Order requested by the parties. *See* Protective Order attached to EOG's Motion to Seal at Exhibit 1.

2. Thereafter, on February 13, 2014, the Court signed an agreed order extending the protections of the Protective Order to non-parties that had been requested to produce documents in this matter. *See* Non-Party Order attached to EOG's Motion to Seal at Exhibit 2.

<sup>1</sup> Non-party Resources, Inc. has a similar Motion to Seal on file with the Court. Newfield hereby incorporates all exhibits attached to that Motion by reference as if those documents were attached hereto.





3. Newfield was requested to produce documents in this matter. Newfield did so when it produced more than 500 pages of documents, bates stamped Meyer-NFX 001-568 (the “documents” or “information” in issue).

4. On October 8, 2014, JPMorgan Chase Bank, NA (“Chase”) gave Newfield notice that it intended to use the documents produced by Newfield at trial. *See* Notice attached hereto as **Exhibit A**. The trial of this matter is set for October 27, 2014.

5. As exhibits in the trial of this matter, the documents produced by Newfield would become court records and subject to access by the public. *Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655, 659 (Tex. 1992). Accordingly, through this Motion Newfield seeks an order sealing the documents it previously produced pursuant to Rule 76a of the Texas Rules of Civil Procedure.

## II.

6. Newfield has the following interest in sealing the documents at issue:

- The information previously produced by Newfield contains confidential and proprietary information, and thus its disclosure would harm Newfield’s ability to conduct business by providing its competitors with information they could not otherwise acquire; and
- The information previously produced by Newfield contains trade secrets; as such, access to that information should be restricted pursuant to Rule 76a. *Oryon Technologies, Inc. v. Marcus*, 429 S.W.3d 762, 764 (Tex. App.—Dallas 2014, no pet.).

7. This Motion is made on the grounds that a specific, serious and substantial interest of Newfield clearly outweighs any presumption of openness and any probable adverse effect sealing the information in question will have on general public health and safety. More specifically, and as set forth in the Affidavit of Gary M. Walker, the documents in issue contain information related to specific mineral leases Newfield

considers to be confidential and proprietary and that is not contained in the public domain. See the Affidavit attached hereto as **Exhibit B**. Newfield treats such information as confidential, and allowing this information to be made public would give Newfield's competitors an advantage by allowing them to know the terms and conditions upon which Newfield is willing to lease property. *Id.*

8. No less restrictive means than sealing the above-described documents will adequately and effectively protect the specific interest of Newfield, as the disclosure of the documents in issue will destroy the interest Newfield has in such trade secrets. The information Newfield considers protected is the very information Chase seeks to introduce into evidence in the trial of this matter.

PRAYER

WHEREFORE, non-party Newfield requests that all parties in this matter take notice of this Motion and that, on final hearing of the matter, the Court order the above-described records produced by Newfield to be sealed, and that the Court grant Newfield such other relief to which it is justly entitled.

Respectfully submitted,

**PHIPPS CAVAZOS, PLLC**

By:           /s/ Marc K. Whyte           

**Marc K. Whyte**  
State Bar No. 24056526  
102 9<sup>th</sup> Street  
San Antonio, Texas 78215  
Telephone: 210-340-9877  
Facsimile: 210-340-9889  
Email mwhyte@phipps cavazos.com

**ATTORNEYS      FOR      NON-PARTY  
NEWFIELD                      EXPLORATION  
COMPANY**

**FIAT**

This Motion to Seal filed by Newfield Exploration Company is set for hearing on November 4, 2014 at 8:30 a.m. in the Presiding Courtroom, Bexar County Courthouse.

OCT 20 2014

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

**Barbara Nellerhoe**  
Presiding Judge  
45th District Court  
Bexar County, Texas

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of October, 2014, a true and correct copy of the above and foregoing instrument was deposited in the United States mail, by Certified Mail, Return Receipt Requested, postage prepaid to the following:

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

Charles A. Gall  
John C. Eichman  
Hunton & Williams LLP  
1445 Ross Ave., Suite 3700  
Dallas, TX 75202

George Spencer, Jr.  
Robert Rosenbach  
Clemens & Spencer  
112 East Pecan St., Suite 1300  
San Antonio, TX 78205

James L. Drought  
Ian Bolden  
Drought Drought & Bobbitt LLP  
112 East Pecan St., Suite 2900  
San Antonio, TX 78205

Richard Tinsman  
Sharon C. Savage  
Tinsman & Sciano, Inc.  
10107 McAllister Freeway  
San Antonio, TX 78205

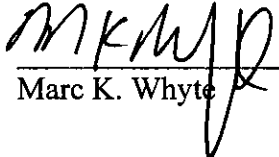
David R. Deary  
Jim L. Flegle  
Loewinsohn Flegle Deary, LLP  
12377 Merit Drive, Suite 900  
Dallas, TX 75251

John B. Massopust  
Matthew Gollinger

Zelle Hofmann Voelbel & Mason LLP  
500 Washington Ave. South, Suite 4000  
Minneapolis, MN 55415-1152

Michael S. Christian  
Zelle Hofmann Voelbel & Mason  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

Fred W. Stumpf  
Glast, Phillips & Murray  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046

  
Marc K. Whyte

# Hornberger Sheehan Fuller & Garza INCORPORATED

David Jed Williams  
jwilliams@hsfblaw.com

October 8, 2014

Newfield Exploration Company  
c/o The Prentice Hall Corporation System  
211 E. 7<sup>th</sup> Street, Suite 620  
Austin, Texas 78701

VIA CM/RRR# 7013 2250 0001 3431 7883

Re: Cause No. 2010-CI-10977, *John K. Meyer, et al. vs. JP Morgan Chase Bank, N.A., et al.*, in the 225th Judicial District Court of Bexar County, Texas

Dear Sir or Madam:

Attached are the following:

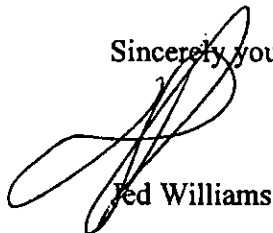
1. Agreed Protective Order dated November 14, 2011; and
2. Agreed Protective Order dated February 13, 2014.

Pursuant to the terms of the enclosed Orders, Defendant JPMorgan Chase Bank, N.A., in all capacities ("JPM"), hereby notifies Newfield Exploration Company ("Newfield") that it has listed the documents produced by Newfield, and Bates Stamped Meyer-NFX\_001-Meyer-NFX\_568 ("Newfield's Documents"), on its Proposed Exhibit List and intends to introduce said documents into evidence during trial of the above-referenced cause.

The above-referenced cause is set for trial on October 27, 2014. Please contact me as soon as possible if Newfield intends to move the court regarding JPM's introduction of Newfield's Documents into evidence at the time of trial, including but not limited to, a motion to seal pursuant to Texas Rule of Civil Procedure 76a.

Thank you.

Sincerely yours,



David Williams

DJW/lrk

Enclosures

October 8, 2014

Page 2

cc: Via Email

Mr. George Spencer, Jr.  
Mr. Robert Rosenbach  
CLEMENS & SPENCER  
112 East Pecan, Suite 1300  
San Antonio, Texas 78205

Via Email

Mr. James L. Drought  
Mr. Ian Bolden  
DROUGHT DROUGHT & BOBBITT, LLP  
112 East Pecan, Suite 2900  
San Antonio, Texas 78205

Via Email

Mr. Richard Tinsman  
Ms. Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78216

Via Email

Mr. Michael S. Christian  
ZELLE HOFMANN VOELBEL & MASON  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

Via Email

Mr. Fred W. Stumpf  
GLAST, PHILLIPS & MURRAY  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

Via Email

Mr. David R. Deary  
Mr. Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

Via Email

Mr. Steven J. Badger  
Ms. Ashley Bennett Jones  
ZELLE HOFMANN VOELBEL & MASON  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975

Via Email

Mr. John B. Massopust  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

Via Email

Mr. Matthew H. Gollinger  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

JOHN K. MEYER, et al.,

Plaintiff,

v.,

JPMORGAN CHASE BANK, NA,  
Individually/Corporately and as Trustee  
of the South Texas Syndicate Trust, and  
GARY P. AYMES

Defendant

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**AFFIDAVIT OF GARY M. WALKER**

STATE OF TEXAS

COUNTY OF MONTGOMERY

BEFORE ME, the undersigned authority, on this day personally appeared Gary M. Walker, who, being by me duly sworn, on oath stated:

“My name is Gary M. Walker. I am over eighteen years of age and have never been convicted of a felony. I am fully competent to testify to the matters stated herein, and I have personal knowledge of such matters.

I am the Land Manager, Onshore Gulf Coast, with Newfield Exploration Company (“Newfield”). The documents Newfield seeks to seal in the above-referenced matter – i.e. the documents produced pursuant to the October 2014 subpoena issued to Newfield by JPMORGAN Chase Bank, N.A. (bates labeled Meyer-NFX 001-568) – relate to leases between Newfield and/or predecessors of Newfield and various non-party lessors who have no connection with this matter. These confidential records have been produced upon agreement of the parties; the records are confidential and include

B



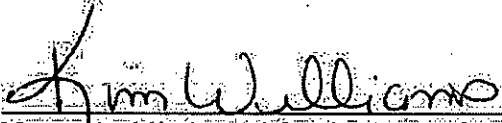
information concerning lease bonus payments, royalty interests, and various covenants and options agreed to by Newfield and the lessors. Newfield considers this information confidential and proprietary, and the disclosure of such information could provide Newfield's competition an advantage by giving them the knowledge of the terms and conditions upon which Newfield is willing to lease property and in the areas represented by the leases. Such information is not in the public domain, and Newfield routinely treats this information as confidential and as trade secrets.

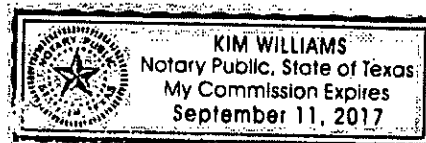
Newfield is requesting that the Court seal the records it has produced in this matter to avoid the immediate and irreparable harm to Newfield that would result from their public disclosure."

FURTHER AFFIANT SAYETH NOT.

  
GARY M. WALKER

SUBSCRIBED AND SWORN TO BEFORE ME this 20<sup>th</sup> day of October, 2014.

  
Notary Public in and for the State of Texas





3. Newfield, a non-party, was requested to produce documents in this matter. Newfield did so when it produced more than 500 pages of documents, bates stamped Meyer-NFX 001-568 (the “documents” or “information” in issue).

4. On October 8, 2014, JPMorgan Chase Bank, NA (“Chase”) gave Newfield notice that it intended to use the documents produced by Newfield at trial. *See* Notice attached hereto as **Exhibit A**. The trial of this matter is set for October 27, 2014.

5. As exhibits in the trial of this matter, the documents produced by Newfield would become court records and subject to access by the public. *Dallas Morning News v. Fifth Court of Appeals*, 842 S.W.2d 655, 659 (Tex. 1992). Accordingly, through this Motion Newfield seeks an order sealing the documents it previously produced pursuant to Rule 76a of the Texas Rules of Civil Procedure.

## II.

6. Newfield has the following interest in sealing the documents at issue:

- The information previously produced by Newfield contains confidential and proprietary information, and thus its disclosure would harm Newfield’s ability to conduct business by providing its competitors with information they could not otherwise acquire; and
- The information previously produced by Newfield contains trade secrets; as such, access to that information should be restricted pursuant to Rule 76a. *Oryon Technologies, Inc. v. Marcus*, 429 S.W.3d 762, 764 (Tex. App.—Dallas 2014, no pet.).

7. This Motion is made on the grounds that a specific, serious and substantial interest of Newfield clearly outweighs any presumption of openness and any probable adverse effect sealing the information in question will have on general public health and safety. More specifically, and as set forth in the Affidavit of Gary M. Walker, the documents in issue contain information related to specific mineral leases Newfield

considers to be confidential and proprietary and that is not contained in the public domain. See the Affidavit attached hereto as **Exhibit B**. Newfield treats such information as confidential, and allowing this information to be made public would give Newfield's competitors an advantage by allowing them to know the terms and conditions upon which Newfield is willing to lease property. *Id.* This would immediately and irreparably harm Newfield. *Id.*

8. No less restrictive means than sealing the above-described documents will adequately and effectively protect the specific interest of Newfield, as the disclosure of the documents in issue will destroy the interest Newfield has in such trade secrets. The information Newfield considers protected is the very information Chase seeks to introduce into evidence in the trial of this matter.

### III.

9. Newfield requests that after this temporary sealing order is in place, the Court enter a final sealing order. Newfield requests that a hearing on the final sealing order take place on **November 4, 2014 at 8:30 a.m.**

### PRAYER

WHEREFORE, non-party Newfield requests that all parties in this matter take notice of this Motion and that, that a temporary sealing order be entered, that a hearing be scheduled on the request for a final sealing order, on final hearing of the matter, the Court order the above-described records produced by Newfield to be permanently sealed, and that the Court grant Newfield such other relief to which it is justly entitled.

Respectfully submitted,

**PHIPPS CAVAZOS, PLLC**

By:           /s/ Marc K. Whyte           

**Marc K. Whyte**  
State Bar No. 24056526  
102 9<sup>th</sup> Street  
San Antonio, Texas 78215  
Telephone: 210-340-9877  
Facsimile: 210-340-9889  
Email mwhyte@phippscavazos.com

**ATTORNEYS      FOR      NON-PARTY  
NEWFIELD                      EXPLORATION  
COMPANY**

**FIAT**

This Motion for Temporary Sealing Order filed by Newfield Exploration Company is set for hearing on October 28, 2014 at 9:00 a.m. in Room 109 in the Bexar County Courthouse. It should be heard at the same time EOG Resources, Inc.'s Motion to Seal is heard. That Motion is already set for hearing on October 28, 2014 at 9:00 a.m.

OCT 20 2014

**Barbara Nellermoe**  
**Presiding Judge**  
\_\_\_\_\_  
JUDGE PRESIDING 45th District Court  
Bexar County, Texas

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of October, 2014, a true and correct copy of the above and foregoing instrument was deposited in the United States mail, by Certified Mail, Return Receipt Requested, postage prepaid to the following:

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

Charles A. Gall  
John C. Eichman  
Hunton & Williams LLP  
1445 Ross Ave., Suite 3700  
Dallas, TX 75202

George Spencer, Jr.  
Robert Rosenbach  
Clemens & Spencer  
112 East Pecan St., Suite 1300  
San Antonio, TX 78205

James L. Drought  
Ian Bolden  
Drought Drought & Bobbitt LLP  
112 East Pecan St., Suite 2900  
San Antonio, TX 78205

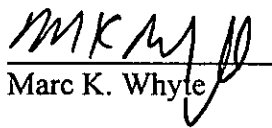
Richard Tinsman  
Sharon C. Savage  
Tinsman & Sciano, Inc.  
10107 McAllister Freeway  
San Antonio, TX 78205

David R. Deary  
Jim L. Flegle  
Loewinsohn Flegle Deary, LLP  
12377 Merit Drive, Suite 900  
Dallas, TX 75251

John B. Massopust  
Matthew Gollinger  
Zelle Hofmann Voelbel & Mason LLP  
500 Washington Ave. South, Suite 4000  
Minneapolis, MN 55415-1152

Michael S. Christian  
Zelle Hofmann Voelbel & Mason  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

Fred W. Stumpf  
Glast, Phillips & Murray  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046

  
Marc K. Whyte

# Hornberger Sheehan Fuller & Garza INCORPORATED

David Jed Williams  
jwilliams@hsfblaw.com

October 8, 2014

Newfield Exploration Company  
c/o The Prentice Hall Corporation System  
211 E. 7<sup>th</sup> Street, Suite 620  
Austin, Texas 78701

VIA CM/RRR# 7013 2250 0001 3431 7883

Re: Cause No. 2010-CI-10977, *John K. Meyer, et al. vs. JP Morgan Chase Bank, N.A., et al.*, in the 225th Judicial District Court of Bexar County, Texas

Dear Sir or Madam:

Attached are the following:

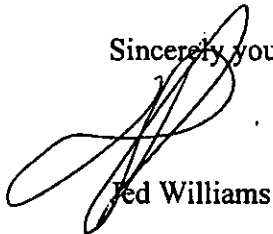
1. Agreed Protective Order dated November 14, 2011; and
2. Agreed Protective Order dated February 13, 2014.

Pursuant to the terms of the enclosed Orders, Defendant JPMorgan Chase Bank, N.A., in all capacities ("JPM"), hereby notifies Newfield Exploration Company ("Newfield") that it has listed the documents produced by Newfield, and Bates Stamped Meyer-NFX\_001-Meyer-NFX\_568 ("Newfield's Documents"), on its Proposed Exhibit List and intends to introduce said documents into evidence during trial of the above-referenced cause.

The above-referenced cause is set for trial on October 27, 2014. Please contact me as soon as possible if Newfield intends to move the court regarding JPM's introduction of Newfield's Documents into evidence at the time of trial, including but not limited to, a motion to seal pursuant to Texas Rule of Civil Procedure 76a.

Thank you.

Sincerely yours,



David Williams

DJW/lrk

Enclosures



October 8, 2014

Page 2

cc: *Via Email*

Mr. George Spencer, Jr.  
Mr. Robert Rosenbach  
CLEMENS & SPENCER  
112 East Pecan, Suite 1300  
San Antonio, Texas 78205

*Via Email*

Mr. James L. Drought  
Mr. Ian Bolden  
DROUGHT DROUGHT & BOBBITT, LLP  
112 East Pecan, Suite 2900  
San Antonio, Texas 78205

*Via Email*

Mr. Richard Tinsman  
Ms. Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78216

*Via Email*

Mr. Michael S. Christian  
ZELLE HOFMANN VOELBEL & MASON  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

*Via Email*

Mr. Fred W. Stumpf  
GLAST, PHILLIPS & MURRAY  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

*Via Email*

Mr. David R. Deary  
Mr. Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

*Via Email*

Mr. Steven J. Badger  
Ms. Ashley Bennett Jones  
ZELLE HOFMANN VOELBEL & MASON  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975

*Via Email*

Mr. John B. Massopust  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

*Via Email*

Mr. Matthew H. Gollinger  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

JOHN K. MEYER, et al.

Plaintiff,

v.

JPMORGAN CHASE BANK, NA,  
Individually/Corporately and as Trustee  
of the South Texas Syndicate Trust, and  
GARY P. AYMES

Defendant

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**AFFIDAVIT OF GARY M. WALKER**

STATE OF TEXAS

COUNTY OF MONTGOMERY

BEFORE ME, the undersigned authority, on this day personally appeared Gary M. Walker, who, being by me duly sworn, on oath stated:

“My name is Gary M. Walker. I am over eighteen years of age and have never been convicted of a felony. I am fully competent to testify to the matters stated herein, and I have personal knowledge of such matters.

I am the Land Manager, Onshore Gulf Coast, with Newfield Exploration Company (“Newfield”). The documents Newfield seeks to seal in the above-referenced matter – i.e. the documents produced pursuant to the October 2014 subpoena issued to Newfield by JPMORGAN Chase Bank, N.A. (bates labeled Meyer-NFX 001-568) – relate to leases between Newfield and/or predecessors of Newfield and various non-party lessors who have no connection with this matter. These confidential records have been produced upon agreement of the parties; the records are confidential and include

B


information concerning lease bonus payments, royalty interests, and various covenants and options agreed to by Newfield and the lessors. Newfield considers this information confidential and proprietary, and the disclosure of such information could provide Newfield's competition an advantage by giving them the knowledge of the terms and conditions upon which Newfield is willing to lease property and in the areas represented by the leases. Such information is not in the public domain, and Newfield routinely treats this information as confidential and as trade secrets.

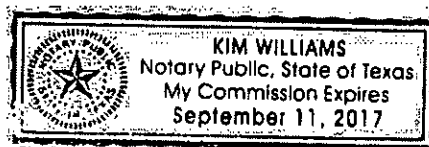
Newfield is requesting that the Court seal the records it has produced in this matter to avoid the immediate and irreparable harm to Newfield that would result from their public disclosure."

FURTHER AFFIANT SAYETH NOT.

  
GARY M. WALKER

SUBSCRIBED AND SWORN TO BEFORE ME this 20<sup>th</sup> day of October, 2014.

  
Notary Public in and for the State of Texas





CAUSE NO. 2010-CI-10977

JOHN K. MEYER, et al.

Plaintiff,

v.

JPMORGAN CHASE BANK, NA,  
Individually/Corporately and as Trustee  
of the South Texas Syndicate Trust, and  
GARY P. AYMES

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY  
2014 OCT 20 PM 12:47  
DEPUTY  
BY *Albert Chavez*

**NOTICE OF MOTION TO SEAL RECORDS**

A hearing will be held in open Court on a motion filed by Newfield Exploration Company ("Newfield") to seal the records specified below in the above-entitled case.

Any person may intervene and be heard concerning the sealing of the records. The hearing will be held on **November 4, 2014 at 8:30 a.m.**, in the Presiding Courtroom, Bexar County Courthouse in San Antonio, Texas.

The underlying action is brought against JPMorgan Chase Bank, NA ("Defendant") alleging that the Defendant breached its fiduciary duties as trustee for the South Texas Syndicate Trust.

The records Newfield seeks to seal are documents related to various mineral leases and other agreements between Newfield and/or its predecessors and nonparties to this action. Such records have been produced to the Defendant herein with the understanding that they would remain confidential.

Respectfully submitted,

PHIPPS CAVAZOS, LLP  
THE PHIPPS  
102 9<sup>th</sup> Street  
San Antonio, Texas 78215  
Telephone: (210) 340-9877  
Telecopier: (210) 340-9899  
Email: [mwhyte@phippscavazos.com](mailto:mwhyte@phippscavazos.com)

By:   
MARC K. WHYTE  
STATE BAR NO. 24056526

**ATTORNEYS FOR NON-PARTY NEWFIELD  
EXPLORATION COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of October, 2014, a true and correct copy of the above and foregoing instrument was deposited in the United States mail, by Certified Mail, Return Receipt Requested, postage prepaid to the following:

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

Charles A. Gall  
John C. Eichman  
Hunton & Williams LLP  
1445 Ross Ave., Suite 3700  
Dallas, TX 75202

George Spencer, Jr.  
Robert Rosenbach  
Clemens & Spencer  
112 East Pecan St., Suite 1300  
San Antonio, TX 78205

James L. Drought  
Ian Bolden  
Drought Drought & Bobbitt LLP  
112 East Pecan St., Suite 2900  
San Antonio, TX 78205

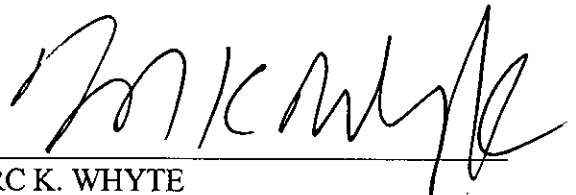
Richard Tinsman  
Sharon C. Savage  
Tinsman & Sciano, Inc.  
10107 McAllister Freeway  
San Antonio, TX 78205

David R. Deary  
Jim L. Flegle  
Loewensohn Flegle Deary, LLP  
12377 Merit Drive, Suite 900  
Dallas, TX 75251

John B. Massopust  
Matthew Gollinger  
Zelle Hofmann Voelbel & Mason LLP  
500 Washington Ave. South, Suite 4000  
Minneapolis, MN 55415-1152

Michael S. Christian  
Zelle Hofmann Voelbel & Mason  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

Fred W. Stumpf  
Glast, Phillips & Murray  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046



MARC K. WHYTE

**VERIFICATION**

STATE OF TEXAS

§

COUNTY OF BEXAR

§

§

BEFORE ME, the undersigned authority, on this day personally appeared MARC K. WHYTE who having been by me duly sworn, on oath, deposed and verifies that the Notice to which this Verification was posted at the Bexar County Courthouse, was filed with Bexar County District courts and was filed with the Texas Supreme Court. Mr. Whyte further verifies the accuracy of the details set forth in such Motion.

*M. K. Whyte*

\_\_\_\_\_  
MARC K. WHYTE

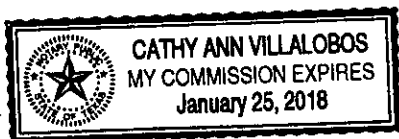
SUBSCRIBED AND SWORN to before me by on this day 20th day of October, 2014.

*Cathy Villalobos*

\_\_\_\_\_  
Notary Public, State of Texas

*Cathy Villalobos*

\_\_\_\_\_  
Printed Name of Notary Public



Commission Expires: 1/25/18

*Canales*

*30 min*  
**JUDGE'S NOTES**



CAUSE NO.: 2010CI10977

COURT: 225

DATE/TIME: 10/20/2014 08:30AM

SETTING COURT: 109

STYLE: JOHN K MEYER  
VS. JP MORGAN CHASE BANK N A ET AL

DISCOVERY LEVEL: 2

ATTORNEY(S) FOR CASE:

MARK RANDOLPH  
JAMES DROUGHT  
STEVEN BADGER  
MATTHEW GOLLINGER  
JOHN EICHMAN  
MARK JOSEPHS  
FRED STUMPF  
DAVID BUTTERBAUGH

PATRICK SHEEHAN  
JIM FLEGLE  
JOHN MASSOPUST  
RUDY GARZA  
DAVID WILLIAMS  
RICHARD TINSMAN  
IAN BOLDEN

THIS CASE HAS 15 OR MORE ATTORNEYS

TYPE OF MOTION OR APPLICATION:

NON-JURY RESET SETTING MTN FOR CAMERA INSPECTION AND ORDER COMPELLING PRODUCTION

CONFERRING \_\_\_\_\_ ESTIMATE HEARING TIME \_\_\_\_\_  
AGREED ORDER \_\_\_\_\_ ASSIGNED COURT 73rd/Canales  
DROP \_\_\_\_\_ RECORD TAKEN Waived  
INTERPRETER \_\_\_\_\_ RESET DATE \_\_\_\_\_ TIME \_\_\_\_\_

*Donna Kay McKinney*  
DEPUTY

2014 OCT 20 AM 11:57

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY

DATE OF NOTES 10/20/14

JUDGE INITIALS DL

Granted in part - order signed



**CAUSE NO. 2010-CI-10977**

<b>JOHN K. MEYER, ET AL.,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	<b>225TH JUDICIAL DISTRICT</b>
	§	
<b>JP MORGAN CHASE BANK, N.A., ET</b>	§	
<b>AL.,</b>	§	
	§	<b>BEXAR COUNTY, TEXAS</b>
<b>Defendants.</b>	§	

**NOTICE OF HEARING ON MOTION TO SEAL COURT RECORDS**

Notice is hereby given that on November 12, 2014, at 8:30 a.m., a hearing will be held in open court in the above styled and numbered cause on a Motion to Seal Court Records (“Motion”) filed by Non-Party Texas Crude Energy, LLC (“Texas Crude”) pursuant to Texas Rule of Civil Procedure 76a.

This lawsuit involves claims between Plaintiffs John K. Meyer, et al. and Defendants JP Morgan Chase Bank, N.A., et al. Texas Crude is not a party to this lawsuit. Generally, Plaintiffs assert claims for breach of fiduciary duty and other causes of action against Defendants, on the grounds that Defendants, as trustees for certain assets, failed to receive adequate consideration in exchange for oil and gas leases.

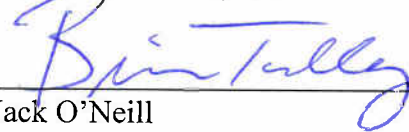
On July 28, 2014, Texas Crude produced documents in response to a subpoena issued by JP Morgan Chase Bank, N.A. (“Chase”). The documents produced by Texas Crude consist of lease files which were labeled as “Confidential” when produced by Texas Crude pursuant to the protective orders already in place.

At the hearing, Texas Crude will move the Court to seal filings or hearing transcripts relating to the substance of the documents produced by Texas Crude. Any person may intervene and be heard concerning the sealing of court records.

The Motion was filed on October 24, 2014, and this notice was posted on October 28, 2014.

Respectfully submitted,

PIERCE & O'NEILL, LLP

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

Jack O'Neill  
State Bar No. 15288500  
Brian K. Tully  
State Bar No. 24039217  
4203 Montrose Boulevard  
Houston, Texas 77006  
Telephone: (713) 634-3600  
Facsimile: (713) 634-3639  
E-mail: joneill@pierc.oneill.com  
E-mail: btully@pierc.oneill.com

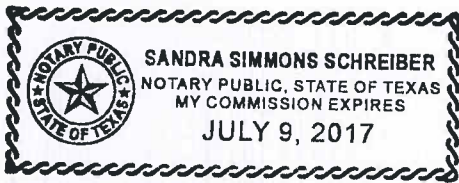
ATTORNEYS FOR TEXAS CRUDE  
ENERGY, LLC

**VERIFICATION**

I hereby certify that on, October 28, 2014, I posted a notice containing this information at the place for posting of public notices as directed by administrative personnel at the Bexar County District Court House.

  
\_\_\_\_\_  
Brian K. Tully

SUBSCRIBED AND SWORN TO BEFORE ME, on this 28th day of October, 2014.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motions was served on the following counsel of record on October 28, 2014, via facsimile and e-mail:

Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Facsimile: (214) 572-1717  
E-mail: [jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)  
*Attorneys for Plaintiffs Emilie Blaze, et al.*

Patrick K. Sheehan  
David Jed Williams  
HORNBERGER SHEEHAN FULLER &  
GARZA INCORPORATED  
The Quarry Heights Bldg.  
7373 Broadway, Suite 300  
San Antonio, Texas 78209  
Telephone: (210) 271-1700  
Facsimile: (210) 271-1730  
E-mail: [psheehan@hsfblaw.com](mailto:psheehan@hsfblaw.com)  
E-mail: [jwilliams@hsfblaw.com](mailto:jwilliams@hsfblaw.com)

And

Charles A. Gall  
John C. Eichman  
Amy S. Bowen  
HUNTON & WILLIAMS LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202  
Telephone: (214) 979-3000  
Facsimile: (214) 880-0011  
E-mail: [cgall@hunton.com](mailto:cgall@hunton.com)  
E-mail: [jeichman@hunton.com](mailto:jeichman@hunton.com)

And

Kevin M. Beiter  
MCGINNIS LOCHRIDGE  
600 Congress Ave., Suite 2100  
Austin, Texas 78701  
Telephone: (512) 495-6084  
Facsimile: (512) 495-6384  
Email: [kbeiter@mcginnislaw.com](mailto:kbeiter@mcginnislaw.com)  
*Attorneys for Defendants JP Morgan Chase  
Bank, N.A., Individually/Corporately and as  
Trustee of the South Texas Syndicate Trust  
and Gary P. Aymes*

Richard Tinsman  
TINSMAN & SCIANO, INC.  
10107 McAllister Fwy  
San Antonio, Texas 78216  
Telephone: (210) 225-3121  
Facsimile: (210) 225-6235  
E-mail: [rtinsman@tsslawyers.com](mailto:rtinsman@tsslawyers.com)

And

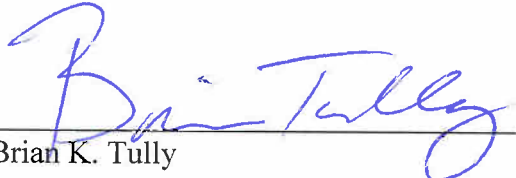
George H. Spencer Jr.  
Robert Rosenbach  
CLEMENS & SPENCER  
112 E. Pecan Street, Suite 1300  
San Antonio, Texas 78205  
Telephone: (201) 227-7121  
Facsimile: (210) 227-0732  
E-mail: [spencer@clemens-spencer.com](mailto:spencer@clemens-spencer.com)  
E-mail: [rosenbar@clemens-spencer.com](mailto:rosenbar@clemens-spencer.com)

And

James L. Drought  
DROUGHT, DROUGHT & BOBBITT, LLP  
2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
Telephone: (210) 225-4031  
Facsimile: (210) 225-0586  
E-mail: [jld@ddb-law.com](mailto:jld@ddb-law.com)  
*Attorneys for Plaintiffs John K. Meyer, et al.*

Fred W. Stumpf  
BOYER SHORT LLP  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046  
Telephone: (713) 871-2025  
Facsimile: (713) 871-2024  
E-mail: [fstumpf@boyerjacobs.com](mailto:fstumpf@boyerjacobs.com)  
*Attorneys for The Washburn Intervenors*

John B. Massopust  
Matthew J. Gollinger  
ZELLE HOFFMAN VOELBEL & MASON  
LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, Minnesota 65415-1152  
Telephone: (612) 339-2020  
Facsimile: (612) 336-9100  
E-mail: [jmassopu@zelle.com](mailto:jmassopu@zelle.com)  
E-mail: [mgollinger@zelle.com](mailto:mgollinger@zelle.com)  
*Attorneys for Intervenor-Plaintiffs, Linda  
Aldrich, et al.*

  
\_\_\_\_\_  
Brian K. Tully

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CAUSE NO. 2010-CI-10977

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

REPORTER'S CERTIFICATION  
ORAL & VIDEO DEPOSITION  
CHARLES E. GRAHAM, III  
SEPTEMBER 2, 2014

I, OLGA GUTIERREZ, Certified Shorthand  
Reporter, in and for the State of Texas, hereby certify  
to the following:

That the witness, CHARLES E. GRAHAM, III, was  
duly sworn by the officer and that the transcript of the  
Oral & Video Deposition is a true record of the  
testimony given by the Witness;

That the deposition transcript was submitted on  
September 10, 2014 to the attorney for the witness  
for examination, signature and return to me by  
October 3, 2014;

That the amount of time used by each party at  
the deposition is as follows:

- MR. CHARLES GALL- 5 hours, 49 minutes
- MR. GRAYSON LINYARD- 0 hours, 0 minutes
- MR. RICHARD TINSMAN- 0 hours, 0 minutes
- MS. SHARON SAVAGE- 0 hours, 0 minutes
- MR. IAN BOLDEN- 0 hours, 0 minutes
- MR. JAMES DROUGHT- 0 hours, 0 minutes

1 MR. JOHN MASSOPUST- 0 hours, 0 minutes  
 2 MR. KEVIN BEITER- 0 hours, 0 minutes

3 That pursuant to information given to the  
 4 deposition officer at the time said testimony was taken,  
 5 the following includes counsel for all parties of  
 6 record:

- 7 MR. CHARLES GALL - Attorney for Defendant
- 8 MR. GRAYSON LINYARD - Attorney for Defendant
- 9 MR. RICHARD TINSMAN - Attorney for Plaintiff
- 10 MS. SHARON SAVAGE - Attorney for Plaintiff
- 11 MR. IAN BOLDEN - Attorney for Plaintiff
- 12 MR. JAMES DROUGHT - Attorney for Plaintiff
- 13 MR. KEVIN BEITER - Attorney for Defendant
- 14 MR. JOHN MASSOPUST - Attorney for Defendant

15 I further certify that I am neither counsel  
 16 for, related to, nor employed by any of the parties or  
 17 attorneys in the action in which this proceeding was  
 18 taken. And further, that I am not financially or  
 19 otherwise interested in the outcome of the action.

20 Further certification requirements pursuant to  
 21 Rule 203 of TRCP will be certified to after they have  
 22 occurred.

23 Certified to by me this 10<sup>th</sup> day of Sept  
 24 2014.

*Olga Gutierrez*



OLGA GUTIERREZ, Texas CSR 5061  
 Expiration Date: 12/31/15  
 U.S. Legal Support, Inc.  
 Firm Registration No. 341  
 4801 N.W. Loop 410, Suite 375  
 San Antonio, Texas 78229  
 (210) 734-7127

25

## 1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition transcript was/was not  
3 returned to the deposition officer on October 3, 2014.

4 If returned, the attached Changes and Signature page  
5 contains any changes and the reasons therefor;

6 That \$ 3002<sup>10</sup> is the deposition officer's charges  
7 to MR. CHARLES GALL for preparing the original  
8 deposition transcript and any copies of exhibits;

9 That the deposition was delivered in accordance with  
10 Rule 203.3, and that a copy of this certificate was  
11 served on all parties shown herein on and filed with the  
12 Clerk.

13 Certified to by me this 27<sup>th</sup> day of October, 2014.

14

15

16

17

18

19

20

21

22

23

24

25

Olga Gutierrez *EGAC*  
OLGA GUTIERREZ, Texas CSR 5061  
Expiration Date: 12/31/15  
U.S. Legal Support, Inc.  
Firm Registration No. 341  
4801 N.W. Loop 410, Suite 375  
San Antonio, Texas 78229  
(210) 734-7127



# JUDGE'S NOTES



CAUSE NO.: 2010CI10977

COURT: 225

DATE/TIME: 10/27/2014 09:30AM

SETTING COURT: 225

STYLE: JOHN K MEYER  
VS. JP MORGAN CHASE BANK N A ET AL

DISCOVERY LEVEL: 2

ATTORNEY(S) FOR CASE:

MARK RANDOLPH  
JAMES DROUGHT - Plaintiff  
STEVEN BADGER  
MATTHEW GOLLINGER  
JOHN EICHMAN  
MARK JOSEPHS  
FRED STUMPF  
DAVID BUTTERBAUGH

PATRICK SHEEHAN - Defendant  
JIM FLEGLÉ - Plaintiff  
JOHN MASSOPUST  
RUDY GARZA  
DAVID WILLIAMS  
RICHARD TINSMAN - Plaintiff  
IAN BOLDEN  
George Spence Plaintiff  
Chuck Bell - Defendant

THIS CASE HAS 15 OR MORE ATTORNEYS

TYPE OF MOTION OR APPLICATION:

NON-JURY SETTING ON REVISED MICHAEL JONES REPORT FOR REVIEW AND CONSIDERATION

CONFERRING \_\_\_\_\_ ESTIMATE HEARING TIME 30 min.  
AGREED ORDER \_\_\_\_\_ ASSIGNED COURT 225th Dist. Ct.  
DROP \_\_\_\_\_ RECORD TAKEN Record taken by: Cindy Hyatt  
INTERPRETER \_\_\_\_\_ RESET DATE \_\_\_\_\_ TIME \_\_\_\_\_

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY  
14 OCT 27 AM 11:50  
DEPUTY  
JUDGE INITIALS  
Bryce

DATE OF NOTES 10/27/14

~~Second Plaintiff's~~ Defendant's second motion  
to Exclude Testimony of lawyer  
Michael D. Jones is DENIED

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

JOHN K. MEYER, ET AL.,

*Plaintiffs,*

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

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFFS' PROPOSED CHARGE OF THE COURT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiffs John K. Meyer, et al. (collectively "Plaintiffs"), submit this Proposed Charge of the Court, in compliance with Rules 271-79 of the Texas Rules of Civil Procedure. Plaintiffs do not waive their rights to object to the submission to the jury of any theory, any element of damages or any other matter, do not waive their rights to seek judgment as a matter of law with respect to any theory, any element of damages or any other matter, and do not waive their rights to withdraw any portion of the proposed charge and/or to submit additional, amended or modified questions, instructions or definitions to the Court prior to the time the Charge of the Court is submitted to the jury.

DATE: October 24, 2014.

Respectfully submitted,

**CLEMENS & SPENCER, P.C.**  
GEORGE SPENCER, JR.  
State Bar No. 18921001  
112 E. Pecan St., Suite 1300  
San Antonio, Texas 78205  
Telephone: (210) 227-7121  
Facsimile: (210) 227-0732

**DROUGHT DROUGHT & BOBBITT, LLP**  
JAMES L. DROUGHT  
State Bar No. 06135000  
112 E. Pecan St., Suite 2900  
San Antonio, Texas 78205  
Telephone: (210) 225-4031  
Facsimile: (210) 222-0586

**TINSMAN & SCIANO, INC.**  
RICHARD TINSMAN  
State Bar No. 20064000  
10107 McAllister Freeway  
San Antonio, Texas 78205  
Telephone: (210) 225-3121  
Facsimile: (210) 225-6235

**LOEWINSOHN FLEGLE DEARY, L.L.P.**  
DAVID R. DEARY  
State Bar No. 05624900  
JIM L. FLEGLE  
State Bar No. 07118600  
CAROL E. FARQUHAR  
State Bar No. 06828300  
JOHN W. MCKENZIE, III  
State Bar No. 24065723  
TYLER M. SIMPSON  
State Bar No. 24066091  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Facsimile: (214) 572-1717

**ZELLE HOFMANN VOELBEL & MASON LLP**  
JOHN B. MASSOPUST (pro hac vice)  
MATTHEW J. GOLLINGER (pro hac vice)  
MICHAEL CHRISTIAN (pro hac vice)  
500 Washington Avenue South, Suite 5000  
Minneapolis, Minnesota 55415  
Telephone: (612) 339-2020  
Facsimile: (612) 336-9100

STEVEN J. BADGER  
Texas State Bar No. 01499050  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975  
Telephone: (214) 742-3000  
Facsimile: (214) 760-8994

By: /s/ Carol E. Farquhar  
Carol E. Farquhar

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been electronically filed and served through eService and email on the below listed counsel of record on October 24, 2014:

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

Kevin M. Beiter  
McGinnis Lochridge  
600 Congress Ave, Ste. 2100  
Austin, TX 78701

Charles A. Gall  
John C. Eichman  
Amy S. Bowen  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

Fred W. Stumpf  
Boyer Short, PC  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046

*/s/ Carol E. Farquhar*

\_\_\_\_\_  
Carol E. Farquhar

## MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. Unless you are otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.
12. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

**Presiding Juror:**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. have the complete charge read aloud if it will be helpful to your deliberations;

- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

**Instructions for Signing the Verdict Certificate:**

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors.

The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4. There are special instructions before Questions \_\_\_\_\_ explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

---

HONORABLE LARRY NOLL  
DISTRICT JUDGE, 408TH JUDICIAL DISTRICT



**Verdict Certificate**

Check one:

\_\_\_\_\_ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

\_\_\_\_\_ Our verdict is not unanimous. Eleven of us have agreed to each and every answer to each and every answer and have signed the certificate below.

\_\_\_\_\_ Our verdict is not unanimous. Ten of us have agreed to each and every answer to each and every answer and have signed the certificate below.

Signature

Name Printed

- |     |       |       |
|-----|-------|-------|
| 1.  | _____ | _____ |
| 2.  | _____ | _____ |
| 3.  | _____ | _____ |
| 4.  | _____ | _____ |
| 5.  | _____ | _____ |
| 6.  | _____ | _____ |
| 7.  | _____ | _____ |
| 8.  | _____ | _____ |
| 9.  | _____ | _____ |
| 10. | _____ | _____ |
| 11. | _____ | _____ |

If you have answered Question \_\_\_\_\_, then you must sign this certificate also.

**Additional Certificate**

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

[Questions requiring unanimous answer]

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

**SOURCE:** 100.3, 100.11 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408TH JUDICIAL DISTRICT

## DEFINITIONS

“**STS Trust**” means the “South Texas Syndicate Trust” which was the subject of the Final Decree dated February 18, 1951, cause no. F-62,656: *Fred W. Shield, et al. v. Eva M. Barrington, et al.*, in the District Court, 73<sup>rd</sup> Judicial District, Bexar County, Texas;

“**JP Morgan**” means J.P. Morgan Chase Bank, N.A., as Trustee of the STS Trust and successor in interest to Alamo National Bank;

“**Beneficiaries**” means the beneficiaries of the STS Trust.

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408TH JUDICIAL DISTRICT

**INSTRUCTION NO. 1**  
**(Circumstantial evidence)**

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

**SOURCE:** 100.8 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408TH JUDICIAL DISTRICT

**QUESTION NO. 1**  
**(Self-Dealing – 2008 Petrohawk leases)**

**Do you find that when JP Morgan entered the 2008 mineral leases with Petrohawk, JP Morgan was engaged in “self-dealing” as defined below?**

“Self-dealing” as used in this question means JP Morgan used the advantage of its position to gain any benefit for JP Morgan, other than reasonable compensation, or any benefit for any third person, firm, corporation, or entity that JP Morgan desired to be benefited, at the expense of the STS Trust and the Beneficiaries.

**ANSWER: “Yes” or “No”**

**ANSWER: \_\_\_\_\_**

**SOURCE:** *See InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 899 (Tex.App. – Texarkana 1987, no writ); *Smith v. Estate of Branch*, no. 05-90-00941-CV, 1991 WL 219469, \*17 (Tex.App.—Dallas 1991, no writ); Restatement (Second) Trusts § 170, comment q (1959).

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408TH JUDICIAL DISTRICT

If you answered “Yes” to Question 1, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 2**  
**(Breach of fiduciary duty – self-dealing 2008 Petrohawk leases)**

**Did JP Morgan prove by a preponderance of the evidence that it complied with all of the following duties owed to the Beneficiaries in connection with the 2008 Petrohawk leases?**

“Good faith” means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.

As Trustee of the STS Trust, JP Morgan owed the Beneficiaries of the STS Trust a fiduciary duty. To prove it complied with this duty in connection with the 2008 Petrohawk leases, JP Morgan must show that, at the time of the 2008 Petrohawk leases:

1. The 2008 Petrohawk leases were fair and equitable to the Beneficiaries.
2. JP Morgan made reasonable use of the confidence that the beneficiaries placed in it.
3. JP Morgan acted in the utmost good faith and in accordance with the purposes of the trust in connection with the 2008 Petrohawk leases.
4. JP Morgan placed the interests of the Beneficiaries before its own and did not use the advantage of its position to gain any benefit for itself at the expense of the Beneficiaries.
5. JP Morgan fully and fairly disclosed to the Beneficiaries all material facts known to JP Morgan concerning the 2008 Petrohawk leases that might affect the Beneficiaries’ rights.
6. The duty to comply with the “prudent investor” rule.
  - a. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
  - b. A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
  - c. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- i. general economic conditions;
  - ii. the possible effect of inflation or deflation;
  - iii. the expected tax consequences of investment decisions or strategies;
  - iv. the role that each investment or course of action plays within the overall trust portfolio, which may include real property (including mineral interests);
  - v. the expected total return from income and the appreciation of capital;
  - vi. other resources of the beneficiaries;
  - vii. needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - viii. an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- d. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- e. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise has a duty to use those special skills or expertise.

**ANSWER:** "Yes" or "No"

**ANSWER:** \_\_\_\_\_

**SOURCE:** 235.10 *Texas Pattern Jury Charges* (2014 ed.); TEX. TRUST CODE §§ 113.051; 117.004

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
 HONORABLE LARRY NOLL  
 JUDGE, 408TH JUDICIAL DISTRICT

If you answered “No” to Question 1, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 3**  
**(Breach of fiduciary duty – no self-dealing 2008 Petrohawk leases)**

**Did JP Morgan fail to comply with one or more of the following duties owed to the Beneficiaries in connection with the 2008 Petrohawk leases?**

**Answer “Yes” or “No” for each.**

<p>I. The duty to comply with the “prudent investor” rule.</p> <ul style="list-style-type: none"><li>a. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.</li><li>b. A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.</li><li>c. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:<ul style="list-style-type: none"><li>i. general economic conditions;</li><li>ii. the possible effect of inflation or deflation;</li><li>iii. the expected tax consequences of investment decisions or strategies;</li><li>iv. the role that each investment or course of action plays within the overall trust portfolio, which may include real property (including mineral interests);</li><li>v. the expected total return from income and the appreciation of capital;</li><li>vi. other resources of the beneficiaries;</li><li>vii. needs for liquidity, regularity of income, and preservation or appreciation of capital; and</li><li>viii. an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.</li></ul></li></ul>	<p><b>Answer:</b> _____</p>
---	-----------------------------



<p>d. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.</p> <p>e. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise has a duty to use those special skills or expertise.</p>	
<p>2. The duty of good faith</p> <p>A trustee fails to comply with his duty as a trustee if it fails to administer the trust in good faith or fails to act in accordance with the purposes of the trust.  “Good faith” means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.</p>	<p><b>Answer:</b> _____</p>
<p>3. The duty to keep the Beneficiaries reasonably informed concerning:</p> <p>a. the administration of the trust; and</p> <p>b. the material facts necessary for the Beneficiaries to protect the Beneficiaries’ interests.</p>	<p><b>Answer:</b> _____</p>

**SOURCE:** 235.9 *Texas Pattern Jury Charges* (2014 ed.); *Texas Trust Code* §§ 111.0035, 113.051 (duty of good faith); 117.004 (prudent investor).

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408TH JUDICIAL DISTRICT

If you answered “no” to Question 2 or “yes” to any part of Question 3, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 4**  
**(Damages – 2008 Petrohawk leases)**

**What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the STS Trust for its damages, if any, resulting from the conduct that you have found in your answer to Question 2 or in Question 3 relating to the 2008 Petrohawk leases?**

A trustee who commits a breach of trust is chargeable with the amount required to restore the values of the trust estate and trust distributions to what they would have been if the portion of the trust affected by the breach had been properly administered.

Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents for damages, if any.

- 1. Lost bonus payments** \$ \_\_\_\_\_
- 2. Fair market value for royalty losses for imprudent development lease terms** \$ \_\_\_\_\_

**SOURCE:** 235.14 *Texas Pattern Jury Charges* (2014 ed.); Restatement (Third) of Trusts § 100 (2012)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408TH JUDICIAL DISTRICT

**QUESTION 5**

**(Self-Dealing, amendments/extensions of Broad Oak/Hunt Oil leases)**

**Do you find that when JP Morgan entered the amendments and/or extensions of mineral leases with Broad Oak/Hunt Oil, JP Morgan was engaged in “self-dealing” as defined below?**

“Self-dealing” as used herein means JP Morgan used the advantage of its position to gain any benefit for JP Morgan, other than reasonable compensation, or any benefit for any third person, firm, corporation, or entity, at the expense of the STS Trust and the Beneficiaries.

**ANSWER:** “Yes” or “No”

**ANSWER:** \_\_\_\_\_

**SOURCE:** *See InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 899 (Tex.App. – Texarkana 1987, no writ); *Smith v. Estate of Branch*, no. 05-90-00941-CV, 1991 WL 219469, \*17 (Tex.App.—Dallas 1991, no writ); Restatement (Second) Trusts § 170, comment q (1959).

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

If you answered “Yes” to Question 5, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 6**  
**(Breach of fiduciary duty – self-dealing amendments/extensions of Broad Oak/Hunt Oil leases)**

**Did JP Morgan prove by a preponderance of the evidence that it complied with all of the following duties owed to the Beneficiaries in connection with the amendments/extensions of Broad Oak/Hunt Oil leases?**

“Good faith” means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.

As Trustee of the STS Trust, JP Morgan owed the Beneficiaries of the STS Trust a fiduciary duty. To prove it complied with this duty in connection with the amendments/extensions of Broad Oak/Hunt Oil leases, JP Morgan must show that, at the time of the amendments/extensions of the Broad Oak/Hunt Oil leases:

1. The amendments/extensions of the Broad Oak/Hunt Oil leases were fair and equitable to the Beneficiaries.
2. JP Morgan made reasonable use of the confidence that the beneficiaries placed in it.
3. JP Morgan acted in the utmost good faith and in accordance with the purposes of the trust in connection with the amendments/extensions of the Broad Oak/Hunt Oil leases.
4. JP Morgan placed the interests of the Beneficiaries before its own and did not use the advantage of its position to gain any benefit for itself at the expense of the Beneficiaries.
5. JP Morgan fully and fairly disclosed to the Beneficiaries all material facts known to JP Morgan concerning the amendments/extensions of the Broad Oak/Hunt Oil leases that might affect the Beneficiaries’ rights.
6. The duty to comply with the “prudent investor” rule.
  - a. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
  - b. A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust

portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

- c. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
  - i. general economic conditions;
  - ii. the possible effect of inflation or deflation;
  - iii. the expected tax consequences of investment decisions or strategies;
  - iv. the role that each investment or course of action plays within the overall trust portfolio, which may include real property (including mineral interests);
  - v. the expected total return from income and the appreciation of capital;
  - vi. other resources of the beneficiaries;
  - vii. needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - viii. an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- d. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- e. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise has a duty to use those special skills or expertise.

**ANSWER:** "Yes" or "No"

**ANSWER:** \_\_\_\_\_

**SOURCE:** 235.10 *Texas Pattern Jury Charges* (2014 ed.); TEX. TRUST CODE §§113.051;  
117.004

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

If you answered “No” to Question 5, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 7**

**(Breach of fiduciary duty – no self-dealing amendments/extensions of Broad Oak/Hunt Oil leases)**

**Did JP Morgan fail to comply with one or more of the following duties owed to the Beneficiaries in connection with the amendments/extensions of the Broad Oak/Hunt Oil leases?**

**Answer “Yes” or “No” for each.**

<p>1. The duty to comply with the “prudent investor” rule.</p> <ul style="list-style-type: none"><li>a. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.</li><li>b. A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.</li><li>c. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:<ul style="list-style-type: none"><li>i. general economic conditions;</li><li>ii. the possible effect of inflation or deflation;</li><li>iii. the expected tax consequences of investment decisions or strategies;</li><li>iv. the role that each investment or course of action plays within the overall trust portfolio, which may include real property (including mineral interests);</li><li>v. the expected total return from income and the appreciation of capital;</li><li>vi. other resources of the beneficiaries;</li><li>vii. needs for liquidity, regularity of income, and preservation or appreciation of capital; and</li></ul></li></ul>	<p><b>Answer:</b> _____</p>
--	-----------------------------

<p>viii. an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.</p> <p>d. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.</p> <p>e. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise has a duty to use those special skills or expertise.</p>	
<p>2. The duty of good faith</p> <p>A trustee fails to comply with his duty as a trustee if it fails to administer the trust in good faith or fails to act in accordance with the purposes of the trust. "Good faith" means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.</p>	<p><b>Answer:</b> _____</p>
<p>3. The duty to keep the Beneficiaries reasonably informed concerning:</p> <p>a. the administration of the trust; and</p> <p>b. the material facts necessary for the Beneficiaries to protect the Beneficiaries' interests.</p>	<p><b>Answer:</b> _____</p>

**SOURCE:** 235.9 *Texas Pattern Jury Charges* (2014 ed.); *Texas Trust Code* §§ 111.0035, 113.051 (duty of good faith); 117.004 (prudent investor).

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
 JUDGE, 408th JUDICIAL DISTRICT



If you answered “no” to Question 6 or “yes” to any part of Question 7, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 8**  
**(Damages – amendments/extensions of Broad Oak/Hunt Oil leases)**

**What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the STS Trust for its damages, if any, resulting from the conduct that you have found in your answer to Question 6 or Question 7 relating to the amendments/extensions of the Broad Oak/Hunt Oil leases?**

A trustee who commits a breach of trust is chargeable with the amount required to restore the values of the trust estate and trust distributions to what they would have been if the portion of the trust affected by the breach had been properly administered.

Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents for damages, if any.

- |           |   |          |
|-----------|---|----------|
| <b>1.</b> | <b>Lost bonus payments</b>  | \$ _____ |
| <b>2.</b> | <b>Fair market value for royalty losses<br/>for imprudent development lease terms</b> | \$ _____ |

**SOURCE:** 235.14 *Texas Pattern Jury Charges* (2014 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

**QUESTION NO. 9**  
**(Breach of fiduciary duty – no self-dealing – Water rights)**

**Did JP Morgan fail to comply with one or more of the following duties to the Beneficiaries by failing to obtain compensation for the water rights?**

A trustee has a duty to comply with the “prudent investor” rule.

The “prudent investor” rule requires:

- a. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- b. A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- c. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
  - i. general economic conditions;
  - ii. the possible effect of inflation or deflation;
  - iii. the expected tax consequences of investment decisions or strategies;
  - iv. the role that each investment or course of action plays within the overall trust portfolio, which may include real property (including mineral interests);
  - v. the expected total return from income and the appreciation of capital;
  - vi. other resources of the beneficiaries;
  - vii. needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - viii. an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
  - ix. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
  - x. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise has a duty to use those special skills or expertise.

A trustee has a duty of good faith. A trustee fails to comply with his duty as a trustee if it fails to administer the trust in good faith or fails to act in accordance with the purposes of the trust.

“Good faith” means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.

**Answer “Yes” or “No.”**

\_\_\_\_\_

**SOURCE:** 235.9 *Texas Pattern Jury Charges* (2014 ed.); *Texas Trust Code* §§ 111.0035, 113.051; 117.004.

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

If you answered “yes” to Question 9, then answer the following question. Otherwise, do not answer the following question

**QUESTION NO. 10**  
**(Damages - water rights)**

**What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the STS Trust for its damages, if any, resulting from JP Morgan’s failure to obtain compensation for the water rights in connection leases entered into by JP Morgan on behalf of the STS Trust ?**

A trustee who commits a breach of trust is chargeable with the amount required to restore the values of the trust estate and trust distributions to what they would have been if the portion of the trust affected by the breach had been properly administered.

Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other.

Answer in dollars and cents for damages, if any.

**Answer:**

**Loss of market value of the water rights**                      \$ \_\_\_\_\_

**SOURCE:** 235.14 *Texas Pattern Jury Charges* (2014 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

**QUESTION 11**  
**(Breach of fiduciary duty – failure to disclose information)**

**Did JP Morgan breach its fiduciary duty to keep the STS Beneficiaries reasonably informed of changes involving the trusteeship and other significant developments concerning the trust and its administration needed by the beneficiaries for the protection of their interests?**

**Answer “Yes” or “No.”**

\_\_\_\_\_

**SOURCE:** 235.9 *Texas Pattern Jury Charges* (2014 ed.); Restatement of the Law on Trusts, Third § 82(1)(c); *Scott on Trusts* § 173.

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

**QUESTION 12**  
**(Amount of JPM fees)**

**What was the amount of JP Morgan's fees charged to STS Trust from July 2, 2010 to July 1, 2014?**

Answer in dollars and cents, if any.

**ANSWER \$** \_\_\_\_\_

**SOURCE:** 115.17 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

**QUESTION 13**  
**(Amount of JPM atty's fees charged to the Trust)**

**What was the amount of JP Morgan's attorney's fees and expenses for the defense of this lawsuit charged to STS Trust from January 1, 2005 to July 1, 2014?**

Answer in dollars and cents, if any.

**ANSWER \$** \_\_\_\_\_

**SOURCE:** 115.17 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

**QUESTION 14**  
**(Negligent misrepresentation)**

**Did JP Morgan make a negligent misrepresentation on which the Beneficiaries justifiably relied?**

Negligent misrepresentation occurs when –

1. A party makes a representation in the course of its business or in a transaction in which it has a pecuniary interest, and
2. The representation supplies false information for the guidance of others in their business, and
3. The party making the representation did not exercise reasonable care or competence in obtaining or communicating the information.

**ANSWER: “Yes” or “No”**

**ANSWER: \_\_\_\_\_**

**SOURCE:** 105.19 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

\_\_\_\_\_  
HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT



**QUESTION 15**  
**(Fraud)**

**Did JP Morgan commit fraud against the STS Trust?**

- a. “Fraud” occurs when:
1. a party fails to disclose a material fact within the knowledge of that party, and
  2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and
  3. the party intends to induce the other part to take some action by failing to disclose the fact, and
  4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.
- b. “Fraud” also occurs when:
1. a party makes a material misrepresentation, and
  2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
  3. the misrepresentation is made with the intention that it should be acted on by the other party, and
  4. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means:

1. a false statement of fact; or
2. An expression of opinion that is false, made by one who has, or purports to have, a special knowledge of the subject matter of the opinion.

“Special knowledge” means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

**ANSWER: “Yes” or “No”**

**ANSWER: \_\_\_\_\_**

**SOURCE:** 105.1, 105.2, 105.3A, 105.3C, 105.3E, 105.4 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

If you answered “yes” to Questions 14 or 15, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 16**  
**(Damages – Fraud and negligent misrepresentation)**

**What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the STS Trust for its damages, if any, that were proximately caused by such fraud or such negligent misrepresentation?**

Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other.

Answer in dollars and cents for damages, if any.

- 1. The economic loss, if any, suffered in the past as a consequence of the STS Trust’s reliance on the misrepresentation** \$ \_\_\_\_\_
  
- 2. The economic loss, if any, that in reasonable probability will be sustained in the future as a consequence of the STS Trust’s reliance on the misrepresentation** \$ \_\_\_\_\_

**SOURCE:** 115.21 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

**QUESTION 17**  
**(Attorney's fees)**

**What is a reasonable fee for the necessary services of the Beneficiaries' attorneys, stated in dollars and cents?**

Factors to consider in determining a reasonable fee include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

**Answer with an amount for each of the following:**

1. **For representation in the trial court:**

**ANSWER: \$** \_\_\_\_\_

2. **For representation through appeal to the court of appeals:**

**ANSWER: \$** \_\_\_\_\_

3. **For representation at the petition for review stage in the Supreme Court of Texas:**

**ANSWER: \$** \_\_\_\_\_

4. **For representation at the merits briefing stage in the Supreme Court of Texas:**

**ANSWER: \$** \_\_\_\_\_

5. **For representation through oral argument and the completion of proceedings in the Supreme Court of Texas:**

**ANSWER: \$** \_\_\_\_\_

**SOURCE:** 115.47 *Texas Pattern Jury Charges* (2012 ed.); Texas Trust Code § 114.064.

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

Answer the following question only if you unanimously answered “No” to any part of Questions 2 or 6, or if you unanimously answered “Yes” to any part of Questions 3, 7, 9, or 11. Otherwise, do not answer the following question.

To answer “yes” to any part of the following question, your answer must be unanimous. You may answer “No” to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION NO. 18**  
**(Exemplary damages predicate)**

**Do you find by clear and convincing evidence that the harm the Beneficiaries suffered, if any, resulted from fraud, malice or gross negligence?**

“Fraud” occurs when:

1. a party fails to disclose a material fact within the knowledge of that party, and
2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and
3. the party intends to induce the other part to take some action by failing to disclose the fact, and
4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

Or

“Fraud” occurs when:

1. a party makes a material misrepresentation, and
2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation is made with the intention that it should be acted on by the other party, and
4. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means:

1. a false statement of fact; or
2. a promise of future performance made with an intention, at the time the promise was made, not to perform as promised; or
3. a statement of opinion based on a false statement of fact; or
4. a statement of opinion that the maker knows to be false; or
5. an expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

“Special knowledge” means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

Or

“Fraud” occurs when:

1. a party fails to disclose a material fact within the knowledge of that party, and
2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and
3. the party intends to induce the other party to take some action by failing to disclose the fact, and
4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegation sought to be established.

“Malice” means a specific intent to cause substantial injury to the Beneficiaries.

“Gross Negligence means an act or omission by JP Morgan’s agent

- (a) which when viewed objectively from the standpoint of JP Morgan’s agents at the time of its occurrence involved an extreme degree of risk considering the probability and magnitude of the potential harm to others; and
- (b) of which JP Morgan’s agents had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others.

You may find that the harm to the Beneficiaries resulted from JP Morgan’s fraud, malice or gross negligence only if you find that it authorized or subsequently approved its agents’ malice or gross negligence, or acted with malice or gross negligence through a “vice principal.”

The term “vice principal” means:

- (a) a corporate officer; or
- (b) a person to whom JP Morgan has confided the management of the whole or a department or division of the business of JP Morgan; or
- (c) those who have authority to employ, direct, and discharge servants of the master; or

(d) those engaged in the performance of nondelegable or absolute duties of the matter.

**ANSWER: “Yes” or “No” whether the harm resulted from malice for each transaction**

1. The 2008 Petrohawk leases “Yes” \_\_\_\_\_ “No” \_\_\_\_\_
2. The amendments/extensions of the Broad Oak/Hunt Oil leases “Yes” \_\_\_\_\_ “No” \_\_\_\_\_
3. The failure to obtain compensation for water rights “Yes” \_\_\_\_\_ “No” \_\_\_\_\_

**ANSWER: “Yes” or “No” whether the harm resulted from gross negligence for each transaction**

1. The 2008 Petrohawk leases “Yes” \_\_\_\_\_ “No” \_\_\_\_\_
2. The amendments/extensions of the Broad Oak/Hunt Oil leases “Yes” \_\_\_\_\_ “No” \_\_\_\_\_
3. The failure to obtain compensation for water rights “Yes” \_\_\_\_\_ “No” \_\_\_\_\_

**ANSWER: “Yes” or “No” whether the harm resulted from fraud for each transaction**

1. The 2008 Petrohawk leases “Yes” \_\_\_\_\_ “No” \_\_\_\_\_
2. The amendments/extensions of the Broad Oak/Hunt Oil leases “Yes” \_\_\_\_\_ “No” \_\_\_\_\_
3. The failure to obtain compensation for water rights “Yes” \_\_\_\_\_ “No” \_\_\_\_\_

**SOURCE:** 105.2, 105.3, 105.3A-105.E, 105.4, 115.37B, *Texas Pattern Jury Charges* (2012 ed.); *Chrysler Ins. Co. v. Greenspoint Dodge of Houston, Inc.*, 297 S.W.3d 248, 250 n. 1 (Tex. 2009); *Bennett v. Reynolds*, 315 S.W.3d 867, 884 (Tex. 2010).



ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

If you answered “yes” to any part of Question 18, answer the following subparts of this question regarding the projects where you answered “yes” in Question 18. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

**QUESTION NO. 19**  
**(Exemplary damages – amount)**

**What sum of money, if any, if paid now in cash, should be assessed against JP Morgan, and awarded to the Beneficiaries as exemplary damages, if any, for the conduct found, if any, in response to Question 18?**

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of JP Morgan.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of JP Morgan.

**Answer in dollars and cents, if any for each transaction.**

1. The 2008 Petrohawk leases \$ \_\_\_\_\_
2. The amendments/extensions of the  
Broad Oak/Hunt Oil leases \$ \_\_\_\_\_
3. The failure to obtain compensation for water rights \$ \_\_\_\_\_

**SOURCE:** 115.38 *Texas Pattern Jury Charges* (2012 ed.)

ACCEPTED: \_\_\_\_\_

REFUSED: \_\_\_\_\_

MODIFIED: \_\_\_\_\_

Signed on October \_\_\_\_, 2014

---

HONORABLE LARRY NOLL  
JUDGE, 408th JUDICIAL DISTRICT

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

JOHN K. MEYER, ET AL.,

*Plaintiffs,*

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

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFFS' PROPOSED CHARGE OF THE COURT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiffs John K. Meyer, et al. (collectively "Plaintiffs"), submit this Proposed Charge of the Court, in compliance with Rules 271-79 of the Texas Rules of Civil Procedure. Plaintiffs do not waive their rights to object to the submission to the jury of any theory, any element of damages or any other matter, do not waive their rights to seek judgment as a matter of law with respect to any theory, any element of damages or any other matter, and do not waive their rights to withdraw any portion of the proposed charge and/or to submit additional, amended or modified questions, instructions or definitions to the Court prior to the time the Charge of the Court is submitted to the jury.

DATE: October 24, 2014.

Respectfully submitted,

**CLEMENS & SPENCER, P.C.**  
GEORGE SPENCER, JR.  
State Bar No. 18921001  
112 E. Pecan St., Suite 1300  
San Antonio, Texas 78205  
Telephone: (210) 227-7121  
Facsimile: (210) 227-0732

**DROUGHT DROUGHT & BOBBITT, LLP**  
JAMES L. DROUGHT  
State Bar No. 06135000  
112 E. Pecan St., Suite 2900  
San Antonio, Texas 78205  
Telephone: (210) 225-4031  
Facsimile: (210) 222-0586

**TINSMAN & SCIANO, INC.**  
RICHARD TINSMAN  
State Bar No. 20064000  
10107 McAllister Freeway  
San Antonio, Texas 78205  
Telephone: (210) 225-3121  
Facsimile: (210) 225-6235

**LOEWINSOHN FLEGLE DEARY, L.L.P.**  
DAVID R. DEARY  
State Bar No. 05624900  
JIM L. FLEGLE  
State Bar No. 07118600  
CAROL E. FARQUHAR  
State Bar No. 06828300  
JOHN W. MCKENZIE, III  
State Bar No. 24065723  
TYLER M. SIMPSON  
State Bar No. 24066091  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Facsimile: (214) 572-1717

**ZELLE HOFMANN VOELBEL & MASON LLP**  
JOHN B. MASSOPUST (pro hac vice)  
MATTHEW J. GOLLINGER (pro hac vice)  
MICHAEL CHRISTIAN (pro hac vice)  
500 Washington Avenue South, Suite 5000  
Minneapolis, Minnesota 55415  
Telephone: (612) 339-2020  
Facsimile: (612) 336-9100

STEVEN J. BADGER  
Texas State Bar No. 01499050  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975  
Telephone: (214) 742-3000  
Facsimile: (214) 760-8994

By: /s/ Carol E. Farquhar  
Carol E. Farquhar

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been electronically filed and served through eService and email on the below listed counsel of record on October 24, 2014:

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

Kevin M. Beiter  
McGinnis Lochridge  
600 Congress Ave, Ste. 2100  
Austin, TX 78701

Charles A. Gall  
John C. Eichman  
Amy S. Bowen  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

Fred W. Stumpf  
Boyer Short, PC  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046

*/s/ Carol E. Farquhar*

\_\_\_\_\_  
Carol E. Farquhar

Cause No. 2010-CI-10977

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFFS,	§	
	§	
VS.	§	
	§	225th JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
	§	
DEFENDANT.	§	BEXAR COUNTY, TEXAS

---

DEFENDANT’S PROPOSED CHARGE OF THE COURT

---

Defendant JPMorgan Chase Bank, N.A., Individually/Corporately and as Former Trustee of the South Texas Syndicate Trust (“JPMorgan”), serves its Proposed Charge of the Court.

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFFS,	§	
	§	
VS.	§	
	§	225th JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
	§	
DEFENDANTS.	§	BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.



1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average.
10. Do not trade your answers. For example, do not say, “I will answer this question your way if you answer another question my way.”
11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on

every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved. A fact cannot be established by circumstantial evidence that gives rise to multiple inferences if none of the inferences is more probable than the others.<sup>1</sup>

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

---

<sup>1</sup> See PJC 200.8; *Blount v. Bordens, Inc.*, 910 S.W.2d 931, 933 (Tex. 1995) (holding that a "jury may not infer an ultimate fact" from "meager circumstantial evidence which could give rise to any number of inferences, none more probable than another." (internal quotations omitted)).

**QUESTION 1:**

Did JPMorgan engage in self-dealing in connection with the following transactions?

A trustee engages in self-dealing if it knowingly uses its position as trustee to gain an advantage, profit, or otherwise benefit itself from a transaction that it enters into on behalf of the trust.

Without more, the fact that a bank trustee's trust department enters into transactions on behalf of the trust with a person or company that has a banking relationship with one of the bank's other departments is no evidence of self-dealing.

A trustee does not engage in self-dealing by earning a fee for serving as a trustee.

**Answer "Yes" or "No" for each.**

1.1. The May 2008 leases with Petrohawk

Answer: \_\_\_\_\_

1.2. The July 2008 leases with Petrohawk

Answer: \_\_\_\_\_

1.3. The December 2008 leases with Petrohawk

Answer: \_\_\_\_\_

1.4. The July 2009 lease extensions with Broad Oak

Answer: \_\_\_\_\_

1.5. The October 2010 lease amendments with Hunt

Answer: \_\_\_\_\_

1.6. The January 2011 lease amendments with Hunt

Answer: \_\_\_\_\_

1.7. The July 2012 lease extensions with Hunt

Answer: \_\_\_\_\_

1.8. The August 2012 lease amendments with Hunt

Answer: \_\_\_\_\_

Source: *See* PJC 235.10 (stating that a predicate question is appropriate where allegations of self-dealing are disputed); *Texas Bank and Trust Co. v. Moore*, 595 S.W.2d 502, 507 (Tex. 1980) (self-dealing where nephew of decedent serving in fiduciary role took possession of decedent's property pursuant to transfers he made under power of attorney); *In the Estate of Edythe A. Miller*, --S.W.3d--, 2014 WL 3970766, \*5 (Tex. App.—Tyler, Aug. 13, 2014) (self-dealing where son signed agreement for incapacitated mother, pursuant to power of attorney, authorizing son to make non-interest bearing loans to himself from his mother's funds); *InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 895 (Tex. App.—Texarkana 1987, no writ) (holding that an entity's long-term banking relationship with a bank trustee does not make that entity a "business associate" of the bank for purposes of Texas's self-dealing statute and that a trustee's fees do not constitute self-dealing), *disapproved of on other grounds by Tex. Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240 (Tex. 2002).

If you answered “No” to item 1.1 in Question 1, then answer item 2.1 in Question 2.

If you answered “No” to item 1.2 in Question 1, then answer item 2.2 in Question 2.

If you answered “No” to item 1.3 in Question 1, then answer item 2.3 in Question 2.

If you answered “No” to item 1.4 in Question 1, then answer item 2.4 in Question 2.

If you answered “No” to item 1.5 in Question 1, then answer item 2.5 in Question 2.

If you answered “No” to item 1.6 in Question 1, then answer item 2.6 in Question 2.

If you answered “No” to item 1.7 in Question 1, then answer item 2.7 in Question 2.

If you answered “No” to item 1.8 in Question 1, then answer item 2.8 in Question 2.

Otherwise, do not answer Question 2.

## **QUESTION 2:**

With regard to each of the transactions for which you answered “No” in Question 1, did JPMorgan fail to comply with one or more of the following duties?

In answering this question, you are instructed as follows:

- (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- (b) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- (c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
  - (1) general economic conditions;
  - (2) the possible effect of inflation or deflation;
  - (3) the expected tax consequences of investment decisions or strategies;
  - (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

- (5) the expected total return from income and the appreciation of capital;
  - (6) other resources of the beneficiaries;
  - (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- (d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (e) A trustee fails to comply with his duty as trustee if he fails to act in good faith or fails to act in accordance with the purposes of the trust.
- “Good faith” means an action that is prompted by honesty of intention and a reasonable belief that the action was probably correct.
- (f) Whether a trustee has complied with its duty to prudently invest is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**Answer “Yes” or “No” for each transaction for which you answered “No” in Question 1.**

2.1. The May 2008 leases with Petrohawk

Answer: \_\_\_\_\_

2.2. The July 2008 leases with Petrohawk

Answer: \_\_\_\_\_

2.3. The December 2008 leases with Petrohawk

Answer: \_\_\_\_\_

2.4. The July 2009 lease extensions with Broad Oak

Answer: \_\_\_\_\_

2.5. The October 2010 lease amendments with Hunt

Answer: \_\_\_\_\_

2.6. The January 2011 lease amendments with Hunt

Answer: \_\_\_\_\_

2.7. The July 2012 lease extensions with Hunt

Answer: \_\_\_\_\_

2.8. The August 2012 lease amendments with Hunt

Answer: \_\_\_\_\_

Sources: Question 1 is from PJC 235.9; Instructions (a)–(d) are from PJC 235.9 and Tex. Prop. Code § 117.004; Instruction (e) is from PJC 235.9; Instruction (f) is from Tex. Prop. Code § 117.010.

If you answered “Yes” to item 1.1 in Question 1, then answer item 3.1 in Question 3.

If you answered “Yes” to item 1.2 in Question 1, then answer item 3.2 in Question 3.

If you answered “Yes” to item 1.3 in Question 1, then answer item 3.3 in Question 3.

If you answered “Yes” to item 1.4 in Question 1, then answer item 3.4 in Question 3.

If you answered “Yes” to item 1.5 in Question 1, then answer item 3.5 in Question 3.

If you answered “Yes” to item 1.6 in Question 1, then answer item 3.6 of Question 3.

If you answered “Yes” to item 1.7 in Question 1, then answer item 3.7 in Question 3.

If you answered “Yes” to item 1.8 in Question 1, then answer item 3.8 in Question 3.

Otherwise, do not answer Question 3.

**QUESTION 3:**

With regard to each of the transactions for which you answered “Yes” in Question 1, if any, did JPMorgan comply with its fiduciary duty to Plaintiffs?

JPMorgan owed Plaintiffs a fiduciary duty. To prove it complied with this duty in connection with the transactions in question, JPMorgan must show that, at the time of the transactions in question—

1. the transactions in question were fair and equitable to Plaintiffs; and
2. JPMorgan made reasonable use of the confidence placed in it by the creator of the trust.

JPMorgan’s conduct must be judged in light of the information available to it at the time of the transactions in question and must not be based on hindsight.

**Answer “Yes” or “No” for each transaction for which you answered “Yes” in Question 1.**

3.1. The May 2008 leases with Petrohawk

Answer: \_\_\_\_\_

3.2. The July 2008 leases with Petrohawk

Answer: \_\_\_\_\_

3.3. The December 2008 leases with Petrohawk



Answer: \_\_\_\_\_

3.4. The July 2009 lease extensions with Broad Oak

Answer: \_\_\_\_\_

3.5. The October 2010 lease amendments with Hunt

Answer: \_\_\_\_\_

3.6. The January 2011 lease amendments with Hunt

Answer: \_\_\_\_\_

3.7. The July 2012 lease extensions with Hunt

Answer: \_\_\_\_\_

3.8. The August 2012 lease amendments with Hunt

Answer: \_\_\_\_\_

Sources: Question 3 is from PJC 235.10; the hindsight instruction is from *InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 895 (Tex. App.—Texarkana 1987, no writ) (“Certainly a trustee cannot be held liable based upon the privileged view of hindsight; but rather, his actions must be judged in the light of the information available to him at the time of the transaction. If the sale is fairly made, in good faith, for an adequate price, and with the required degree of diligence and care, the trustee should not be held liable.”), *disapproved of on other grounds by Tex. Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240 (Tex. 2002).

If you answered “Yes” to Item 2.1 in Question 2 or “No” to item 3.1 in Question 3, then answer item 4.1 in Question 4.

If you answered “Yes” to item 2.2 in Question 2 or “No” to item 3.2 in Question 3, then answer item 4.2 in Question 4.

If you answered “Yes” to item 2.3 in Question 2 or “No” to item 3.3 in Question 3, then answer item 4.3 in Question 4.

If you answered “No” to item 2.4 in Question 2 or “Yes” to item 3.4 in Question 3, AND you answered “Yes” to item 2.8 in Question 2 or “No” to item 3.8 in Question 3, then answer item 4.4 in Question 4.

Otherwise, do not answer Question 4.

#### **QUESTION 4:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the trust estate for lost bonus damages, if any, resulting from the conduct about which you answered “Yes” in Question 2 or “No” in Question 3?

Consider the following element of damages, if any, and none other.

Any loss or depreciation in value of the trust as of the date of the transaction in question.

Loss or depreciation in value of the trust is measured by the difference, if any, between the fair market value of the assets at issue (as of the date of the transaction in question) and the fair market value of what was received by the trust (as of the date of the transaction in question).

Fair market value is what a willing buyer under no compulsion to buy will pay to a willing seller under no compulsion to sell.

In answering this question, you are instructed not to consider any increases in the fair market value of the trust’s assets after the date of the transaction in question.

You may only award an amount of damages that the Plaintiffs have proved to a reasonable degree of certainty were suffered as a result of the conduct about which you answered “Yes” in Question 2 or “No” in Question 3.

Do not add any amount for interest on damages, if any.

**Answer separately in dollars and cents for damages, if any, for each transaction for which you answered “Yes” in Question 2 or “No” in Question 3.**

4.1. The May 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

4.2. The July 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

4.3. The December 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

4.4. The August 2012 lease amendments with Hunt

Answer: \$ \_\_\_\_\_

Sources: PJC 235.14. Source for measure of damages: *InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 895 (Tex. App.—Texarkana 1987, no writ), *disapproved of on other grounds by Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240 (Tex. 2002) (holding that the proper measure of damages for a trustee’s authorized sale of trust property for insufficient value is the difference between the fair market value of the property *at the time of the sale* and the value received); *White v. White*, 11-01-00040-CV, 2002 WL 32341854 (Tex. App.—Eastland, Jun. 20, 2002, no pet.) (not designated for publication) (“If a trustee sells property for less than she should, she is liable for the value of the property *at the time of the sale* less the amount which she received for the property.” (citing *Risser*) (emphasis added)); *Hopkins v. Loeber*, 74 N.E.2d 39 (Ill. App. Ct. 1947) (“[T]he authorities are clear that his measure of liability, if any, for the breach of trust, would be the loss, if any, in value of the securities *at the time of the breach* of trust, and *not a value sought to be established some five or six years later.*” (emphasis added)); RESTATEMENT (SECOND) OF TRUSTS § 205, cmt. d. (“If the trustee is authorized to sell property, but in breach of trust he sells it for less than he should receive, he is liable for the value of the property *at the time of the sale* less the amount which he received.” (emphasis added)); RESTATEMENT (SECOND) OF TRUSTS § 205, ill. 8 (“A is trustee for B of Blackacre. By the terms of the trust he is directed to sell Blackacre. He sells Blackacre for \$10,000, although if he had not been negligent he could have sold it for \$12,000. A is liable for \$2000. *Although Blackacre subsequently becomes worth \$15,000, A is not liable for more than \$2000.*” (emphasis added)); *Fletcher v. Day*, 04-12-00485-CV, 2013 WL 3963701, at \*4 (Tex. App.—San Antonio July 31, 2013, no pet.) (“Plaintiffs have the burden to prove their damages with a reasonable degree of certainty.”); Source for definition of fair market value: *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, ---S.W.3d---, No. 13-0084, 2014 WL 4116810, at \*9 (Tex. Aug. 22, 2014) (“Market value is what a willing buyer under no compulsion to buy will pay to a willing seller under no compulsion to sell.” (internal quotations omitted)).

If you answered “Yes” to Item 2.1 in Question 2 or “No” to item 3.1 in Question 3, then answer item 5.1 in Question 5.

If you answered “Yes” to item 2.2 in Question 2 or “No” to item 3.2 in Question 3, then answer item 5.2 in Question 5.

If you answered “Yes” to item 2.3 in Question 2 or “No” to item 3.3 in Question 3, then answer item 5.3 in Question 5.

Otherwise, do not answer Question 5.

**QUESTION 5:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the trust estate for the royalty damages, if any, resulting from the conduct about which you answered “Yes” in Question 2 or “No” in Question 3?

Consider the following element of damages, if any, and none other.

Any loss or depreciation in value of the trust as of the date of the transaction in question.

Loss or depreciation in value of the trust is measured by the difference, if any, between the fair market value of the assets at issue (as of the date of the transaction in question) and the fair market value of what was received by the trust (as of the date of the transaction in question).

Fair market value is what a willing buyer under no compulsion to buy will pay to a willing seller under no compulsion to sell.

In answering this question, you are instructed not to consider any increases in the fair market value of the trust’s assets after the date of the transaction in question.

You may only award an amount of damages that the Plaintiffs have proved to a reasonable degree of certainty were suffered as a result of the conduct about which you answered “Yes” in Question 2 or “No” in Question 3.

**Answer separately in dollars and cents for damages, if any, for each transaction for which you answered “Yes” in Question 2 or “No” in Question 3.**

5.1. The May 2008 leases with Petrohawk

Answer: \$\_\_\_\_\_

5.2. The July 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

### 5.3. The December 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

Sources: PJC 235.14. Source for measure of damages: *InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 895 (Tex. App.—Texarkana 1987, no writ), *disapproved of on other grounds by Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240 (Tex. 2002) (holding that the proper measure of damages for a trustee’s authorized sale of trust property for insufficient value is the difference between the fair market value of the property *at the time of the sale* and the value received); *White v. White*, 11-01-00040-CV, 2002 WL 32341854 (Tex. App.—Eastland, Jun. 20, 2002, no pet.) (not designated for publication) (“If a trustee sells property for less than she should, she is liable for the value of the property *at the time of the sale* less the amount which she received for the property.” (citing *Risser*) (emphasis added)); *Hopkins v. Loeber*, 74 N.E.2d 39 (Ill. App. Ct. 1947) (“[T]he authorities are clear that his measure of liability, if any, for the breach of trust, would be the loss, if any, in value of the securities *at the time of the breach* of trust, and *not a value sought to be established some five or six years later.*” (emphasis added)); RESTATEMENT (SECOND) OF TRUSTS § 205, cmt. d. (“If the trustee is authorized to sell property, but in breach of trust he sells it for less than he should receive, he is liable for the value of the property *at the time of the sale* less the amount which he received.” (emphasis added)); RESTATEMENT (SECOND) OF TRUSTS § 205, ill. 8 (“A is trustee for B of Blackacre. By the terms of the trust he is directed to sell Blackacre. He sells Blackacre for \$10,000, although if he had not been negligent he could have sold it for \$12,000. A is liable for \$2000. *Although Blackacre subsequently becomes worth \$15,000, A is not liable for more than \$2000.*” (emphasis added)); *Fletcher v. Day*, 04-12-00485-CV, 2013 WL 3963701, at \*4 (Tex. App.—San Antonio July 31, 2013, no pet.) (“Plaintiffs have the burden to prove their damages with a reasonable degree of certainty.”); Source for definition of fair market value: *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, ---S.W.3d---, No. 13-0084, 2014 WL 4116810, at \*9 (Tex. Aug. 22, 2014) (“Market value is what a willing buyer under no compulsion to buy will pay to a willing seller under no compulsion to sell.” (internal quotations omitted)).

If you answered “Yes” to Item 2.1 in Question 2 or “No” to item 3.1 in Question 3, then answer item 6.1 in Question 6.

If you answered “Yes” to item 2.2 in Question 2 or “No” to item 3.2 in Question 3, then answer item 6.2 in Question 6.

If you answered “Yes” to item 2.3 in Question 2 or “No” to item 3.3 in Question 3, then answer item 6.3 in Question 6.

Otherwise, do not answer Question 6.

**QUESTION 6:**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the trust estate for the water-rights damages, if any, resulting from the conduct about which you answered “Yes” in Question 2 or “No” in Question 3?

Consider the following element of damages, if any, and none other.

Any loss or depreciation in value of the trust as of the date of the transaction in question.

Loss or depreciation in value of the trust is measured by the difference, if any, between the fair market value of the assets at issue (as of the date of the transaction in question) and the fair market value of what was received by the trust (as of the date of the transaction in question).

Fair market value is what a willing buyer under no compulsion to buy will pay to a willing seller under no compulsion to sell.

In answering this question, you are instructed not to consider any increases in the fair market value of the trust’s assets after the date of the transaction in question.

You may only award an amount of damages that the Plaintiffs have proved to a reasonable degree of certainty were suffered as a result of the conduct about which you answered “Yes” in Question 2 or “No” in Question 3.

**Answer separately in dollars and cents for damages, if any, for each transaction for which you answered “Yes” in Question 2 or “No” in Question 3.**

6.1. The May 2008 leases with Petrohawk

Answer: \$\_\_\_\_\_

6.2. The July 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

### 6.3. The December 2008 leases with Petrohawk

Answer: \$ \_\_\_\_\_

Sources: PJC 235.14. Source for measure of damages: *InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 895 (Tex. App.—Texarkana 1987, no writ), *disapproved of on other grounds by Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240 (Tex. 2002) (holding that the proper measure of damages for a trustee’s authorized sale of trust property for insufficient value is the difference between the fair market value of the property *at the time of the sale* and the value received); *White v. White*, 11-01-00040-CV, 2002 WL 32341854 (Tex. App.—Eastland, Jun. 20, 2002, no pet.) (not designated for publication) (“If a trustee sells property for less than she should, she is liable for the value of the property *at the time of the sale* less the amount which she received for the property.” (citing *Risser*) (emphasis added)); *Hopkins v. Loeber*, 74 N.E.2d 39 (Ill. App. Ct. 1947) (“[T]he authorities are clear that his measure of liability, if any, for the breach of trust, would be the loss, if any, in value of the securities *at the time of the breach* of trust, and *not a value sought to be established some five or six years later.*” (emphasis added)); RESTATEMENT (SECOND) OF TRUSTS § 205, cmt. d. (“If the trustee is authorized to sell property, but in breach of trust he sells it for less than he should receive, he is liable for the value of the property *at the time of the sale* less the amount which he received.” (emphasis added)); RESTATEMENT (SECOND) OF TRUSTS § 205, ill. 8 (“A is trustee for B of Blackacre. By the terms of the trust he is directed to sell Blackacre. He sells Blackacre for \$10,000, although if he had not been negligent he could have sold it for \$12,000. A is liable for \$2000. *Although Blackacre subsequently becomes worth \$15,000, A is not liable for more than \$2000.*” (emphasis added)); *Fletcher v. Day*, 04-12-00485-CV, 2013 WL 3963701, at \*4 (Tex. App.—San Antonio July 31, 2013, no pet.) (“Plaintiffs have the burden to prove their damages with a reasonable degree of certainty.”); Source for definition of fair market value: *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, ---S.W.3d---, No. 13-0084, 2014 WL 4116810, at \*9 (Tex. Aug. 22, 2014) (“Market value is what a willing buyer under no compulsion to buy will pay to a willing seller under no compulsion to sell.” (internal quotations omitted)).

**QUESTION 7:**

Did the Plaintiffs come into Court with “unclean hands” with respect to the transactions in question?

A person has “unclean hands” if they have engaged in conduct that is unconscientious, unjust, or marked by a want of good faith, or if they have violated the principles of equity and righteous dealing.

**Answer “Yes” or “No.”**

Answer: \_\_\_\_\_

Source: *Crown Const. Co., Inc. v. Huddleston*, 961 S.W.2d 552, 559 (Tex. App.—San Antonio 1997, no writ) (“The doctrine of unclean hands is applied to one whose own conduct in connection with the matter at issue has been unconscientious, unjust, or marked by a want of good faith, or one who has violated the principles of equity and righteous dealing.”).



**QUESTION 8:**

Did the Plaintiffs unreasonably delay in asserting their claims against JPMorgan and thereby cause JPMorgan to, in good faith, change its position to its detriment?

**Answer “Yes” or “No.”**

Answer: \_\_\_\_\_

Source: *In re Laibe Corp.*, 307 S.W.3d 314, 318 (Tex. 2010) (“To invoke the equitable doctrine of laches, the moving party ordinarily must show an unreasonable delay by the opposing party in asserting its rights, and also the moving party’s good faith and detrimental change in position because of the delay.”).

Answer the following question only if you unanimously answered “Yes” to an item in Question 2 or “No” to an item in Question 3. Otherwise, do not answer the following question.

To answer “Yes” to any part of the following question, your answer must be unanimous. You may answer “No” to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION 9:**

Do you find by clear and convincing evidence that the harm to the Plaintiffs, if any, resulted from malice, fraud, or gross negligence?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Malice” means a specific intent by JPMorgan to cause substantial injury or harm to the Plaintiff.

Fraud occurs when—

1. a party makes a material misrepresentation, and
2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation is made with the intention that it should be acted on by the other party, and
4. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means—

1. a false statement of fact, or
2. a promise of future performance made with an intent, at the time the promise was made, not to perform as promised, or
3. a statement of opinion based on a false statement of fact, or
4. a statement of opinion that the maker knows to be false, or
5. an expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

Fraud also occurs when—

1. a party fails to disclose a material fact within the knowledge of that party, and

2. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth, and
3. the party intends to induce the other party to take some action by failing to disclose the fact, and
4. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

A fact or misrepresentation is material if it would likely affect the conduct of a reasonable person concerning the transaction in question.

“Gross negligence” means an act or omission by JPMorgan,

1. which when viewed objectively from the standpoint of JPMorgan at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which JPMorgan has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

**Answer “Yes” or “No.”**

Answer: \_\_\_\_\_

Sources: Question is from PJC 115.37B; the definition of “malice” is from PJC 115.37B; the first definition of “fraud” is from PJC 105.2; the first definition of “misrepresentation” is from PJC 105.3A; the second definition of “misrepresentation” is from PJC 105.3B; the third definition of “misrepresentation” is from PJC 105.3C; the fourth definition of “misrepresentation” is from PJC 105.3D; the fifth definition of “misrepresentation” is from PJC 105.3E; the second definition of “fraud” is from PJC 105.4; the instruction on what constitutes a material fact or representation is from *Miller v. Kennedy & Minshew, P.C.*, 142 S.W.3d 325, 345 (Tex. App.—Fort Worth 2003, pet. denied) (“A fact is material if it would likely affect the conduct of a reasonable person concerning the transaction in question”), *see also Fleming v. Curry*, 412 S.W.3d 723, 736–37 (Tex. App.—Houston [14th Dist.] 2013, pet. filed) (same); and the definition of “gross negligence” is from PJC 115.37 and TEX. CIV. PRAC. & REM. CODE § 41.001(11).

Answer the following question only if you unanimously answered “Yes” to an item in Question 5. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

**QUESTION 10:**

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to the Plaintiffs as exemplary damages, if any, for the conduct found in response to Question 9?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of JPMorgan.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of JPMorgan.

**Answer in dollars and cents, if any.**

Answer: \$\_\_\_\_\_

Source: PJC 115.38

**QUESTION 11:**

What is a reasonable fee for the necessary services of Plaintiffs' attorneys in this action?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

**Answer in dollars and cents for each of the following:**

1. For representation in the trial court.

Answer: \$ \_\_\_\_\_

2. For representation in the court of appeals.

Answer: \$ \_\_\_\_\_

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ \_\_\_\_\_

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ \_\_\_\_\_

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ \_\_\_\_\_

Source: PJC 250.4

**QUESTION 12:**

What is a reasonable fee for the necessary services of JPMorgan’s attorneys in this action?

Factors to consider in determining a reasonable fee include—

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation, and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

**Answer in dollars and cents for each of the following:**

1. For representation in the trial court.

Answer: \$ \_\_\_\_\_

2. For representation in the court of appeals.

Answer: \$ \_\_\_\_\_

3. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ \_\_\_\_\_

4. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$\_\_\_\_\_

5. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$\_\_\_\_\_

Source: PJC 250.4



### **Presiding Juror:**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. have the complete charge read aloud if it will be helpful to your deliberations;
  - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
  - c. give written questions or comments to the bailiff who will give them to the judge;
  - d. write down the answers you agree on;
  - e. get the signatures for the verdict certificate; and
  - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

### **Instructions for Signing the Verdict Certificate:**

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict.  
  
If eleven jurors agree on every answer, those eleven jurors sign the verdict.  
  
If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.
4. There are some special instructions before Questions \_\_\_\_\_ explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

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

**Verdict Certificate**

Check one:

\_\_\_\_\_ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

\_\_\_\_\_ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

\_\_\_\_\_ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

- |     |       |       |
|-----|-------|-------|
| 1.  | _____ | _____ |
| 2.  | _____ | _____ |
| 3.  | _____ | _____ |
| 4.  | _____ | _____ |
| 5.  | _____ | _____ |
| 6.  | _____ | _____ |
| 7.  | _____ | _____ |
| 8.  | _____ | _____ |
| 9.  | _____ | _____ |
| 10. | _____ | _____ |
| 11. | _____ | _____ |

If you have answered Question No. \_\_\_\_, then you must sign this certificate also.

**Additional Certificate**

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

*[Judge to list questions that require a unanimous answer,  
including the predicate liability question.]*

---

Signature of Presiding Juror

---

Printed Name of Presiding Juror

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &  
GARZA INCORPORATED**

Patrick K. Sheehan  
[psheehan@hsfblaw.com](mailto:psheehan@hsfblaw.com)

State Bar No. 18175500

Rudy A. Garza

[rugar@hsfblaw.com](mailto:rugar@hsfblaw.com)

State Bar No. 07738200

David Jed Williams

[jwilliams@hsfblaw.com](mailto:jwilliams@hsfblaw.com)

State Bar No. 21518060

The Quarry Heights Building

7373 Broadway, Suite 300

San Antonio, Texas 78209

Telephone: (210) 271-1700

Facsimile: (210) 271-1730

**MCGINNIS LOCHRIDGE**

600 Congress Ave., suite 2100

Austin, Texas 78701

Telephone: (512) 495-6084

Facsimile: (512) 495-6384

Kevin M. Beiter

State Bar No. 02059065

*And*

**HUNTON & WILLIAMS LLP**

By: /s/ John C. Eichman

Charles A. Gall

State Bar No. 07281500

Email: [cgall@hunton.com](mailto:cgall@hunton.com)

John C. Eichman

State Bar No. 06494800

Email: [jeichman@hunton.com](mailto:jeichman@hunton.com)

Amy S. Bowen

State Bar No. 24028216

Email: [abowen@hunton.com](mailto:abowen@hunton.com)

1445 Ross Avenue, Suite 3700

Dallas, Texas 75202

(214) 979-3000

(214) 880-0011 (fax)

**ATTORNEYS FOR DEFENDANT  
JPMORGAN CHASE BANK, N.A.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 24th day of October, 2014.

John B. Massopust  
Matthew J. Gollinger  
Zelle Hofmann Voelbel & Mason LLP  
500 Washington Avenue South, Suite 5000  
Minneapolis, MN 55415  
[jmassopu@zelle.com](mailto:jmassopu@zelle.com)  
[mgollinger@zelle.com](mailto:mgollinger@zelle.com)

Michael S. Christian  
Zelle Hoffmann Voelbel & Mason LLP  
44 Montgomery Street, Suite 3400  
San Francisco, California 94104  
[mchristian@zelle.com](mailto:mchristian@zelle.com)

James L. Drought  
Ian T. Bolden  
DROUGHT DROUGHT & BOBBITT, LLP  
112 E. Pecan Street, Suite 2900  
San Antonio, Texas 78205  
[jld@ddb-law.com](mailto:jld@ddb-law.com)  
[itb@ddb-law.com](mailto:itb@ddb-law.com)

Richard Tinsman  
Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78205  
[rtinsman@tsslawyers.com](mailto:rtinsman@tsslawyers.com)  
[ssavage@tsslawyers.com](mailto:ssavage@tsslawyers.com)

Steven J. Badger  
Zelle Hofmann Voelbel & Mason LLP  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975  
[sbadger@zelle.com](mailto:sbadger@zelle.com)

George Spencer, Jr.  
Robert Rosenbach  
CLEMENS & SPENCER, P.C.  
112 E. Pecan St., Suite 1300  
San Antonio, Texas 78205  
[spencer@clemens-spencer.com](mailto:spencer@clemens-spencer.com)  
[rosenbar@clemens-spencer.com](mailto:rosenbar@clemens-spencer.com)

David R. Deary  
Jim L. Flegle  
Jeven R. Sloan  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
[davidd@LFDlaw.com](mailto:davidd@LFDlaw.com)  
[jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)  
[jevens@LFDlaw.com](mailto:jevens@LFDlaw.com)

Fred W. Stumpf  
GLAST, PHILLIPS & MURRAY  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046  
[fstumpf@gpm-law.com](mailto:fstumpf@gpm-law.com)

/s/ John C. Eichman

John C. Eichman

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

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

**NON-PARTY TEXAS CRUDE ENERGY, LLC'S  
MOTION TO SEAL COURT RECORDS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW TEXAS CRUDE ENERGY, LLC ("Texas Crude") and, in accordance with Texas Rule of Civil Procedure 76a, hereby files its Motion for to Seal Court Records and respectfully shows the Court as follows:

**I.**

**BACKGROUND**

Defendant JP Morgan Chase Bank N.A. ("Chase") served a subpoena dated July 18, 2014 on Texas Crude. On July 28, 2014, pursuant to the subpoena and other communications between counsel for Chase and Mr. David Ezarik of Texas Crude, Texas Crude provided a Deposition on Written Questions completed by Mr. Charles Kana of Texas Crude as well as various lease files. Exhibit 1-A. Texas Crude labeled the documents that it produced as "Confidential." Exhibit 1, *Affidavit of Charles Kana*, ¶ 6.

On October 8, 2014, Chase provided Mr. Kane Weiner of Texas Crude with copies of the Agreed Protective Order dated November 14, 2011 and the Agreed Protective Order dated February 13, 2014. Exhibit 1-C. By this letter, Chase also provided notice that it had listed the

229 pages of documents previously produced by Texas Crude (the “Texas Crude documents”) on Chase’s Proposed Exhibit List and that Chase intended to introduce these documents into evidence at trial in this case, which is scheduled to begin on October 27, 2014. Exhibit 1-C. As instructed by the letter, counsel for Texas Crude contacted counsel for Chase to provide notice of Texas Crude’s intent to file a motion to seal pursuant to Texas Rule of Civil Procedure 76a.

The Texas Crude documents contain sensitive information regarding the business activities of Texas Crude. *Affidavit of Charles Kana*, ¶¶ 5, 9. In its normal course of business, Texas Crude keeps such information confidential and limits access to such information. *Affidavit of Charles Kana*, ¶ 7. The Texas Crude documents consist of lease files which have been held to be trade secret information. *See, e.g., In re TXCO Res., Inc.*, 475 B.R. 781, 813-15 (Bankr. W.D. Tex. 2012) (San Antonio Division) (applying Texas law and collecting authorities). Chase intends to use the documents produced by Texas Crude in order to defend against the Plaintiffs’ claims. In order to do so, the information contained in the Texas Crude documents will be discussed by parties and witnesses in open court and the Texas Crude documents will be made available to the jury if admitted by the court into evidence. Texas Crude respects the right of the parties to prosecute or defend the various claims asserted in this lawsuit, yet Texas Crude nonetheless desires to maintain the confidentiality of its business transactions.

Texas Crude files this Motion in order to preserve the trade secret information contained in the documents that it produced pursuant to the subpoena from Chase. If these records are not sealed, Texas Crude will suffer immediate and irreparable injury to its business interests.



## II.

### ARGUMENT AND AUTHORITIES

The documents produced by Texas Crude contain confidential and sensitive commercial information. Texas Crude is not a party to this lawsuit and has not otherwise put these documents in issue. The use of these documents at trial will make such information available to the general public, which will eliminate the confidentiality which Texas Crude has taken steps to maintain. In order to protect Texas Crude's interest in maintaining the confidentiality of these documents, they should be sealed.

The Texas Crude documents are "court records" as that term is used in Rule 76a. This term excludes "discovery in cases originally intended to preserve bona fide trade secrets or other intangible property rights." TEX. R. CIV. P. 76a(2)(c). But that does not mean that documents containing trade secrets and other commercially-sensitive information cannot be protected by the sealing of court records. *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (per curiam) ("Regardless of the cause of action, a properly proven trade secret is an interest that should be considered in making the determination required by Rule 76a."); *Clear Channel Commc'ns, Inc. v. United Servs. Auto. Ass'n*, 195 S.W.3d 129, 137 (Tex. App.—San Antonio 2006, no pet.) ("[Rule 76a] expressly recognizes that the need to protect trade secrets and other proprietary information can overcome the presumption of openness.").

Court records may be sealed upon a showing that (1) there is a serious, specific, and substantial interest in sealing the records that outweighs the usual presumption of openness and any probable adverse effect on the general public health or safety, and (2) there are no other, less restrictive means that will adequately protect the specific interest asserted. *E.g.*, TEX. R. CIV. P. 76a(1); *Compaq Computer Corp. v. Lapray*, 75 S.W.3d 669, 674 (Tex. App.—Beaumont 2002,

no pet.); *Fox v. Doe*, 869 S.W.2d 507, 512 (Tex. App.—San Antonio 1993, writ denied). Both these elements are satisfied in the present case.

The lease files produced by Texas Crude should be protected and kept confidential because they are entitled to protection as trade secrets. Texas law defines a trade secret as “any formula, patten, device or compilation of information which is used in one’s business and presents an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Bass*, 13 S.W.3d 735, 739 (Tex. 2003) (orig. proceeding) (quoting *Computer Assocs., Int’l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996)). In order to determine whether a trade secret exists, Texas courts apply the six-factor test from the Restatement of Torts:

(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of the measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and to [the company's] competitors; (5) the amount of effort or money expended by [the company] in developing the information; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Bass*, 113 S.W.3d at 739 (quoting RESTATEMENT OF TORTS § 757 cmt. b. (1939)); *see also Rimkus Consulting Group, Inc. v. Cammarata*, 688 F.Supp.2d 598, 666 (S.D. Tex. 2010) (listing cases) (collecting authorities and discussing Texas law’s protection of trade secrets, proprietary information, and confidential information where the Restatement’s test is met). The secrecy component (which relates to four of these six factors) does not require complete secrecy, just that the information not be “generally known or readily ascertainable by independent investigation.” *See Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 552 (Tex. App.—Dallas 1993, no writ); *see also Metallurgical Indus. Inc. v. Fourtek, Inc.*, 790 F.2d 1195, 1200 (5th Cir.1986) (“Although the law requires secrecy, it need not be absolute.”). Finally, these six factors are “relevant, but not dispositive” and “trade secrets do not fit neatly into each factor every time”

and “other circumstances could also be relevant to the trade secret analysis.” *In re Bass*, 113 S.W.3d 735, 739-40 (Tex. 2003). Therefore, in considering whether information qualifies as a trade secret, the court should weigh the relevant factors rather than use them as a checklist.

Texas Crude has a specific, serious, and substantial interest in preserving the confidentiality of the documents that it produced in response to the subpoena which outweighs the usual presumption of openness of the Court’s proceedings. *See* TEX. R. CIV. P. 76a(1)(a). The documents at issue are lease files maintained by Texas Crude. *Affidavit of Charles Kana*, ¶ 5. These lease files contain information regarding various property interests which Texas Crude has leased, as well as the consideration that was paid for such interests. *Affidavit of Charles Kana*, ¶¶ 5, 9. Lease files, such as those produced by Texas Crude in this lawsuit, have been held to contain trade secret information. *See, e.g., In re TXCO Res., Inc.*, 475 B.R. at 813-15. This information is of great value. *E.g., In re TXCO Res., Inc.*, 475 B.R. at 815 (“Land and lease files are valuable because they reveal a company’s business strategy through its acreage position, lease expiration dates, drilling requirements, and renewal measures.”). Texas Crude does not share its lease files with the general public and has taken steps to keep the terms of these transactions confidential. *Affidavit of Charles Kana*, ¶ 6. When it produced these documents in response to the subpoena, Texas Crude labeled these documents as “Confidential” in order to continue to maintain the confidentiality of these documents while still satisfying its obligations under the subpoena. *See Affidavit of Charles Kana*, ¶ 6. If such information became generally known to the public, Texas Crude will have lost the confidentiality that it has worked to maintain, and will therefore suffer immediate and irreparable harm to its commercial interests. *Affidavit of Charles Kana*, ¶ 9.

In the event that the Texas Crude documents are used to interrogate witnesses or present arguments to the jury during the trial proceedings, the details of specific business transactions in which Texas Crude participated will become generally known to the public. Texas Crude's understanding is that Defendants will use Texas Crude's lease files to demonstrate the commercial reasonableness of the leases entered into by Defendants at or around the same time as Texas Crude. Therefore, it will almost certainly be necessary for the parties to discuss, in detail, the terms of various leases entered into by Texas Crude, including the consideration paid for such leases, and it will not be feasible or practical for the parties to this lawsuit to use redacted copies of Texas Crude's lease files at trial. Even if material can be redacted from the Texas Crude documents, it will still be necessary to provide the further protection of requiring the documents to be kept under seal, as recognized in a prior order entered by the Court in the present case. Exhibit 2 (Agreed Order entered Sept. 12, 2014 regarding documents produced by non-party SM Energy).

As a result, there are no less restrictive means than sealing the court records containing the Texas Crude documents. Nothing short of such actions will adequately and effectively protect Texas Crude's interest in maintaining the confidentiality of the information contained in the documents that it produced. *See* TEX. R. CIV. P. 76a(1)(b).

The sealing of these records and related court proceedings will have no probable chance of adversely affecting the general public health or safety. *See* TEX. R. CIV. P. 76a(1)(a). There is no legitimate reason to set aside Texas Crude's right to confidentiality in this case, particularly as Texas Crude is not a party to this lawsuit.

Further, the failure to seal these records and related court proceedings would frustrate the public policy of protecting trade secret information from public disclosure. "A properly proven

trade secret is an interest that trial courts should consider in determining whether to seal records under Rule 76a.” *Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 530 (Tex. 1998) (Spector, J., concurring in part and dissenting in part) (citing *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992)).

### III. PRAYER

WHEREFORE, Texas Crude respectfully prays that its Motion to Seal Court Records be granted, and that Texas Crude be awarded such other and further relief to which it may be entitled.

Respectfully submitted,

PIERCE & O’NEILL, LLP

By: /s/ Jack O’Neill

Jack O’Neill  
State Bar No. 15288500  
Brian K. Tully  
State Bar No. 24039217  
4203 Montrose Boulevard  
Houston, Texas 77006  
Telephone: (713) 634-3600  
Facsimile: (713) 634-3639  
E-mail: joneill@piercioneill.com  
E-mail: btully@piercioneill.com

ATTORNEYS FOR MOVANT TEXAS  
CRUDE ENERGY, LLC

**CERTIFICATE OF SERVICE**

This is to certify that on October 23, 2014, a true and correct copy of the above and foregoing document has served via electronic service upon the following:

Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Facsimile: (214) 572-1717  
E-mail: [jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)  
*Attorneys for Plaintiffs Emilie Blaze, et al.*

Patrick K. Sheehan  
David Jed Williams  
HORNBERGER SHEEHAN FULLER & GARZA  
INCORPORATED  
The Quarry Heights Bldg.  
7373 Broadway, Suite 300  
San Antonio, Texas 78209  
Telephone: (210) 271-1700  
Facsimile: (210) 271-1730  
E-mail: [psheehan@hfsblaw.com](mailto:psheehan@hfsblaw.com)  
E-mail: [jwilliams@hsfblaw.com](mailto:jwilliams@hsfblaw.com)

And

Charles A. Gall  
John C. Eichman  
Amy S. Bowen  
HUNTON & WILLIAMS LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202  
Telephone: (214) 979-3000  
Facsimile: (214) 880-0011  
E-mail: [cgall@hunton.com](mailto:cgall@hunton.com)  
E-mail: [jeichman@hunton.com](mailto:jeichman@hunton.com)

And

Kevin M. Beiter  
MCGINNIS LOCHRIDGE  
600 Congress Ave., Suite 2100  
Austin, Texas 78701  
Telephone: (512) 495-6084  
Facsimile: (512) 495-6384  
Email: [kbeiter@mcginnislaw.com](mailto:kbeiter@mcginnislaw.com)  
*Attorneys for Defendants JP Morgan Chase Bank,  
N.A., Individually/Corporately and as Trustee of  
the South Texas Syndicate Trust and Gary P.  
Aymes*

Richard Tinsman  
TINSMAN & SCIANO, INC.  
10107 McAllister Fwy  
San Antonio, Texas 78216  
Telephone: (210) 225-3121  
Facsimile: (210) 225-6235  
E-mail: [rtinsman@tsslawyers.com](mailto:rtinsman@tsslawyers.com)

And

George H. Spencer Jr.  
Robert Rosenbach  
CLEMENS & SPENCER  
112 E. Pecan Street, Suite 1300  
San Antonio, Texas 78205  
Telephone: (201) 227-7121  
Facsimile: (210) 227-0732  
E-mail: [spencer@clemens-spencer.com](mailto:spencer@clemens-spencer.com)  
E-mail: [rosenbach@clemens-spencer.com](mailto:rosenbach@clemens-spencer.com)

And

James L. Drought  
DROUGHT, DROUGHT & BOBBITT, LLP  
2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
Telephone: (210) 225-4031  
Facsimile: (210) 225-0586  
E-mail: [jld@ddb-law.com](mailto:jld@ddb-law.com)  
*Attorneys for Plaintiffs John K. Meyer, et al.*

Fred W. Stumpf  
BOYER SHORT LLP  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046  
Telephone: (713) 871-2025  
Facsimile: (713) 8781-2024  
E-mail: [fstumpf@boyerjacobs.com](mailto:fstumpf@boyerjacobs.com)  
*Attorneys for The Washburn Intervenors*

John B. Massopust  
Matthew J. Gollinger  
ZELLE HOFFMAN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, Minnesota 55415-1152  
Telephone: (612) 339-2020  
Facsimile: (612) 336-9100  
E-mail: [jmassopu@zelle.com](mailto:jmassopu@zelle.com)  
E-mail: [mgollinger@zelle.com](mailto:mgollinger@zelle.com)  
*Attorneys for Intervenor-Plaintiffs, Linda Aldrich,  
et al.*

*/s/ Jack O'Neill*

---

Jack O'Neill

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

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

**NON-PARTY TEXAS CRUDE ENERGY, LLC'S  
MOTION FOR TEMPORARY SEALING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW TEXAS CRUDE ENERGY, LLC (“Texas Crude”) and, in accordance with Texas Rule of Civil Procedure 76a(5), hereby files its Motion for a Temporary Sealing Order and respectfully shows the Court as follows:

**I.**

**BACKGROUND**

Defendant JP Morgan Chase Bank N.A. (“Chase”) served a subpoena dated July 18, 2014 on Texas Crude. On July 28, 2014, pursuant to the subpoena and other communications between counsel for Chase and Mr. David Ezarik of Texas Crude, Texas Crude provided a Deposition on Written Questions completed by Mr. Charles Kana of Texas Crude as well as various lease files. Exhibit 1-A. Texas Crude labeled the documents that it produced as “Confidential.” Exhibit 1, *Affidavit of Charles Kana*, ¶ 6.

On October 8, 2014, Chase provided Mr. Kane Weiner of Texas Crude with copies of the Agreed Protective Order dated November 14, 2011 and the Agreed Protective Order dated February 13, 2014. Exhibit 1-C. By this letter, Chase also provided notice that it had listed the



229 pages of documents previously produced by Texas Crude (the “Texas Crude documents”) on Chase’s Proposed Exhibit List and that Chase intended to introduce these documents into evidence at trial in this case, which is scheduled to begin on October 27, 2014. Exhibit 1-C. As instructed by the letter, counsel for Texas Crude contacted counsel for Chase to provide notice of Texas Crude’s intent to file a motion to seal pursuant to Texas Rule of Civil Procedure 76a.

The Texas Crude documents contain sensitive information regarding the business activities of Texas Crude. *Affidavit of Charles Kana*, ¶¶ 5, 9. In its normal course of business, Texas Crude keeps such information confidential and limits access to such information. *Affidavit of Charles Kana*, ¶ 7. The Texas Crude documents consist of lease files which have been held to be trade secret information. *See, e.g., In re TXCO Res., Inc.*, 475 B.R. 781, 813-15 (Bankr. W.D. Tex. 2012) (San Antonio Division) (applying Texas law and collecting authorities). Chase intends to use the documents produced by Texas Crude in order to defend against the Plaintiffs’ claims. In order to do so, the information contained in the Texas Crude documents will be discussed by parties and witnesses in open court and the Texas Crude documents will be made available to the jury if admitted by the court into evidence. Texas Crude respects the right of the parties to prosecute or defend the various claims asserted in this lawsuit, yet Texas Crude nonetheless desires to maintain the confidentiality of its business transactions.

Texas Crude files this Motion in order to preserve the trade secret information contained in the documents that it produced pursuant to the subpoena from Chase. As shown below, Texas Crude has a compelling need to temporarily seal any filing containing the Texas Crude documents. If the Texas Crude documents are not so protected until proper notice can be posted and a hearing held as directed by Rule 76a(4) — which requires a minimum of fourteen days’

notice to the parties and to the public — Texas Crude will suffer immediate and irreparable injury to its business interests.

## II.

### ARGUMENT AND AUTHORITIES

The documents produced by Texas Crude contain confidential and sensitive commercial information. Texas Crude is not a party to this lawsuit and has not otherwise put these documents in issue. The use of these documents at trial will make such information available to the general public, which will eliminate the confidentiality which Texas Crude has taken steps to maintain. In order to protect Texas Crude's interest in maintaining the confidentiality of these documents, they should be sealed until a hearing can be held upon proper notice as required by Rule 76a(4).

The Texas Crude documents are “court records” as that term is used in Rule 76a. This term excludes “discovery in cases originally intended to preserve bona fide trade secrets or other intangible property rights.” TEX. R. CIV. P. 76a(2)(c). But that does not mean that documents containing trade secrets and other commercially-sensitive information cannot be protected by the sealing of court records. *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (per curiam) (“Regardless of the cause of action, a properly proven trade secret is an interest that should be considered in making the determination required by Rule 76a.”); *Clear Channel Commc'ns, Inc. v. United Servs. Auto. Ass'n*, 195 S.W.3d 129, 137 (Tex. App.—San Antonio 2006, no pet.) (“[Rule 76a] expressly recognizes that the need to protect trade secrets and other proprietary information can overcome the presumption of openness.”).

Court records may be sealed upon a showing that (1) there is a serious, specific, and substantial interest in sealing the records that outweighs the usual presumption of openness and

any probable adverse effect on the general public health or safety, and (2) there are no other, less restrictive means that will adequately protect the specific interest asserted. *E.g.*, TEX. R. CIV. P. 76a(1); *Compaq Computer Corp. v. Lapray*, 75 S.W.3d 669, 674 (Tex. App.—Beaumont 2002, no pet.); *Fox v. Doe*, 869 S.W.2d 507, 512 (Tex. App.—San Antonio 1993, writ denied). Both these elements are satisfied in the present case.

The lease files produced by Texas Crude should be protected and kept confidential because they are entitled to protection as trade secrets. Texas law defines a trade secret as “any formula, patten, device or compilation of information which is used in one’s business and presents an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Bass*, 13 S.W.3d 735, 739 (Tex. 2003) (orig. proceeding) (quoting *Computer Assocs., Int’l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996)). In order to determine whether a trade secret exists, Texas courts apply the six-factor test from the Restatement of Torts:

(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of the measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and to [the company's] competitors; (5) the amount of effort or money expended by [the company] in developing the information; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Bass*, 113 S.W.3d at 739 (quoting RESTATEMENT OF TORTS § 757 cmt. b. (1939)); *see also Rimkus Consulting Group, Inc. v. Cammarata*, 688 F.Supp.2d 598, 666 (S.D. Tex. 2010) (listing cases) (collecting authorities and discussing Texas law’s protection of trade secrets, proprietary information, and confidential information where the Restatement’s test is met). The secrecy component (which relates to four of these six factors) does not require complete secrecy, just that the information not be “generally known or readily ascertainable by independent investigation.” *See Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 552 (Tex. App.—Dallas 1993, no writ);

*see also Metallurgical Indus. Inc. v. Fourtek, Inc.*, 790 F.2d 1195, 1200 (5th Cir.1986) (“Although the law requires secrecy, it need not be absolute.”). Finally, these six factors are “relevant, but not dispositive” and “trade secrets do not fit neatly into each factor every time” and “other circumstances could also be relevant to the trade secret analysis.” *In re Bass*, 113 S.W.3d 735, 739-40 (Tex. 2003). Therefore, in considering whether information qualifies as a trade secret, the court should weigh the relevant factors rather than use them as a checklist.

Texas Crude has a specific, serious, and substantial interest in preserving the confidentiality of the documents that it produced in response to the subpoena which outweighs the usual presumption of openness of the Court’s proceedings. *See* TEX. R. CIV. P. 76a(1)(a). The documents at issue are lease files maintained by Texas Crude. *Affidavit of Charles Kana*, ¶ 5. These lease files contain information regarding various property interests which Texas Crude has leased, as well as the consideration that was paid for such interests. *Affidavit of Charles Kana*, ¶¶ 5, 9. Lease files, such as those produced by Texas Crude in this lawsuit, have been held to contain trade secret information. *See, e.g., In re TXCO Res., Inc.*, 475 B.R. at 813-15. This information is of great value. *E.g., In re TXCO Res., Inc.*, 475 B.R. at 815 (“Land and lease files are valuable because they reveal a company’s business strategy through its acreage position, lease expiration dates, drilling requirements, and renewal measures.”). Texas Crude does not share its lease files with the general public and has taken steps to keep the terms of these transactions confidential. *Affidavit of Charles Kana*, ¶¶ 4, 6, 7, 9. When it produced these documents in response to the subpoena, Texas Crude labeled these documents as “Confidential” in order to continue to maintain the confidentiality of these documents while still satisfying its obligations under the subpoena. *See Affidavit of Charles Kana*, ¶ 6. If such information became generally known to the public, Texas Crude will have lost the confidentiality that it has worked

to maintain, and will therefore suffer immediate and irreparable harm to its commercial interests.  
*Affidavit of Charles Kana*, ¶ 9.

In the event that the Texas Crude documents are used to interrogate witnesses or present arguments to the jury during the trial proceedings, the details of specific business transactions in which Texas Crude participated will become generally known to the public. Texas Crude's understanding is that Defendants will use Texas Crude's lease files to demonstrate the commercial reasonableness of the leases entered into by Defendants at or around the same time as Texas Crude. Therefore, it will almost certainly be necessary for the parties to discuss, in detail, the terms of various leases entered into by Texas Crude, including the consideration paid for such leases, and it will not be feasible or practical for the parties to this lawsuit to use redacted copies of Texas Crude's lease files at trial. Even if material can be redacted from the Texas Crude documents, it will still be necessary to provide the further protection of requiring the documents to be kept under seal, as recognized in a prior order entered by the Court in the present case. Exhibit 2 (Agreed Order entered Sept. 12, 2014 regarding documents produced by non-party SM Energy).

As a result, there are no less restrictive means than sealing the court records containing the Texas Crude documents. Nothing short of such actions will adequately and effectively protect Texas Crude's interest in maintaining the confidentiality of the information contained in the documents that it produced. *See* TEX. R. CIV. P. 76a(1)(b).

The sealing of these records and related court proceedings will have no probable chance of adversely affecting the general public health or safety. *See* TEX. R. CIV. P. 76a(1)(a). There is no legitimate reason to set aside Texas Crude's right to confidentiality in this case, particularly as Texas Crude is not a party to this lawsuit.

Further, the failure to seal these records and related court proceedings would frustrate the public policy of protecting trade secret information from public disclosure. “A properly proven trade secret is an interest that trial courts should consider in determining whether to seal records under Rule 76a.” *Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 530 (Tex. 1998) (Spector, J., concurring in part and dissenting in part) (citing *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992)).

### III. PRAYER

WHEREFORE, Texas Crude respectfully prays that its Motion for Temporary Sealing Order be granted, and that Texas Crude be awarded such other and further relief to which it may be entitled.

Respectfully submitted,

PIERCE & O’NEILL, LLP

By: /s/ Jack O’Neill

Jack O’Neill  
State Bar No. 15288500  
Brian K. Tully  
State Bar No. 24039217  
4203 Montrose Boulevard  
Houston, Texas 77006  
Telephone: (713) 634-3600  
Facsimile: (713) 634-3639  
E-mail: joneill@pierc.oneill.com  
E-mail: btully@pierc.oneill.com

ATTORNEYS FOR MOVANT TEXAS  
CRUDE ENERGY, LLC

**CERTIFICATE OF SERVICE**

This is to certify that on October 21, 2014, a true and correct copy of the above and foregoing document has served via electronic service upon the following:

Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Facsimile: (214) 572-1717  
E-mail: [jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)  
*Attorneys for Plaintiffs Emilie Blaze, et al.*

Patrick K. Sheehan  
David Jed Williams  
HORNBERGER SHEEHAN FULLER & GARZA  
INCORPORATED  
The Quarry Heights Bldg.  
7373 Broadway, Suite 300  
San Antonio, Texas 78209  
Telephone: (210) 271-1700  
Facsimile: (210) 271-1730  
E-mail: [psheehan@hfsblaw.com](mailto:psheehan@hfsblaw.com)  
E-mail: [jwilliams@hsfblaw.com](mailto:jwilliams@hsfblaw.com)

And

Charles A. Gall  
John C. Eichman  
Amy S. Bowen  
HUNTON & WILLIAMS LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202  
Telephone: (214) 979-3000  
Facsimile: (214) 880-0011  
E-mail: [cgall@hunton.com](mailto:cgall@hunton.com)  
E-mail: [jeichman@hunton.com](mailto:jeichman@hunton.com)

And

Kevin M. Beiter  
MCGINNIS LOCHRIDGE  
600 Congress Ave., Suite 2100  
Austin, Texas 78701  
Telephone: (512) 495-6084  
Facsimile: (512) 495-6384  
Email: [kbeiter@mcginnislaw.com](mailto:kbeiter@mcginnislaw.com)  
*Attorneys for Defendants JP Morgan Chase Bank,  
N.A., Individually/Corporately and as Trustee of  
the South Texas Syndicate Trust and Gary P.  
Aymes*

Richard Tinsman  
TINSMAN & SCIANO, INC.  
10107 McAllister Fwy  
San Antonio, Texas 78216  
Telephone: (210) 225-3121  
Facsimile: (210) 225-6235  
E-mail: [rtinsman@tsslawyers.com](mailto:rtinsman@tsslawyers.com)

And

George H. Spencer Jr.  
Robert Rosenbach  
CLEMENS & SPENCER  
112 E. Pecan Street, Suite 1300  
San Antonio, Texas 78205  
Telephone: (201) 227-7121  
Facsimile: (210) 227-0732  
E-mail: [spencer@clemens-spencer.com](mailto:spencer@clemens-spencer.com)  
E-mail: [rosenbach@clemens-spencer.com](mailto:rosenbach@clemens-spencer.com)

And

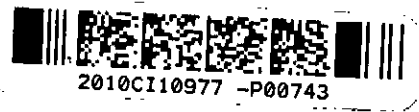
James L. Drought  
DROUGHT, DROUGHT & BOBBITT, LLP  
2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
Telephone: (210) 225-4031  
Facsimile: (210) 225-0586  
E-mail: [jld@ddb-law.com](mailto:jld@ddb-law.com)  
*Attorneys for Plaintiffs John K. Meyer, et al.*

Fred W. Stumpf  
BOYER SHORT LLP  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046  
Telephone: (713) 871-2025  
Facsimile: (713) 8781-2024  
E-mail: [fstumpf@boyerjacobs.com](mailto:fstumpf@boyerjacobs.com)  
*Attorneys for The Washburn Intervenors*

John B. Massopust  
Matthew J. Gollinger  
ZELLE HOFFMAN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, Minnesota 55415-1152  
Telephone: (612) 339-2020  
Facsimile: (612) 336-9100  
E-mail: [jmassopu@zelle.com](mailto:jmassopu@zelle.com)  
E-mail: [mgollinger@zelle.com](mailto:mgollinger@zelle.com)  
*Attorneys for Intervenor-Plaintiffs, Linda Aldrich,  
et al.*

*/s/ Jack O'Neill*  
\_\_\_\_\_  
Jack O'Neill





(Consolidated Under)  
Cause No. 2010-CI-10977

JOHN K. MEYER, ET AL

IN THE DISTRICT COURT

VS.

225<sup>TH</sup> JUDICIAL DISTRICT

JPMORGAN CHASE BANK, N.A., ET AL

BEXAR COUNTY, TEXAS

RECEIPT OF EXHIBITS TO DISTRICT CLERK'S OFFICE  
UNDER RULE 75(a) OF THE  
TEXAS RULES OF CIVIL PROCEDURE

I, Rhonda Hogan, Court Reporter for the 37<sup>th</sup> District Court of Bexar County, Texas, certify and acknowledge that the following exhibits were given to the District Clerk's Office of Bexar County, Texas to the below named Deputy District Clerk:

- |       |  |       |              |
|-------|--|-------|--------------|
| PX-1  | Defendant's 4 <sup>th</sup> Amended Answer   | PX-8  | Section 2.12 |
| PX-2  | Section 2.06   | PX-9  | Section 2.13 |
| PX-3  | Section 2.07   | PX-10 | Section 2.14 |
| PX-4  | Section 2.08   | PX-11 | Section 2.15 |
| PX-5  | Section 2.09   | PX-12 | Section 2.16 |
| PX-6  | Section 2.10   | PX-13 | Section 2.17 |
| PX-7  | Section 2.11   | PX-14 | Section 2.18 |
| <br>  |  |       |              |
| PX-15 | Cover Letter with Defendant's Amended Objections and Responses To Plaintiff's Third Set of Interrogatories |       | (SEALED)     |
| <br>  |  |       |              |
| PX-16 | Cover Letter with Notice of Filing Affidavit of Custodian of Records For Broadway National Bank            |       | (SEALED)     |

*Gene V. Mason III*  
Deputy District Clerk

*Rhonda Hogan*  
Rhonda Hogan

10-23-14  
Date

10-23-2014  
Date

DATE OF HEARING: March 12, 2014

*Gene V. Mason III*  
DEPUTY

14 OCT 23 AM 9:04

FILED  
DONNA KAY HEKINNEY  
DISTRICT CLERK  
BEXAR COUNTY

1 CAUSE NO. 2010-CI-10977  
 2 JOHN K. MEYER, ET AL. \* IN THE DISTRICT COURT  
 \*  
 3 \*  
 VS. \*  
 4 \*  
 \* 225TH JUDICIAL DISTRICT  
 5 JPMORGAN CHASE BANK, N.A. \*  
 INDIVIDUALLY/CORPORATELY \*  
 6 AND AS TRUSTEE OF THE \*  
 SOUTH TEXAS SYNDICATE \*  
 7 TRUST \* BEXAR COUNTY, TEXAS

8 \*\*\*\*\*

9 REPORTER'S CERTIFICATION  
 DEPOSITION OF RENEE MCELHANEY  
 10 SEPTEMBER 23, 2014

11 \*\*\*\*\*

12 I, TRICIA FOX WILLIAMS, Certified Shorthand  
 Reporter in and for the State of Texas, hereby certify  
 13 to the following:

14 That the witness, RENEE MCELHANEY, was duly  
 sworn by the officer and that the transcript of the oral  
 15 deposition is a true record of the testimony given by  
 the witness;

16 That the deposition transcript was submitted on  
 17 9-26-14 to the witness or to the attorney for the  
 witness for examination, signature and return to me by  
 18 10-19-14;

19 That the amount of time used by each party at  
 the deposition is as follows:

20 MR. JOHN EICHMAN - 02 HOURS:52 MINUTE(S)

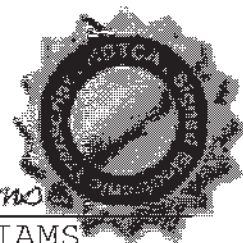
21 That pursuant to information given to the  
 22 deposition officer at the time said testimony was taken,  
 the following includes counsel for all parties of  
 23 record:

24 MR. GEORGE SPENCER, Attorney for Plaintiffs  
 MR. RICHARD TINSMAN, Attorney for Plaintiffs  
 25 MR. JOHN EICHMAN, Attorney for Defendant

1 I further certify that I am neither counsel  
 2 for, related to, nor employed by any of the parties or  
 3 attorneys in the action in which this proceeding was  
 4 taken, and further that I am not financially or  
 5 otherwise interested in the outcome of the action.

6 Further certification requirements pursuant to  
 7 Rule 203 of TRCP will be certified to after they have  
 8 occurred.

9 Certified to by me this 26 of  
 10 09, 2014.



11 *Tricia Williams*  
 12 TRICIA FOX WILLIAMS  
 13 Certified Court Reporter

14 Certification Number: 8273  
 15 Date of Expiration: 12/31/2015  
 16 Firm Registration Number: 341  
 17 Business Address:  
 18 U.S. Legal Support  
 19 363 N. Sam Houston Pkwy E.  
 20 Suite 1200  
 21 Houston, Texas 77060  
 22 (210) 734-7127  
 23  
 24  
 25

## 1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was, was not returned to the  
3 deposition officer on October 16, 2014;

4 If returned, the attached Changes and Signature  
5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was  
7 delivered to John Eichman, Custodial  
8 Attorney;

9 That \$ 882.<sup>95</sup> is the deposition officer's  
10 charges to the Defendant for preparing the original  
11 deposition transcript and any copies of exhibits;

12 That the deposition was delivered in accordance  
13 with Rule 203.3, and that a copy of this certificate was  
14 served on all parties shown herein on and filed with the  
15 Clerk.

16 Certified to by me this 23<sup>rd</sup> day of

17 October, 2014.

18 Tricia Williams  
19 TRICIA FOX WILLIAMS  
20 Certified Court Reporter

21 Certification Number: 8273  
22 Date of Expiration: 12/31/2015  
23 Firm Registration Number: 341  
24 Business Address:

25 U.S. Legal Support  
363 N. Sam Houston Pkwy E.  
Suite 1200  
Houston, Texas 77060  
(210) 734-7127

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHANGES AND SIGNATURE

WITNESS NAME: RENEE MCELHANEY

DATE OF DEPOSITION: SEPTEMBER 23, 2014

PAGE	LINE	CHANGE	REASON
161	22	TCHR	not TCEQ

162	25	TCHR	not TCEQ
-----	----	------	----------

163	14	TCHR	not TCEQ
-----	----	------	----------

163	22	TCHR	not TCEQ
-----	----	------	----------

227	2	Continuances	incorrect transcription
-----	---	--------------	-------------------------

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, RENEE MCELHANEY, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

*Renée McElhane*  
RENEE MCELHANEY

THE STATE OF TEXAS:  
COUNTY OF BEXAR:

Before me, Renée McElhane, on this day personally appeared RENEE MCELHANEY, known to me (or proved to me under oath or through \_\_\_\_\_) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 16th day of October, 2014.



*V Guerra*  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

2010CI10977

82

1 CAUSE NO. 2010-CI-10977  
2 JOHN K. MEYER, ET AL. § IN THE DISTRICT COURT  
3 VS. § 225TH JUDICIAL DISTRICT  
4 JPMORGAN CHASE BANK, N.A. §  
INDIVIDUALLY/CORPORATELY AND §  
5 AS TRUSTEE OF THE SOUTH §  
6 TEXAS SYNDICATE TRUST § BEXAR COUNTY, TEXAS

7 REPORTER'S CERTIFICATION  
8 ORAL & VIDEO DEPOSITION OF JUAN F. VASQUEZ, JR.  
9 AUGUST 27, 2014

10 I, OLGA GUTIERREZ, Certified Shorthand  
11 Reporter, in and for the State of Texas, hereby certify  
12 to the following:

13 That the witness, JUAN F. VASQUEZ, JR., was  
14 duly sworn by the officer and that the transcript of the  
15 Oral & Video Deposition is a true record of the  
16 testimony given by the Witness;

17 That the deposition transcript was submitted on  
18 September 8, 14 to the attorney for the witness  
19 for examination, signature and return to me by

20 October 1, 14;

21 That the amount of time used by each party at  
22 the deposition is as follows:

23 MR. DAVID JED WILLIAMS- 1 hour, 47 minutes  
24 MS. SHARON SAVAGE- 0 hours, 0 minutes  
25 MR. JAMES DROUGHT- 0 hours, 1 minute  
MS. STEPHANIE CURETTE- 0 hours, 0 minutes  
MR. IAN BOLDEN- 0 hours, 0 minutes  
MR. RICHARD TINSMAN- 0 hours, 0 minutes

1           That pursuant to information given to the  
 2 deposition officer at the time said testimony was taken,  
 3 the following includes counsel for all parties of  
 4 record:

- 5
- 6       MR. DAVID JED WILLIAMS - Attorney for Defendant
  - 7       MS. SHARON SAVAGE - Attorney for Plaintiff
  - 8       MR. JAMES DROUGHT - Attorney for Plaintiff
  - 9       MS. STEPHANIE CURETTE - Attorney for Defendant
  - 10      MR. IAN BOLDEN - Attorney for Plaintiff
  - 11      MR. RICHARD TINSMAN - Attorney for Plaintiff

12           I further certify that I am neither counsel  
 13 for, related to, nor employed by any of the parties or  
 14 attorneys in the action in which this proceeding was  
 15 taken. And further, that I am not financially or  
 16 otherwise interested in the outcome of the action.

17           Further certification requirements pursuant to  
 18 Rule 203 of TRCP will be certified to after they have  
 19 occurred.

20           Certified to by me this 8 day of 09  
 21 2014.

*Olga Gutierrez*



OLGA GUTIERREZ, Texas CSR 5061  
 Expiration Date: 12/31/15  
 U.S. Legal Support, Inc.  
 Firm Registration No. 341  
 4801 N.W. Loop 410, Suite 375  
 San Antonio, Texas 78229  
 (210) 734-7127

22  
 23  
 24  
 25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition transcript was ~~was~~ not returned to the deposition officer on October 1, 2014.

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

That \$ 815.60 is the deposition officer's charges to MR. DAVID JED WILLIAMS for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 23<sup>rd</sup> day of October, 2014.

Olga Gutierrez *BPAE*  
OLGA GUTIERREZ, Texas CSR 5061  
Expiration Date: 12/31/15  
U.S. Legal Support, Inc.  
Firm Registration No. 341  
4801 N.W. Loop 410, Suite 375  
San Antonio, Texas 78229  
(210) 734-7127

1 CAUSE NO. 2010-CI-10977  
 2 JOHN K. MEYER, ET. AL. ) IN THE DISTRICT COURT  
 )  
 3 VS. )  
 )  
 4 JPMORGAN CHASE BANK, N.A. ) 225TH JUDICIAL DISTRICT  
 INDIVIDUALLY/CORPORATELY )  
 5 AND AS TRUSTEE OF THE )  
 SOUTH TEXAS SYNDICATE )  
 6 TRUST ) BEXAR COUNTY, TEXAS  
 7

REPORTER'S CERTIFICATION

8 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT E. LEE, III  
 SEPTEMBER 10, 2014  
 9

10 I, Stephanie M. Harper, a Certified Shorthand  
 11 Reporter in and for the State of Texas, hereby certify  
 12 to the following:

13 That the witness, ROBERT E. LEE, III, was duly  
 14 sworn by the officer and that the transcript of the  
 15 oral deposition is a true record of the testimony given  
 16 by the witness;

17 That the deposition transcript was submitted on  
 18 09.15, 2014, to the witness, or to the attorney  
 19 for the witness, for examination, signature, and return  
 20 to U.S. Legal Support, Inc., by 10.08, 2014;

21 That the amount of time used by each party at the  
 22 deposition is as follows:

- 23 MR. JOHN B. MASSOPUST - 00:00
- 24 MS. SHARON C. SAVAGE - 00:00
- 25 MR. CHARLES A. GALL - 06:06

1 MR. GRAYSON L. LINYARD - 00:00

2 MR. KEVIN M. BEITER - 00:00

3 MS. SUSAN PAUL KRAVIK - 00:00

4 MR. BRUCE WALLACE - 00:00

5 That pursuant to information given to the  
6 deposition officer at the time said testimony was  
7 taken, the following includes counsel for all parties  
8 of record:

9 MR. JOHN B. MASSOPUST AND

MS. SHARON C. SAVAGE,

10 ATTORNEYS FOR PLAINTIFFS.

MR. CHARLES A. GALL,

11 MR. GRAYSON L. LINYARD,

MR. KEVIN M. BEITER,

12 MS. SUSAN PAUL KRAVIK, AND

MR. BRUCE WALLACE,

13 ATTORNEY FOR DEFENDANT.

14 I further certify that I am neither counsel for,  
15 related to, nor employed by any of the parties or  
16 attorneys in the action in which this proceeding was  
17 taken, and further that I am not financially or  
18 otherwise interested in the outcome of the action.

19 Further certification requirements pursuant to Rule  
20 203 of TRCP will be certified to after they have  
21 occurred.

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Certified to by me this 15 of SEPTEMBER, 2014.

*Stephanie M. Harper*



STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-14

JOB NO. 166769

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was \_\_\_\_\_ was not <sup>X</sup> returned to U.S. Legal Support, Inc., on 10/8/14, 2014.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. CHARLES A. GALL, Custodial Attorney;

That ~~\$4,535.~~<sup>55</sup> is the deposition officer's charges to the Attorney for Defendant, MR. CHARLES A. GALL, Texas Bar No. 07281500, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on 10/24/14 and filed with the Clerk.

Certified to by me this 23<sup>rd</sup> day of October, 2014.

Stephanie M. Harper <sup>BPAC</sup>  
STEPHANIE M. HARPER  
TEXAS CSR NO. 7433  
Expiration Date: 12-31-14

U.S. Legal Support, Inc.  
Firm Registration No. 122  
363 North Sam Houston Parkway East,  
Suite 1200  
Houston, Texas 77060  
(713) 653-7100

JOB NO. 166769

1 CAUSE NO. 2010-CI-10977  
 2 JOHN K. MEYER, ET AL ) IN THE DISTRICT COURT  
 )  
 3 VS. ) 225TH JUDICIAL DISTRICT  
 )  
 4 JPMORGAN CHASE BANK, N.A., )  
 INDIVIDUALLY/CORPORATELY )  
 5 AND AS TRUSTEE OF THE )  
 SOUTH TEXAS SYNDICATE TRUST)  
 6 AND GARY P. AYMES ) BEXAR COUNTY, T E X A S

7  
 8 REPORTER'S CERTIFICATE  
 9 ORAL/VIDEOTAPED DEPOSITION OF JOHN FLANNERY  
 10 SEPTEMBER 15, 2014

11  
 12 I, Tina M. Montemayor, Certified Shorthand Reporter  
 13 in and for the State of Texas, hereby certify to the  
 14 following:

15 That the witness, JOHN FLANNERY, was duly sworn and  
 16 that the transcript of the deposition is a true record  
 17 of the testimony given by the witness;

18 That the deposition transcript was duly submitted on  
 19 9.22.14 to the witness or to the attorney for  
 20 the witness for examination, signature, and return to me  
 21 by 10.15.14.

22 That pursuant to information given to the deposition  
 23 officer at the time said testimony was taken, the  
 24 following includes all parties of record and the amount  
 25 of time used by each party at the time of the

1 deposition:



2 MR. DAVID JED WILLIAMS (2 hours, 57 minutes)  
Attorney for Defendants;  
3 MR. JAMES L. DROUGHT (1 hour, 21 minutes)  
Attorney for Plaintiffs;  
4

5 That a copy of this certificate was served on all  
6 parties shown herein on \_\_\_\_\_ and filed  
7 with the Clerk.

8 I further certify that I am neither counsel for,  
9 related to, nor employed by any of the parties in the  
10 action in which this proceeding was taken, and further  
11 that I am not financially or otherwise interested in the  
12 outcome of this action.

13 Further certification requirements pursuant to  
14 Rule 203 of the Texas Code of Civil Procedure will be  
15 complied with after they have occurred.

16 Certified to by me on this 22 day of  
17 September, 2014.

18  
19    
20 Tina M. Montemayor, CSR  
Texas CSR 3487  
21 Expiration: 12/31/2014  
U.S. Legal Support  
22 Firm Registration No. 341  
4801 N.W. Loop 410, Suite 375  
23 San Antonio, Texas 78229  
(210) 734-7127  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FURTHER CERTIFICATION UNDER TRCP RULE 203

The original deposition (was) was not returned to the deposition officer on October 14, 2014.

If returned, the attached Changes and Signature page(s) contain(s) any changes and the reasons therefor.

If returned, the original deposition was delivered to MR. DAVID JED WILLIAMS, Custodial Attorney.

\$1200<sup>25</sup> is the deposition officer's charges to the Defendants for preparing the original deposition and any copies of exhibits;

The deposition was delivered in accordance with Rule 203.3, and a copy of this certificate, served on all parties shown herein, was filed with the Clerk.

Certified to by me on this 23<sup>rd</sup> day of October, 2014.

Tina M. Montemayor BAAE  
Tina M. Montemayor, CSR  
Texas CSR 3487  
Expiration: 12/31/2014  
U.S. Legal Support  
Firm Registration No. 341  
4801 N.W. Loop 410, Suite 375  
San Antonio, Texas 78229  
(210) 734-7127



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

CHANGES AND SIGNATURE

PAGE LINE


CHANGE

REASON

No Change

ORIGINAL

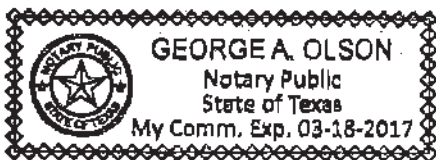
1 I, JOHN FLANNERY, have read the foregoing deposition  
2 and hereby affix my signature that same is true and  
3 correct, except as noted above.

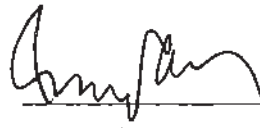
4  
5   
6 \_\_\_\_\_  
7 JOHN FLANNERY

8 THE STATE OF TEXAS )  
9 COUNTY OF BEXAR )

10  
11 Before me, GEORGE A. OLSON, on this day  
12 personally appeared JOHN FLANNERY, known to me or proved  
13 to me on the oath of \_\_\_\_\_ or through  
14 \_\_\_\_\_ (description of identity card  
15 or other document) to be the person whose name is  
16 subscribed to the foregoing instrument and acknowledged  
17 to me that he/she executed the same for the purpose and  
18 consideration therein expressed.

19 Given under my hand and seal of office on this 14th?  
20 Day of OCTOBER, 2014.



21  
22   
23 \_\_\_\_\_  
24 NOTARY PUBLIC IN AND FOR  
25 THE STATE OF TEXAS

My Commission Expires: \_\_\_\_\_

**ORIGINAL**

1 CAUSE NO. 2010-CI-10977  
2 JOHN K. MEYER, ET. AL. ) IN THE DISTRICT COURT  
) )  
3 VS. ) )  
) )  
4 JPMORGAN CHASE BANK, N.A. ) 225TH JUDICIAL DISTRICT  
INDIVIDUALLY/CORPORATELY ) )  
5 AND AS TRUSTEE OF THE ) )  
SOUTH TEXAS SYNDICATE ) )  
6 TRUST ) BEXAR COUNTY, TEXAS  
7

8 REPORTER'S CERTIFICATION  
9 ORAL AND VIDEOTAPED DEPOSITION OF  
10 DAVID LEATHERS, ASA, CFE  
11 SEPTEMBER 4, 2014

12 I, Stephanie M. Harper, a Certified Shorthand  
13 Reporter in and for the State of Texas, hereby certify  
14 to the following:

15 That the witness, DAVID LEATHERS, ASA, CFE, was  
16 duly sworn by the officer and that the transcript of  
17 the oral deposition is a true record of the testimony  
18 given by the witness;

19 That the deposition transcript was submitted on  
September 8, 2014, to the witness, or to the attorney  
20 for the witness, for examination, signature, and return  
21 to U.S. Legal Support, Inc., by October 1, 2014;

22 That the amount of time used by each party at the  
23 deposition is as follows:

24 MR. MICHAEL S. CHRISTIAN - 00:00  
25 MR. RICHARD TINSMAN - 00:00

1168521

1 MS. SHARON C. SAVAGE - 00:00

2 MR. KEVIN M. BEITER - 00:00

3 MR. JOHN C. EICHMAN - 06:03

4 MS. SUSAN PAUL KRAVIK - 00:00

5 That pursuant to information given to the  
6 deposition officer at the time said testimony was  
7 taken, the following includes counsel for all parties  
8 of record:

9 MR. MICHAEL S. CHRISTIAN,  
MR. RICHARD TINSMAN,  
10 MS. SHARON C. SAVAGE,  
ATTORNEYS FOR PLAINTIFFS.

11 MR. KEVIN M. BEITER,  
MR. JOHN C. EICHMAN,  
12 MS. SUSAN PAUL KRAVIK,  
ATTORNEYS FOR DEFENDANT.

13 I further certify that I am neither counsel for,  
14 related to, nor employed by any of the parties or  
15 attorneys in the action in which this proceeding was  
16 taken, and further that I am not financially or  
17 otherwise interested in the outcome of the action.

18 Further certification requirements pursuant to Rule  
19 203 of TRCP will be certified to after they have  
20 occurred.

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Certified to by me this 8<sup>th</sup> of SEPTEMBER, 2014.

*Stephanie M. Harper*



STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-14

JOB NO. 168521 [LEATHERS]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was X was not returned to U.S. Legal Support, Inc., on September 29<sup>th</sup>, 2014.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. JOHN C. EICHMAN, Custodial Attorney;

That \$ 3,782.45 is the deposition officer's charges to the Attorney for Defendant, MR. JOHN C. EICHMAN, Texas Bar No. 06494800, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on 10/16/14 and filed with the Clerk.

Certified to by me this 15<sup>th</sup> day of October, 2014.

Stephanie M Harper BAE.

STEPHANIE M. HARPER  
TEXAS CSR NO. 7433  
Expiration Date: 12-31-14

U.S. Legal Support, Inc.  
Firm Registration No. 122  
363 North Sam Houston Parkway East,  
Suite 1200  
Houston, Texas 77060  
(713) 653-7100


JOB NO. 168521

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESS CORRECTIONS AND SIGNATURE

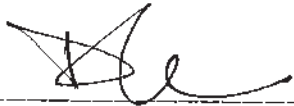
Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE	CORRECTION	REASON FOR CHANGE
73/7	No, sir, except for the consideration of lost profits in determining the reasonableness of my approach.	Clarify the record
113/12	report, yes, before adjustments	Clarify the record for risk.
170/1	Yes, Business Valuation Review is a American Society of Appraisers' publication.	Clarify the record
202/25	I don't believe so, except as part of an acquisition or business combination.	Clarify the record
203/10	Correct, except as part of an acquisition or business combination.	Clarify the record
203/20	Incorrect. Unproven reserves are recorded at Fair Value when acquired.	Clarify the record
204/1	Incorrect. Risk adjusted unproven reserves are recorded when acquired.	Clarify the record

  
DAVID LEATHERS, ASA, CFE

*[Faint handwritten notes]*

1 I, DAVID LEATHERS, ASA, CFE, solemnly swear or  
 2 affirm under the pains and penalties of perjury that  
 3 the foregoing pages contain a true and correct  
 4 transcript of the testimony given by me at the time and  
 5 place stated herein, except as noted on the previous  
 6 correction page(s), and that I am signing this before a  
 7 Notary Public.


8 

9 DAVID LEATHERS, ASA, CFE

10 STATE OF T E X A S \*  
 11 COUNTY OF Harris \*

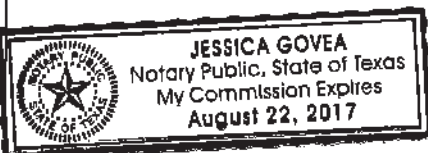
12 Before me, David Leathers,  
 13 on this day personally appeared DAVID LEATHERS, ASA,  
 14 CFE, known to me, or proved to me under oath, to be the  
 15 person whose name is subscribed to the foregoing  
 16 instrument and acknowledged to me that they executed  
 17 the same for the purposes and consideration therein  
 18 expressed.

19 Given under my hand and seal of office on  
 20 this, the 29 day of September, 2014.

21 

22 NOTARY PUBLIC IN AND FOR THE  
 23 STATE OF TEXAS

24 My Commission Expires: August 22, 2017



25 JOB NO. 168521

ORIGINAL



1 CAUSE NO. 2010-CI-10977  
2 JOHN K. MEYER, ET. AL. ) IN THE DISTRICT COURT  
 )  
3 VS. )  
 )  
4 JPMORGAN CHASE BANK, N.A. ) 225TH JUDICIAL DISTRICT  
 INDIVIDUALLY/CORPORATELY )  
5 AND AS TRUSTEE OF THE )  
 SOUTH TEXAS SYNDICATE )  
6 TRUST ) BEXAR COUNTY, TEXAS  
7

8 REPORTER'S CERTIFICATION  
9 ORAL AND VIDEOTAPED DEPOSITION OF GEORGE C. HITE, P.E.  
10 SEPTEMBER 3, 2014

11 I, Stephanie M. Harper, a Certified Shorthand  
12 Reporter in and for the State of Texas, hereby certify  
13 to the following:

14 That the witness, GEORGE C. HITE, P.E., was duly  
15 sworn by the officer and that the transcript of the  
16 oral deposition is a true record of the testimony given  
17 by the witness;

18 That the deposition transcript was submitted on  
19 September 8, 2014, to the witness, or to the attorney  
20 for the witness, for examination, signature, and return  
21 to U.S. Legal Support, Inc., by October 1, 2014;

22 That the amount of time used by each party at the  
23 deposition is as follows:

24 MR. MICHAEL S. CHRISTIAN - 00:00  
25 MS. SHARON C. SAVAGE - 00:00  
MR. JAMES L. DROUGHT - 00:00

1 MR. IAN T. BOLDEN - 00:00

2 MR. KEVIN M. BEITER - 04:00

3 That pursuant to information given to the  
4 deposition officer at the time said testimony was  
5 taken, the following includes counsel for all parties  
6 of record:

7 MR. MICHAEL S. CHRISTIAN,

MS. SHARON C. SAVAGE,

8 MR. JAMES L. DROUGHT,

MR. IAN T. BOLDEN,

9 ATTORNEYS FOR PLAINTIFFS.

MR. KEVIN M. BEITER,

10 ATTORNEY FOR DEFENDANT.

11 I further certify that I am neither counsel for,  
12 related to, nor employed by any of the parties or  
13 attorneys in the action in which this proceeding was  
14 taken, and further that I am not financially or  
15 otherwise interested in the outcome of the action.

16 Further certification requirements pursuant to Rule  
17 203 of TRCP will be certified to after they have  
18 occurred.

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Certified to by me this 8<sup>th</sup> of SEPTEMBER, 2014.

*Stephanie M. Harper*



STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-14

JOB NO. 166689 [HITE]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was X was not returned to U.S. Legal Support, Inc., on October 16<sup>th</sup>, 2014.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. KEVIN M. BEITER, Custodial Attorney;

That \$ 2,470.<sup>70</sup> is the deposition officer's charges to the Attorney for Defendant, MR. KEVIN M. BEITER, Texas Bar No. 02059065, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on 10/16/14 and filed with the Clerk.

Certified to by me this 15<sup>th</sup> day of October, 2014.

Stephanie M. Harper <sup>BOAC</sup>

STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-14

U.S. Legal Support, Inc.  
Firm Registration No. 122  
363 North Sam Houston Parkway East,  
Suite 1200  
Houston, Texas 77060  
(713) 653-7100

JOB NO. 166689



1 I, George C. Hite, P.E., solemnly swear or affirm under the pains and penalties  
2 of perjury that the foregoing pages contain a true and correct transcript of the  
3 testimony given by me at the time and place stated herein, except as noted  
4 on the previous correction page (s), and that I am signing this before a  
5 Notary Public

6  
7  
8   
9 \_\_\_\_\_  
George C. Hite

10 THE STATE OF Texas  
11 COUNTY OF Harris

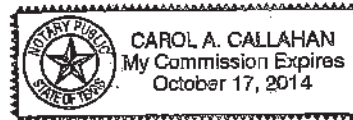
12  
13 Before me, Carol A. Callahan, on this day personally  
14 appeared GEORGE C. HITE, known to me or proved to me under oath or through  
15 \_\_\_\_\_ (description of identity card or other document) to be the  
16 person whose name is subscribed to the foregoing instrument and acknowledged  
17 to me that they executed the same for the purposes and consideration therein  
18 expressed.

19  
20 Given under my hand and seal of office this 6<sup>th</sup>  
21 day of October, 2014.

22 Carol A. Callahan  
23 \_\_\_\_\_

24  
25 Notary Public in and for the State of Texas

26  
27 My Commission Expires: 10/17/2014  
28



**2010CI10977**

**EXHIBIT 1**

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

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

**AFFIDAVIT OF CHARLES KANA**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HARRIS**       §

BEFORE ME, the undersigned authority, on this day personally appeared Charles Kana, who being by me first duly sworn, upon oath testified as follows:

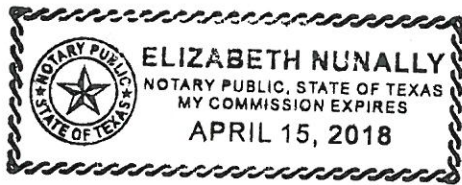
1. My name is Charles Kana. I am over eighteen (18) years of age and otherwise competent to make this Affidavit. I am Vice President, Land of Texas Crude Energy, LLC (“Texas Crude”), and I am duly authorized to make this Affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.
2. On or about July 18, 2014, Texas Crude received a subpoena from Defendant JP Morgan Chase Bank, N.A. (“Chase”) in the above-referenced cause of action. In response to this subpoena, I prepared a letter dated July 28, 2014 to counsel for Chase. A true and correct copy of that letter is attached as Exhibit A to this Affidavit. Enclosed with that letter were the following categories of documents:
  - a. A Deposition on Written Questions dated July 28, 2014 that I completed (a true and correct copy of which is attached as Exhibit B to this Affidavit).
  - b. Various lease file document copies regarding a lease between 1893 Oil & Gas, Ltd., Lessor, to Texas Crude Energy, Inc., Lessee, dated September 15, 2007 (the “1893 Lease”); and
  - c. Various lease file document copies regarding a lease between Melba Jo Parrott et al., Lessor, to Texas Crude Energy, Inc., Lessee, dated September 15, 2007 (the “Parrott Lease”).

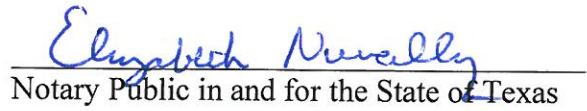


3. After Texas Crude acquired the 1893 Lease and the Parrott Lease, it did not file these leases in the publicly-available records. Rather, Texas Crude filed a "Memorandum of Lease" in the publicly-available records for each of these leases.
4. These lease memoranda filed in the publicly-available property records would reflect only basic information about those leases, such as the identity of the lessor and the lessee, the length of the primary term of those leases, and a description of the properties covered by those leases.
5. The lease files, which were produced in response to the subpoena issued by Chase, contain additional information not available from the publicly-available property records, such as the amount of the bonus that Texas Crude paid to each lessor and the royalty terms of those leases as well as any drilling obligations that might be contained in the leases or other provisions which could affect the calculation of royalties. The lease files also contained drafts or other documents reflecting payments from Texas Crude to each lessor.
6. When Texas Crude produced the lease file documents in response to the subpoena issued by Chase, it labeled each of the documents as "Confidential" as allowed by the Agreed Protective Orders entered in the above-referenced lawsuit.
7. Paper and electronic copies of the lease files are maintained at the offices of Texas Crude and may only be accessed by employees of Texas Crude. Texas Crude has less than 15 employees. Texas Crude does not share its lease files with third parties.
8. Counsel for Chase mailed a letter dated October 8, 2014 to Texas Crude. A true and correct copy of that letter is attached as Exhibit C to this Affidavit. In that letter, counsel for Chase indicated its intent to introduce Texas Crude's lease files into evidence at trial, which is scheduled to begin on October 27, 2014. By the time that Texas Crude was able to consider the matter with counsel and make the decision to ask that these documents be sealed, trial was less than 14 days away.
9. The 1893 Lease and the Parrot Lease are confidential transactions between private parties. When Texas Crude reached agreements with these lessors and obtained these leases, there was an expectation that Texas Crude would keep the terms of these transactions confidential. Texas Crude worked to keep confidential as many terms of these transactions as possible by filing lease memoranda instead of the leases themselves in the publicly-available property records, and by only producing these documents in this lawsuit after designating them as "Confidential." The terms of these leases that Texas Crude worked to keep confidential include the leasing costs paid by Texas Crude to these lessors, the royalty terms, and any other unique provisions in these leases. These unique lease provisions could affect the calculation of royalty under the leases or could include specific drilling commitments by Texas Crude. If such information became available to the public, which would include Texas Crude's competitors as well as other lessors in the area who may have different terms in their leases, Texas Crude would suffer immediate and irreparable injury to its commercial interests.

  
Charles Kana

SUBSCRIBED AND SWORN TO BEFORE ME, on this 23 day of October, 2014.



  
Notary Public in and for the State of Texas

## EXHIBIT 1-A

# TEXAS CRUDE ENERGY, LLC

---

(713) 599-9900

2803 BUFFALO SPEEDWAY

HOUSTON, TEXAS 77098

FAX: (713) 599-9910

MAILING ADDRESS: P.O. BOX 56586

HOUSTON, TEXAS 77256-6586

July 28, 2014

Overnight Delivery

**David Jed Williams**  
**Hornberger Sheehan Fuller & Garza Incorporated**  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

Re: John K. Meyer et al.  
Vs.  
J.P. Morgan Chase...

Dear Mr. Williams:

Pursuant to the Deposition Subpoena etc. received 7/18/14 regarding the subject and in line with your communications, both verbal and email with David Ezarik here, enclosed for your use are the following:

1. Deposition on Written Questions completed by the undersigned;
2. Various lease file document copies in compliance with your request:  
Being a separate package for each lease as follows:
  - a. 1893 Oil & Gas Ltd., Lessor, to Texas Crude Energy, Inc., Lessee, dated 9/15/07,
  - b. Melba Jo Parrott et al, Lessor, to texas Crude Energy, Inc., Lessee, dated 9/15/07.

Although we believe this now completes any Texas Crude obligation for this request, please advise if you need anything further to complete this matter on our behalf.

Sincerely,



Charles Kana  
Vice President, Land  
[ckana@texcrude.com](mailto:ckana@texcrude.com)

## EXHIBIT 1-B

JOHN K. MEYER, ET. AL.

VS.

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

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEPOSITION ON WRITTEN QUESTIONS PROPOUNED UPON THE WITNESS,  
CUSTODIAN OF RECORDS FOR TEXAS CRUDE ENERGY INC.**

1. Please state your full name, business address, and official title.

ANSWER:

Charles Kana Vice President, Land  
Texas Crude Energy, LLC, 2803 Buffalo Spwy, Houston, TX  
77098

2. Did you receive a subpoena for the production of the documents and records listed and described on Exhibit "A" attached to these questions?

ANSWER:

Yes

3. Have these documents and records been produced for this deposition, ~~bates numbered~~, and delivered to the officer taking this deposition?

ANSWER:

Yes

4. Are you the custodian of these documents or records for **TEXAS CRUDE ENERGY INC.?**

ANSWER:

Yes

5. What is the Bates number range for the documents and records produced for this deposition?

ANSWER:

N/A

6. Are the documents and records produced for this deposition originals or photocopies of the original documents?

**ANSWER:**

Yes

7. Are the documents and records produced for this deposition memoranda, reports, records or data compilations of acts, events, or conditions made at or near the time by or from information transmitted by, a person with knowledge?

**ANSWER:**

Yes

8. Are these documents and records kept in the course of a regularly conducted business activity of **TEXAS CRUDE ENERGY INC.?**

**ANSWER:**

Yes

9. Was it the regular practice of the business activity of **TEXAS CRUDE ENERGY INC.**, to make the memorandum, report, record or data compilation reflected in these documents and records?

**ANSWER:**

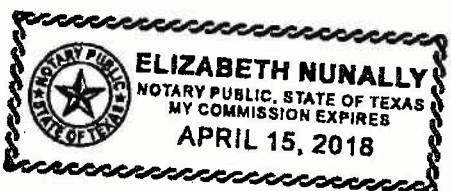
Yes

*Charles...*  
WITNESS, CUSTODIAN OF RECORDS FOR  
**TEXAS CRUDE ENERGY INC. LLC**

I Elizabeth Nunally, a Notary Public in and for the State of Texas, do hereby certify that the forgoing answers of the witness were made by the said witness and sworn to and subscribed before me.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS 28<sup>th</sup> day of July, 2014.

Elizabeth Nunally  
Notary Public, State of Texas



## EXHIBIT 1-C



# Hornberger Sheehan Fuller & Garza INCORPORATED

David Jed Williams  
jwilliams@hsfblaw.com

October 8, 2014

Mr. Kane C. Weiner  
Texas Crude Energy, Inc.  
2803 Buffalo Speedway  
Houston, Texas 77098

VIA CM/RRR# 7013 2250 0001 3431 7906

Re: Cause No. 2010-CI-10977, *John K. Meyer, et al. vs. JP Morgan Chase Bank, N.A., et al.*, in the 225th Judicial District Court of Bexar County, Texas

Dear Mr. Weiner:

Attached are the following:

1. Agreed Protective Order dated November 14, 2011; and
2. Agreed Protective Order dated February 13, 2014.

Pursuant to the terms of the enclosed Agreed Protective Orders, Defendant JPMorgan Chase Bank, N.A., in all capacities ("JPM"), hereby notifies Texas Crude Energy, LLC ("TCE") that it has listed the 229 pages produced by TCE ("TCE's Documents") on its Proposed Exhibit List and intends to introduce said documents into evidence during trial of the above-referenced cause.

The above-referenced cause is set for trial on October 27, 2014. Please contact me as soon as possible if TCE intends to move the court regarding JPM's introduction of TCE's Documents into evidence at the time of trial, including but not limited to, a motion to seal pursuant to Texas Rule of Civil Procedure 76a.

Thank you.

Sincerely yours,



Jed Williams

DJW/lrk  
Enclosures

Mr. Kane C. Weiner  
October 8, 2014  
Page 2

cc: *Via Email*

Mr. George Spencer, Jr.  
Mr. Robert Rosenbach  
CLEMENS & SPENCER  
112 East Pecan, Suite 1300  
San Antonio, Texas 78205

*Via Email*

Mr. James L. Drought  
Mr. Ian Bolden  
DROUGHT DROUGHT & BOBBITT, LLP  
112 East Pecan, Suite 2900  
San Antonio, Texas 78205

*Via Email*

Mr. Richard Tinsman  
Ms. Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78216

*Via Email*

Mr. Michael S. Christian  
ZELLE HOFMANN VOELBEL & MASON  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

*Via Email*

Mr. Fred W. Stumpf  
GLAST, PHILLIPS & MURRAY  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

*Via Email*

Mr. David R. Deary  
Mr. Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

*Via Email*

Mr. Steven J. Badger  
Ms. Ashley Bennett Jones  
ZELLE HOFMANN VOELBEL & MASON  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975

*Via Email*

Mr. John B. Massopust  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

*Via Email*

Mr. Matthew H. Gollinger  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

# EXHIBIT 1

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

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

**AFFIDAVIT OF CHARLES KANA**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF HARRIS**       §

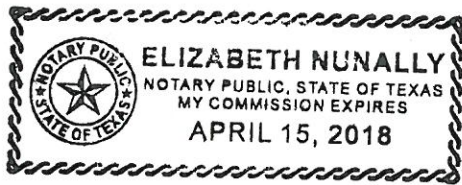
BEFORE ME, the undersigned authority, on this day personally appeared Charles Kana, who being by me first duly sworn, upon oath testified as follows:

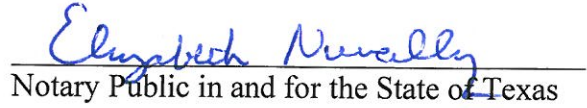
1. My name is Charles Kana. I am over eighteen (18) years of age and otherwise competent to make this Affidavit. I am Vice President, Land of Texas Crude Energy, LLC (“Texas Crude”), and I am duly authorized to make this Affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.
2. On or about July 18, 2014, Texas Crude received a subpoena from Defendant JP Morgan Chase Bank, N.A. (“Chase”) in the above-referenced cause of action. In response to this subpoena, I prepared a letter dated July 28, 2014 to counsel for Chase. A true and correct copy of that letter is attached as Exhibit A to this Affidavit. Enclosed with that letter were the following categories of documents:
  - a. A Deposition on Written Questions dated July 28, 2014 that I completed (a true and correct copy of which is attached as Exhibit B to this Affidavit).
  - b. Various lease file document copies regarding a lease between 1893 Oil & Gas, Ltd., Lessor, to Texas Crude Energy, Inc., Lessee, dated September 15, 2007 (the “1893 Lease”); and
  - c. Various lease file document copies regarding a lease between Melba Jo Parrott et al., Lessor, to Texas Crude Energy, Inc., Lessee, dated September 15, 2007 (the “Parrott Lease”).

3. After Texas Crude acquired the 1893 Lease and the Parrott Lease, it did not file these leases in the publicly-available records. Rather, Texas Crude filed a "Memorandum of Lease" in the publicly-available records for each of these leases.
4. These lease memoranda filed in the publicly-available property records would reflect only basic information about those leases, such as the identity of the lessor and the lessee, the length of the primary term of those leases, and a description of the properties covered by those leases.
5. The lease files, which were produced in response to the subpoena issued by Chase, contain additional information not available from the publicly-available property records, such as the amount of the bonus that Texas Crude paid to each lessor and the royalty terms of those leases as well as any drilling obligations that might be contained in the leases or other provisions which could affect the calculation of royalties. The lease files also contained drafts or other documents reflecting payments from Texas Crude to each lessor.
6. When Texas Crude produced the lease file documents in response to the subpoena issued by Chase, it labeled each of the documents as "Confidential" as allowed by the Agreed Protective Orders entered in the above-referenced lawsuit.
7. Paper and electronic copies of the lease files are maintained at the offices of Texas Crude and may only be accessed by employees of Texas Crude. Texas Crude has less than 15 employees. Texas Crude does not share its lease files with third parties.
8. Counsel for Chase mailed a letter dated October 8, 2014 to Texas Crude. A true and correct copy of that letter is attached as Exhibit C to this Affidavit. In that letter, counsel for Chase indicated its intent to introduce Texas Crude's lease files into evidence at trial, which is scheduled to begin on October 27, 2014. By the time that Texas Crude was able to consider the matter with counsel and make the decision to ask that these documents be sealed, trial was less than 14 days away.
9. The 1893 Lease and the Parrot Lease are confidential transactions between private parties. When Texas Crude reached agreements with these lessors and obtained these leases, there was an expectation that Texas Crude would keep the terms of these transactions confidential. Texas Crude worked to keep confidential as many terms of these transactions as possible by filing lease memoranda instead of the leases themselves in the publicly-available property records, and by only producing these documents in this lawsuit after designating them as "Confidential." The terms of these leases that Texas Crude worked to keep confidential include the leasing costs paid by Texas Crude to these lessors, the royalty terms, and any other unique provisions in these leases. These unique lease provisions could affect the calculation of royalty under the leases or could include specific drilling commitments by Texas Crude. If such information became available to the public, which would include Texas Crude's competitors as well as other lessors in the area who may have different terms in their leases, Texas Crude would suffer immediate and irreparable injury to its commercial interests.

  
Charles Kana

SUBSCRIBED AND SWORN TO BEFORE ME, on this 23 day of October, 2014.



  
Notary Public in and for the State of Texas

## EXHIBIT 1-A

# TEXAS CRUDE ENERGY, LLC

---

(713) 599-9900

2803 BUFFALO SPEEDWAY

HOUSTON, TEXAS 77098

FAX: (713) 599-9910

MAILING ADDRESS: P.O. BOX 56586

HOUSTON, TEXAS 77256-6586

July 28, 2014

Overnight Delivery

**David Jed Williams**  
**Hornberger Sheehan Fuller & Garza Incorporated**  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

Re: John K. Meyer et al.  
Vs.  
J.P. Morgan Chase...

Dear Mr. Williams:

Pursuant to the Deposition Subpoena etc. received 7/18/14 regarding the subject and in line with your communications, both verbal and email with David Ezarik here, enclosed for your use are the following:

1. Deposition on Written Questions completed by the undersigned;
2. Various lease file document copies in compliance with your request:  
Being a separate package for each lease as follows:
  - a. 1893 Oil & Gas Ltd., Lessor, to Texas Crude Energy, Inc., Lessee, dated 9/15/07,
  - b. Melba Jo Parrott et al, Lessor, to texas Crude Energy, Inc., Lessee, dated 9/15/07.

Although we believe this now completes any Texas Crude obligation for this request, please advise if you need anything further to complete this matter on our behalf.

Sincerely,



Charles Kana  
Vice President, Land  
[ckana@texcrude.com](mailto:ckana@texcrude.com)



## EXHIBIT 1-B

JOHN K. MEYER, ET. AL.

VS.

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

§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEPOSITION ON WRITTEN QUESTIONS PROPOUNED UPON THE WITNESS,  
CUSTODIAN OF RECORDS FOR TEXAS CRUDE ENERGY INC.**

1. Please state your full name, business address, and official title.

ANSWER:

Charles Kana Vice President, Land  
Texas Crude Energy, LLC, 2803 Buffalo Spwy, Houston, TX  
77098

2. Did you receive a subpoena for the production of the documents and records listed and described on Exhibit "A" attached to these questions?

ANSWER:

Yes

3. Have these documents and records been produced for this deposition, ~~bates numbered~~, and delivered to the officer taking this deposition?

ANSWER:

Yes

4. Are you the custodian of these documents or records for **TEXAS CRUDE ENERGY INC.?**

ANSWER:

Yes

5. What is the Bates number range for the documents and records produced for this deposition?

ANSWER:

N/A

6. Are the documents and records produced for this deposition originals or photocopies of the original documents?

**ANSWER:**

Yes

7. Are the documents and records produced for this deposition memoranda, reports, records or data compilations of acts, events, or conditions made at or near the time by or from information transmitted by, a person with knowledge?

**ANSWER:**

Yes

8. Are these documents and records kept in the course of a regularly conducted business activity of **TEXAS CRUDE ENERGY INC.?**

**ANSWER:**

Yes

9. Was it the regular practice of the business activity of **TEXAS CRUDE ENERGY INC.**, to make the memorandum, report, record or data compilation reflected in these documents and records?

**ANSWER:**

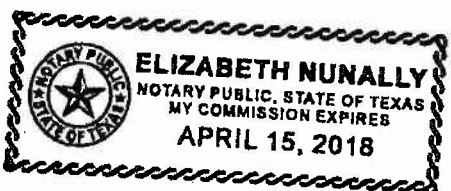
Yes

*Charles...*  
WITNESS, CUSTODIAN OF RECORDS FOR  
**TEXAS CRUDE ENERGY INC. LLC**

I Elizabeth Nunally, a Notary Public in and for the State of Texas, do hereby certify that the forgoing answers of the witness were made by the said witness and sworn to and subscribed before me.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS 28<sup>th</sup> day of July, 2014.

Elizabeth Nunally  
Notary Public, State of Texas



## EXHIBIT 1-C

# Hornberger Sheehan Fuller & Garza INCORPORATED

David Jed Williams  
jwilliams@hsfblaw.com

October 8, 2014

Mr. Kane C. Weiner  
Texas Crude Energy, Inc.  
2803 Buffalo Speedway  
Houston, Texas 77098

VIA CM/RRR# 7013 2250 0001 3431 7906

Re: Cause No. 2010-CI-10977, *John K. Meyer, et al. vs. JP Morgan Chase Bank, N.A., et al.*, in the 225th Judicial District Court of Bexar County, Texas

Dear Mr. Weiner:

Attached are the following:

1. Agreed Protective Order dated November 14, 2011; and
2. Agreed Protective Order dated February 13, 2014.

Pursuant to the terms of the enclosed Agreed Protective Orders, Defendant JPMorgan Chase Bank, N.A., in all capacities ("JPM"), hereby notifies Texas Crude Energy, LLC ("TCE") that it has listed the 229 pages produced by TCE ("TCE's Documents") on its Proposed Exhibit List and intends to introduce said documents into evidence during trial of the above-referenced cause.

The above-referenced cause is set for trial on October 27, 2014. Please contact me as soon as possible if TCE intends to move the court regarding JPM's introduction of TCE's Documents into evidence at the time of trial, including but not limited to, a motion to seal pursuant to Texas Rule of Civil Procedure 76a.

Thank you.

Sincerely yours,



David Jed Williams

DJW/lrk  
Enclosures

Mr. Kane C. Weiner  
October 8, 2014  
Page 2

cc: *Via Email*

Mr. George Spencer, Jr.  
Mr. Robert Rosenbach  
CLEMENS & SPENCER  
112 East Pecan, Suite 1300  
San Antonio, Texas 78205

*Via Email*

Mr. James L. Drought  
Mr. Ian Bolden  
DROUGHT DROUGHT & BOBBITT, LLP  
112 East Pecan, Suite 2900  
San Antonio, Texas 78205

*Via Email*

Mr. Richard Tinsman  
Ms. Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78216

*Via Email*

Mr. Michael S. Christian  
ZELLE HOFMANN VOELBEL & MASON  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104

*Via Email*

Mr. Fred W. Stumpf  
GLAST, PHILLIPS & MURRAY  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

*Via Email*

Mr. David R. Deary  
Mr. Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

*Via Email*

Mr. Steven J. Badger  
Ms. Ashley Bennett Jones  
ZELLE HOFMANN VOELBEL & MASON  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975

*Via Email*

Mr. John B. Massopust  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

*Via Email*

Mr. Matthew H. Gollinger  
ZELLE HOFMANN VOELBEL & MASON  
Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

**2010CI10977**

**EXHIBIT 2**

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, et al.,

*Plaintiffs,*

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

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**AGREED ORDER**

Before the Court are Plaintiffs' Motion to Compel Production of Oil and Gas Leases from SM Energy Company filed on September 8, 2014 and Non-Party SM Energy Company's Motion to Quash and for Protective Order filed on August 28, 2014. The Court, having considered the agreement of Plaintiffs and SM Energy Company ("Saint Mary's") as to the matters contained herein as well as the motions, responses, evidence, arguments of counsel and other matters on file in this case, rules that Plaintiffs' and Saint Mary's motions are all granted in part and denied in part as reflected in the following rulings of the Court:

With regard to the documents requested from St. Mary's as reflected on Exhibit "A" to the subpoena ("Request For Production"), the Court orders St. Mary's to produce the lease agreements referenced in Exhibit "A." St. Mary's is further ordered to produce at least one additional document reflecting the bonus amount, per net mineral acre, paid for each of the lease agreements that are required to be produced. St. Mary's is not required to produce any additional documents requested in Exhibit "A." St. Mary's shall further answer the Deposition upon Written Questions served with the subpoenas with regard to the documents produced.



These documents are to be produced pursuant to and under the November 14, 2011, Agreed Protective Order and the February 13, 2014 Agreed Order, with the following modifications and additional provisions:

1. "Qualified Persons," pursuant to paragraph 3 of the Agreed Protective Order, shall include only the persons listed in subsections (a) and (b) so that the documents are for attorneys and experts eyes only;
2. All produced documents and copies thereof shall be returned or destroyed at the conclusion of the case;
3. Saint Mary's shall be entitled to redact any lease provisions not related to location, acreage size, primary term, continuous drilling obligations, water use and compensation related thereto, royalty and bonus;
4. Any party seeking to introduce any produced documents into evidence that are designated as "confidential" will be required to file an appropriate motion to seal pursuant to Texas Rule of Civil Procedure 76a and provide notice to the producing party so that they too can be involved if they so elect; and
5. None of the Qualified Persons privy to the produced information shall contact the lessors or anyone else regarding the produced information.

SIGNED this \_\_\_\_ day of September, 2014.

SEP 12 2014

Michael E. Mery  
Presiding Judge  
37th District Court  
Bexar County, Texas

\_\_\_\_\_  
Judge Presiding



**AGREED:**

**ZELLE HOFMANN VOELBEL & MASON, L.L.P.**

500 Washington Avenue South, Suite 4000

Minneapolis, Minnesota 55415-1152

(612) 336-2020 – Telephone

(612) 336-9100 – Facsimile

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

*John Massopust by permission*  
John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)

**ATTORNEYS FOR INTERVENOR-PLAINTIFFS,  
LINDA ALDRICH, ET AL.**

**LOEWINSOHN FLEGLE DEARY, L.L.P.**

12377 Meritt Dr., Suite 900

Dallas, Texas 75261

(214) 572-1700 – Telephone

(214) 572-1717 – Facsimile

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

*J. Flegle*  
Jim Flegle  
State Bar No. 07118600

**ATTORNEYS FOR PLAINTIFFS,  
EMILE BLAZE, ET AL.**

**TINSMAN & SCIANO, INC.**

Richard Tinsman

State Bar No. 20084000

Sharon C. Savage

State Bar No. 0474200

10107 McAllister Freeway

San Antonio, Texas 78212

(210) 225-3121 – Telephone

(210) 225-6235 – Facsimile

*And*

**CLEMENS & SPENCER, P.C.**

George H. Spencer, Jr.  
State Bar No. 18921001  
Robert Rosenbach  
State Bar No. 17266400  
112 East Pecan Street, Suite 1300  
San Antonio, Texas 78205  
(210) 227-7121 – Telephone  
(210) 227-0732 – Facsimile

*And*

**DROUGHT, DROUGHT & BOBBITT, LLP**

2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
(210) 225-4031 – Telephone  
(210) 222-0586 – Facsimile

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

*James Drought*  
James I. Drought  
State Bar No. 08135000

*by permission*  
*JM*

**ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.**

**PIERCE & O'NEILL, LLP**

4203 Montrose Boulevard  
Houston, Texas 77006  
(713) 634-3600 Telephone  
(713) 634-3601 Facsimile

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

*Jesse R. Pierce*  
Jesse R. Pierce  
State Bar No. 15995400

**ATTORNEYS FOR NON-PARTY,  
SM ENERGY COMPANY**

## EXHIBIT 2

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, et al.,

*Plaintiffs,*

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

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**AGREED ORDER**

Before the Court are Plaintiffs' Motion to Compel Production of Oil and Gas Leases from SM Energy Company filed on September 8, 2014 and Non-Party SM Energy Company's Motion to Quash and for Protective Order filed on August 28, 2014. The Court, having considered the agreement of Plaintiffs and SM Energy Company ("Saint Mary's") as to the matters contained herein as well as the motions, responses, evidence, arguments of counsel and other matters on file in this case, rules that Plaintiffs' and Saint Mary's motions are all granted in part and denied in part as reflected in the following rulings of the Court:

With regard to the documents requested from St. Mary's as reflected on Exhibit "A" to the subpoena ("Request For Production"), the Court orders St. Mary's to produce the lease agreements referenced in Exhibit "A." St. Mary's is further ordered to produce at least one additional document reflecting the bonus amount, per net mineral acre, paid for each of the lease agreements that are required to be produced. St. Mary's is not required to produce any additional documents requested in Exhibit "A." St. Mary's shall further answer the Deposition upon Written Questions served with the subpoenas with regard to the documents produced.

These documents are to be produced pursuant to and under the November 14, 2011, Agreed Protective Order and the February 13, 2014 Agreed Order, with the following modifications and additional provisions:

1. "Qualified Persons," pursuant to paragraph 3 of the Agreed Protective Order, shall include only the persons listed in subsections (a) and (b) so that the documents are for attorneys and experts eyes only;
2. All produced documents and copies thereof shall be returned or destroyed at the conclusion of the case;
3. Saint Mary's shall be entitled to redact any lease provisions not related to location, acreage size, primary term, continuous drilling obligations, water use and compensation related thereto, royalty and bonus;
4. Any party seeking to introduce any produced documents into evidence that are designated as "confidential" will be required to file an appropriate motion to seal pursuant to Texas Rule of Civil Procedure 76a and provide notice to the producing party so that they too can be involved if they so elect; and
5. None of the Qualified Persons privy to the produced information shall contact the lessors or anyone else regarding the produced information.

SIGNED this \_\_\_\_ day of September, 2014.

SEP 12 2014

Michael E. Mery  
Presiding Judge  
37th District Court  
Bexar County, Texas

Judge Presiding



**AGREED:**

**ZELLE HOFMANN VOELBEL & MASON, L.L.P.**

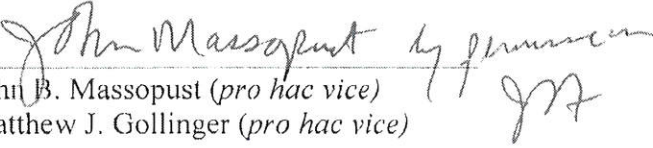
500 Washington Avenue South, Suite 4000

Minneapolis, Minnesota 55415-1152

(612) 336-2020 – Telephone

(612) 336-9100 – Facsimile

By:

  
John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)

**ATTORNEYS FOR INTERVENOR-PLAINTIFFS,  
LINDA ALDRICH, ET AL.**

**LOEWINSOHN FLEGLE DEARY, L.L.P.**

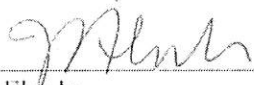
12377 Meritt Dr., Suite 900

Dallas, Texas 75261

(214) 572-1700 – Telephone

(214) 572-1717 – Facsimile

By:

  
Jim Flegle  
State Bar No. 07118600

**ATTORNEYS FOR PLAINTIFFS,  
EMILE BLAZE, ET AL.**

**TINSMAN & SCIANO, INC.**

Richard Tinsman

State Bar No. 20084000

Sharon C. Savage

State Bar No. 0474200

10107 McAllister Freeway

San Antonio, Texas 78212

(210) 225-3121 – Telephone

(210) 225-6235 – Facsimile

*And*

**CLEMENS & SPENCER, P.C.**

George H. Spencer, Jr.  
State Bar No. 18921001  
Robert Rosenbach  
State Bar No. 17266400  
112 East Pecan Street, Suite 1300  
San Antonio, Texas 78205  
(210) 227-7121 – Telephone  
(210) 227-0732 – Facsimile

*And*

**DROUGHT, DROUGHT & BOBBITT, LLP**

2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
(210) 225-4031 – Telephone  
(210) 222-0586 – Facsimile

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

*James Drought*  
James I. Drought  
State Bar No. 08135000

*by permission  
JH*

**ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.**

**PIERCE & O'NEILL, LLP**

4203 Montrose Boulevard  
Houston, Texas 77006  
(713) 634-3600 Telephone  
(713) 634-3601 Facsimile

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

*Jesse R. Pierce*  
Jesse R. Pierce  
State Bar No. 15995400

**ATTORNEYS FOR NON-PARTY,  
SM ENERGY COMPANY**