

CAUSE NO. 2011-CI-02000

CAROLYN J. CLARK, AS EXECUTRIX	§	IN THE DISTRICT COURT
OF THE ESTATE OF PATRICIA BURNS	§	
CLARK, AND CAROLYN J. CLARK,	§	
MICHELE CADWALLADER AND	§	
CHRISTOPHER CLARK, INDIVIDUALLY,	§	
Plaintiffs,	§	
	§	
v.	§	438 <sup>TH</sup> JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A., ET. AL.	§	
Defendants	§	BEXAR COUNTY, TEXAS

**NOTICE OF FILING AFFIDAVITS**

Defendant JPMorgan Chase Bank, N.A., Individually, Corporately, and in its Capacity as Trustee of the Patricia Burns Clark Trust Under the Will of T.E. Burns and The Patricia Burns Clark Irrevocable Trust (collectively referred to herein as “Defendant”), files this Notice of Filing Affidavits in support of its privilege claims with respect to documents set for hearing under Plaintiff’s Motion to Compel Production filed on March 5, 2012.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER BEITER  
WITTENBERG & GARZA INCORPORATED**  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, Texas 78209  
Tel: (210) 271-1700  
Fax: (210) 271-1740

By: /s David Jed Williams  
Patrick K. Sheehan  
State Bar No. 18175500  
Kevin M. Beiter  
State Bar No. 02059065  
Rudy A. Garza  
State Bar No. 07738200  
David Jed Williams  
State Bar No. 21518060

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been served on the following, as indicated, on this the 15<sup>th</sup> day of May, 2012:

Mr. Ricardo G. Cedillo  
Mr. Les J. Strieber  
Davis, Cedillo & Mendoza, Inc.  
755 E. Mulberry Ave., Suite 500  
San Antonio, Texas 78212

**VIA FACSIMILE OR EMAIL**

Mr. James L. Drought  
Drought, Drought, & Bobbitt, LLP  
112 East Pecan Street, Suite 2900  
San Antonio, Texas 78205

**VIA FACSIMILE OR EMAIL**

Mr. Richard Tinsman  
Tinsman & Sciano, Inc.  
10107 McAllister Frwy  
San Antonio, Texas 78216

**VIA FACSIMILE OR EMAIL**

*/s David Jed Williams*

David Jed Williams

CAUSE NO. 2011-CI-02000

CAROLYN J. CLARK, AS EXECUTRIX  
OF THE ESTATE OF PATRICIA BURNS  
CLARK, AND CAROLYN J. CLARK,  
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IN THE DISTRICT COURT

v.

438<sup>TH</sup> JUDICIAL DISTRICT

JPMORGAN CHASE BANK, N.A., ET. AL.  
Defendants

BEXAR COUNTY, TEXAS

**AFFIDAVIT OF JOHN C. MINTER**

STATE OF TEXAS §  
§  
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, personally appeared JOHN C. MINTER, who after being duly sworn, deposed and said the following:

“1. My name is John C. Minter. I am over the age of eighteen (18), have never been convicted of a felony or crime of moral turpitude, and am in all ways competent to make this Affidavit.

2. This Affidavit is based upon my personal knowledge acquired through my own personal participation and actual involvement in the events and discussions that are the subject of this Affidavit.

3. I am Managing Director for JPMorgan Chase Bank (“J.P. Morgan”), a Defendant in this suit. I am the supervisor of Gary Aymes, who was the trust officer primarily responsible for administration of the Burns Trusts during 2009 continuing through the termination of the trusts in 2011.


4. In late November or early December, 2009, I learned that J.P. Morgan had entered into the Option Agreement with Blackbrush and that Carolyn Clark, agent under a power of attorney for the Burns Trusts beneficiary, Patricia Burns Clark Dailey, was not pleased with this decision. It is my understanding that Ms Clark demanded that the bank get out of the Blackbrush deal and pursue a lease with EOG. Based upon the nature of Ms. Clark’s complaint, particularly the demand that J.P. Morgan get out of a deal that it had already signed and agreed to, I certainly anticipated that J.P. Morgan would likely be sued by the beneficiary if it did not

comply with the beneficiary's demand. Because J.P. Morgan could not comply with Ms. Clark's demand and get out of the Blackbrush deal, I fully expected and anticipated that Ms. Clark would bring a lawsuit against J.P. Morgan on behalf of her mother.

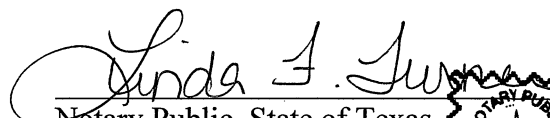
5. It is my understanding that the beneficiary directed a complaint to Todd Maclin, who is head of J. P. Morgan's commercial bank. Mr. Maclin relayed the complaint to Joe Kenney, who at the time was Chief Executive Officer of Private Wealth Management for J.P. Morgan. After J. P. Morgan received the complaint from Ms. Clark, I communicated regarding the complaint with Mr. Maclin and Mr. Kenney and also with Gary Aymes, Charlotte Ray, and the relationship manager, Colleen Dean. Charlotte Ray is an attorney who serves as a risk manager and provides advice and counsel to our trust administration group concerning legal matters and handling of complaints that arise in the administration of trusts. Ms. Ray became involved because of the complaints received by the beneficiary.

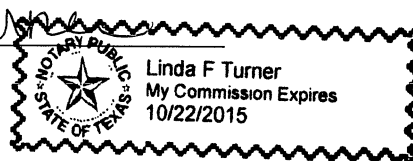
6. On December 10, 2009, Gary Aymes, Colleen Dean, and I met with Carolyn Clark and Randy Cadwallader concerning their complaints. On December 11, 2009, I sent an email with attachments to Todd Maclin, Joe Kenney, and Steve Martin that is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000046-49. The purpose of this email and its attachments was for me to inform the recipients concerning the beneficiary meeting and what was discussed, including options for dealing with the complaint. This email and its attachments contain information pertaining to our review and investigation of Ms. Clark's complaint and the mental impressions developed in anticipation of litigation or for trial and communications made in anticipation of litigation or for trial.

7. On December 12, 2009, I received a reply email from Todd Maclin that is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000054. On December 13, 2009, I received a reply email from Joe McKinney that is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000055. These two emails contain information pertaining to and reflecting our review and investigation of Ms. Clark's complaint and mental impressions developed in anticipation of litigation or for trial and communications made in anticipation of litigation or for trial."

  
\_\_\_\_\_  
JOHN C. MINTER

SUBSCRIBED and SWORN TO on this 14 day of March, 2012.

  
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Notary Public, State of Texas



CAUSE NO. 2011-CI-02000

CAROLYN J. CLARK, AS EXECUTRIX  
OF THE ESTATE OF PATRICIA BURNS  
CLARK, AND CAROLYN J. CLARK,  
MICHELE CADWALLADER AND  
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IN THE DISTRICT COURT

v.

JPMORGAN CHASE BANK, N.A., ET. AL.  
Defendants

438<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**AFFIDAVIT OF GARY P. AYMES**

STATE OF TEXAS §  
§  
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, personally appeared GARY P. AYMES, who after being duly sworn, deposed and said the following:

“1. My name is Gary P. Aymes. I am over the age of eighteen (18), have never been convicted of a felony or crime of moral turpitude, and am in all ways competent to make this Affidavit.

2. This Affidavit is based upon my personal knowledge acquired through my own personal participation and involvement in the events and discussions that are the subject of this Affidavit.

3. I am Executive Director – Senior Trust Officer for JPMorgan Chase Bank (“J.P. Morgan”), a Defendant in this suit. I was the J.P. Morgan trust officer primarily responsible for administration of the Burns Trusts during 2009 continuing through the termination of the trusts in 2011.

4. In late November or early December, 2009, I spoke by telephone with Carolyn Clark, who is the daughter of Patricia Burns Clark Dailey, the income beneficiary of the Burns Trusts until her death in 2011. Ms. Clark had been acting on behalf of her mother for several years under a power of attorney and she was J.P. Morgan’s primary beneficiary contact for matters pertaining to the trusts.

5. During this telephone conversation, Ms. Clark informed me that she had learned that J.P. Morgan had entered into the Option Agreement with Blackbrush and that she was not pleased with this decision. Ms Clark demanded that the bank get out of the Blackbrush deal and pursue a lease with EOG. Based upon the nature of Ms. Clark's complaint, particularly the demand that J.P. Morgan get out of a deal that it had already signed and agreed to, I certainly anticipated J.P. Morgan would likely be sued by the beneficiary if it did not comply with the beneficiary's demand. Because J.P. Morgan could not comply with Ms. Clark's demand and get out of the Blackbrush deal, I fully expected and anticipated that Ms. Clark would bring a lawsuit against J.P. Morgan on behalf of her mother. That is, in fact, what eventually happened.

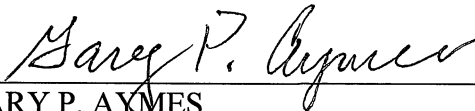
6. After receiving the complaint from Ms. Clark, I communicated regarding the complaint with my supervisor, John Minter, our fiduciary executive, Charlotte Ray, and the relationship manager, Colleen Dean. Charlotte Ray is an attorney who serves as a risk manager and provides legal advice and counsel to our trust administration group concerning legal matters and handling of beneficiary complaints that arise in the administration of trusts. Ms. Ray became involved because of the complaints received by the beneficiary.

7. On December 3, 2009, I sent an email to Joe Kenney, John Minter, Charlotte Ray, and Colleen Dean that is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000017. Joe Kenney is the Chief Executive Officer of Private Wealth Management for J.P. Morgan and had become involved in this matter because the beneficiary had complained about the Blackbrush transaction to Todd Maclin, head of J.P. Morgan's commercial bank, who then relayed the complaint to Mr. Kenney. The purpose of this email was for me to inform Mr. Kenney and the other recipients concerning the complaint and an analysis as to the options for dealing with the complaint. This email contains information learned through our investigation concerning Ms. Clark's complaint and our mental impressions developed in anticipation of litigation or for trial and communications made in anticipation of litigation or for trial. This email also contains confidential communications to the recipients, including an attorney, Charlotte Ray, for Ms. Ray's use and reference in providing counsel and advice to myself and the J.P. Morgan employees involved with the Burns Trust relationship. Such legal advice and counsel was in fact provided to J.P. Morgan employees by Ms. Ray concerning the issues referenced in this Affidavit.


8. On December 4, 2009, I received an email from Charlotte Ray that was also sent to Joe Kenney, John Minter, and Colleen Dean that is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000031-32. The purpose of this email is for Ms. Ray to further elaborate upon the beneficiary's complaint and an analysis as to the options for dealing with the complaint. This email contains information learned through our investigation concerning Ms. Clark's complaint and mental impressions developed in anticipation of litigation or for trial and communications made in anticipation of litigation or for trial. This email also contains confidential communications to the recipients from an attorney, Charlotte Ray, for use and reference in providing counsel and advice to me and the J.P. Morgan employees involved with the Burns Trust relationship.

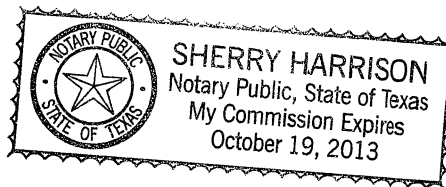
9. I have reviewed unredacted copies of documents that J.P. Morgan produced in this case that are bates nos. JPM0007507 through JPM0007510. The portions of these documents

that were redacted consist of an email exchange between Patricia Schultz-Ormond and me regarding payment of an invoice for a consultant retained by Cox & Smith regarding litigation related to the South Texas Syndicate trust and not related to the Burns Trusts.”

  
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GARY P. AYMES

SUBSCRIBED and SWORN TO on this 14<sup>th</sup> day of March, 2012.

  
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Notary Public, State of Texas



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CLARK, AND CAROLYN J. CLARK,	§	
MICHELE CADWALLADER AND	§	
CHRISTOPHER CLARK, INDIVIDUALLY	§	
Plaintiffs,	§	
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v.	§	438 <sup>TH</sup> JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A., ET. AL.	§	
Defendants	§	BEXAR COUNTY, TEXAS

**AFFIDAVIT OF SUSAN KRAVIK**

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

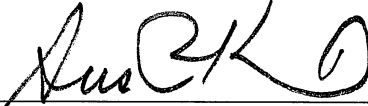
BEFORE ME, the undersigned authority, personally appeared SUSAN KRAVIK, who after being duly sworn, deposed and said the following:

- “1. My name is Susan Kravik. I am over the age of eighteen (18), have never been convicted of a felony or crime of moral turpitude, and am in all ways competent to make this Affidavit.
2. This Affidavit is based upon my personal knowledge acquired through my personal participation and involvement in the events and discussions that are the subject of this Affidavit.
3. I am an attorney licensed to practice in the State of Texas since 1987. I am Vice President, Assistant General Counsel for JPMorgan Chase Bank, N.A. (“J.P. Morgan”), a Defendant in this suit. Part of my job duties and responsibilities is to provide legal counsel and advice to J.P. Morgan employees who administer trusts and trust assets for trusts where J.P. Morgan is trustee.
4. On December 1, 2009, I was contacted by Paula Baker concerning a beneficiary complaint relating to the Burns Trusts. Paula Baker is a Managing Director for J.P. Morgan. She is also an attorney and is the Chief Fiduciary Executive responsible for fiduciary risk management for J.P. Morgan trusts and estates. The basis of the contact by Ms. Baker was a complaint by the trust beneficiary about the bank entering into an Option Agreement with Blackbrush. It was my understanding that the beneficiary of the trust (now a plaintiff in this



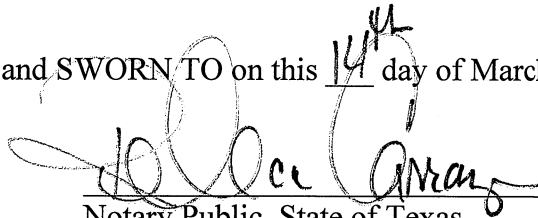
case) was not pleased that the bank had entered into an agreement with Blackbrush and wanted the bank to pursue, instead, an oil and gas lease with another company. Based upon the nature of the beneficiary's complaint, particularly the insistence that J.P. Morgan get out of a deal that it had already signed and agreed to, I certainly anticipated J.P. Morgan would likely be sued by the beneficiary if it did not comply with the beneficiary's request. I was being consulted by J.P. Morgan employees to provide legal services and advice in anticipation of such litigation.

5. After receiving the call from Paula Baker, I contacted H.L. Tompkins and Bertram Hayes-Davis and asked them to prepare a memorandum for me that would contain a timeline of phone calls and activities concerning the Burns Trust/Blackbrush transaction and beneficiary complaints concerning that transaction. An initial draft of the memo was sent to me and I added additional information to the memo. The final memo is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 000009 – 13. The purpose of this memo was for my clients (J.P. Morgan employees) to communicate confidential information to me concerning the subject transaction for my use and reference in providing legal services and legal advice to J.P. Morgan employees involved with the Burns Trust relationship. The information in the memo was in fact used by me for these purposes. This memo reflects information learned through our review and investigation of Ms. Clark's complaint and contains materials, mental impressions, and communications developed in anticipation of litigation or for trial by Mr. Tompkins, Mr. Hayes-Davis, and myself and about which my legal advice was both sought and given."

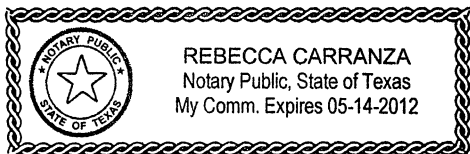


SUSAN KRAVIK

SUBSCRIBED and SWORN TO on this 14<sup>th</sup> day of March, 2012.



Notary Public, State of Texas





by the beneficiary if it did not comply with the beneficiary's demand. Because J.P. Morgan could not comply with Ms. Clark's demand and get out of the Blackbrush deal, I fully expected and anticipated that Ms. Clark would bring a lawsuit against J.P. Morgan on behalf of her mother.


5. After J. P. Morgan had received the demand from Ms. Clark and as a result of this demand, I participated in an investigation concerning the facts and circumstances that led to J.P. Morgan entering into the Blackbrush transaction. In the course of this investigation, I communicated with Bertram Hayes-Davis and H.L. Tompkins of the mineral management group as well as John Minter and Paula Baker. Ms. Baker is an attorney and is the Chief Fiduciary Executive responsible for fiduciary risk management for J.P. Morgan trusts and estates. Ms. Baker provides advice and counsel to our fiduciary management group concerning legal matters and handling of complaints that arise in the administration of trusts and management of trust assets. Ms. Baker became involved because of the complaints received by the beneficiary.

6. On December 11, 2009, I received an email from Paula Baker. This email is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000052-53. The purpose of this email was to communicate with me concerning the beneficiary's complaint and J.P. Morgan's actions in entering into the Blackbrush transaction. This email contains mental impressions developed in anticipation of litigation or for trial and communications made in anticipation of litigation or for trial. This email also contains confidential communications to me from an attorney, Paula Baker, for use and reference in providing counsel and advice to me, which advice was sought by and given to me.

7. On December 11, 2009, I sent a reply email to Paula Baker, responding to her earlier email to me on the same date. This email is listed on J.P. Morgan's privilege log and marked as JPM-PRIV 0000051. The purpose of this email was to communicate with Paula concerning the beneficiary's demand, our investigation of the facts and circumstances surrounding the transaction that was being challenged by Ms. Clark and J.P. Morgan's actions in entering into the Blackbrush transaction. This email contains mental impressions developed in anticipation of litigation or for trial and communications made in anticipation of litigation or for trial. This email also contains confidential communications from me to an attorney, Paula Baker, for use and reference in providing counsel and advice to me, which advice was sought by and given to me.

  
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KEVIN R. SMITH

SUBSCRIBED and SWORN TO on this 15 day of May, 2012.

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

ROBB MICHAEL LAMANNA  
Notary Public, State of New York  
Qualified in Westchester County  
Reg. No. 01LA6019781  
My Commission Expires May 7, 2014

CAROLYN J. CLARK, AS EXECUTRIX  
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IN THE DISTRICT COURT

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438<sup>TH</sup> JUDICIAL DISTRICT

JPMORGAN CHASE BANK, N.A., ET. AL.  
Defendants

BEXAR COUNTY, TEXAS

**AFFIDAVIT OF PATRICK K. SHEEHAN**

STATE OF TEXAS §  
§  
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, personally appeared PATRICK K. SHEEHAN, who after being duly sworn, deposed and said the following:

“1. My name is Patrick K. Sheehan. I am over the age of eighteen (18), have never been convicted of a felony or crime of moral turpitude, and am in all ways competent to make this Affidavit.

2. This Affidavit is based upon my personal knowledge acquired through my personal participation and involvement in the events and discussions that are the subject of this Affidavit.

3. I am an attorney licensed to practice in the State of Texas since 1975 and I am a shareholder in the law firm of Hornberger Sheehan Fuller Beiter Wittenberg & Garza Incorporated (f/k/a Hornberger Sheehan Fuller & Beiter Incorporated). Further, I am lead counsel for Patricia Schultz-Ormond, a Defendant in this suit.

4. On June 13, 2011, Hornberger Sheehan Fuller Beiter Wittenberg & Garza entered into an Engagement Agreement with Patricia Schultz-Ormond (the “Engagement Agreement”). The Engagement Agreement is listed on Defendants’ Privilege Log and marked as JPM-PRIV69-72. The Engagement Agreement contains confidential communications between Patricia Schultz-Ormond and me for the purpose of facilitating the rendition of legal services to Ms. Schultz-Ormond by me and my firm.”



PATRICK K. SHEEHAN

SUBSCRIBED and SWORN TO on this 15<sup>th</sup> day of May 2012.

*Leota Ross Krantz*  
\_\_\_\_\_  
Notary Public, State of Texas

