

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the matter of determining the responsibility of)	Docket No.: 25-CONS-3139-CSHO
Cyclone Petroleum, Incorporated (Operator) for)	
the Swain #1 and Swain B #1 wells in Section 7,)	CONSERVATION DIVISION
Township 35 South, Range 3 East, Cowley)	
County, Kansas)	License No. 30253

**PRE-FILED DIRECT TESTIMONY OF
JAMES HAVER
ON BEHALF OF CYCLONE PETROLEUM, INCORPORATED
JUNE 30, 2025**

1 **Q. What is your name and business address?**

2 A. James M. C. Haver. 1030 W. Main Street, Jenks, Oklahoma 74037-3525.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am President of Cyclone Petroleum.

5 **Q. Would you please briefly describe your background and work experience?**

6 A. I have been employed and have been active as an officer of several oil and gas exploration
7 and production entities for over 30 years.

8 **Q. What duties does your position with Cyclone Petroleum entail?**

9 A. Managing all operations.

10 **Q. Have you previously testified before this Commission concerning these matters?**

11 A. I do not recall ever testifying before the Commission in person regarding these matters.

12 **Q. What is the purpose of your testimony in this docket?**

13 A. To substantiate the position that Cyclone Petroleum has no obligations with respect to the
14 wells in question.

15 **Q. Has this matter ever come before a court of law in Kansas?**

16 A. YES.

17 **Q. What was that case about?**

18 A. In that case (2015-CV-000081) in Sumner County District Court, the judge and jury
19 considered whether Newkumet Exporation, Inc. assumed the obligation to plug all wells on
20 the leases that are the subject of your inquiry. The judge and jury concluded that Newkumet
21 did in fact assume all of those obligations. Specifically:

22 1. The Swaim Lease attached to your letter through which Martin McCorgary leased
23 the Southeast Quarter of Section 7, T35S, R3E is dated July 18, 2002. See Exhibit A; and

1 2. The Assignment of Oil and Gas Lease attached to your letter through which
2 Martin McCorgary assigned the aforementioned lease to Sundance Oil & Gas, LLC is
3 dated August 1, 2002. See Exhibit A; and

4 3. In August of 2011, Cyclone Petroleum Incorporated, Sundance Oil & Gas LLC,
5 and Haveco Oil & Gas Properties LLC, assigned all of their respective interests in the
6 Swaim lease and the wellbores located thereon to Newkumet Exploration, Inc. See
7 Exhibit D. As you can see from a review of the Purchase and Sale Agreement, the
8 Agreement provides at the bottom of page 2 and the top of page 3 (in pertinent part) as
9 follows:

10 “EFFECTIVE DATE is September 1, 2011. Sellers are
11 entitled to all production and are responsible for all expenses
12 including taxes and all liabilities up to the Effective
13 Date. *Buyer* is entitled to all production and *is responsible*
14 *for all expenses and liabilities (including plugging costs*
15 *and liabilities associated with the wells on the Leases*
16 *described in “Exhibit A”*) with respect to the properties from
17 and after the Effective Date...” (*emphasis* added),

18 and Exhibit "A" is a list of leases, not a list of wellbores. Consequently, to the extent it is
19 determined that either Cyclone, Sundance, or Haveco ever had an obligation to plug wells
20 that were located on said leases, Newkumet assumed the obligations. This conclusion is
21 clearly supported by the outcome of the litigation between Endeavor Energy Resources,
22 L.P. and Newkumet Exploration, Inc. on the one hand as Plaintiffs (hereafter
23 “Endeavor/Newkumet”), and Cyclone, Sundance, and Haveco as Defendants on the other

1 hand (hereafter “Cyclone/Sundance/Haveco”). See Exhibit E. In that case,
2 Endeavor/Newkumet sued Cyclone/Sundance/Haveco to reimburse Endeavor/Newkumet
3 for cost incurred in plugging 37 wells across the Prospect that was the subject of the
4 August 2011 Purchase and Sale Agreement. Importantly, one of those wells was on the
5 property that was the subject of the Swaim lease (Swaim A#1, API #15-035-23678). The
6 Sumner County jury returned a verdict in favor of Cyclone, Sundance, and Haveco (and
7 the other defendants) finding that the plugging responsibilities were the responsibility of
8 Newkumet and Endeavor, and that the Defendants had no reimbursement obligation. The
9 Exhibits referenced herein confirm that Endeavor/Newkumet sought to avoid their
10 contractual obligations to plug all wells on all leases by alleging fraud, and the jury found
11 that no fraud was committed by Cyclone, Sundance, Jim Haver, or Haveco. As such,
12 Cyclone, Sundance, and Haveco assert that Newkumet and Endeavor are collaterally
13 estopped from asserting otherwise in the context of the two wells that are the subject of
14 your letter (Exhibit A); and
15 Mr. Marsh’s letter (Exhibit A) asserts “...Cyclone Petroleum appears to be a responsible
16 party pursuant to K.S.A. 55-179(b)(3) as the person that most recently accepted
17 responsibility for the well by accepting an assignment or by signing an agreement or
18 other written document, between private parties, in which the person accepted
19 responsibility...” Cyclone contends that the party that most recently accepted the =
20 plugging responsibility is Newkumet Exploration, Inc., as evidenced by the jury verdict
21 in Sumner County in Case No. 15 CV 81.

22 **Q. What is Exhibit F?**

23 A. Exhibit F is the Pretrial Order in 2015-CV-000081, which is the litigation between

1 Endeavor Energy Resources, L.P. and Newkumet Exploration, Inc. on the one hand as Plaintiffs
2 (hereafter “Endeavor/Newkumet”), and Cyclone, Sundance, and Haveco as Defendants on the
3 other hand (hereafter “Cyclone/Sundance/Haveco”), referenced above.

4 **Q. What is Exhibit G?**

5 Exhibits G are the Jury Instructions issued by the Court in 2015-CV-000081, which is the
6 litigation between Endeavor Energy Resources, L.P. and Newkumet Exploration, Inc. on the
7 one hand as Plaintiffs (hereafter “Endeavor/Newkumet”), and Cyclone, Sundance, and
8 Haveco as Defendants on the other hand (hereafter “Cyclone/Sundance/Haveco”), referenced
9 above.

10 **Q. What is Exhibit H?**

11 A. Exhibit H is the Jury Verdict Form in 2015-CV-000081, which is the litigation between
12 Endeavor Energy Resources, L.P. and Newkumet Exploration, Inc. on the one hand as Plaintiffs
13 (hereafter “Endeavor/Newkumet”), and Cyclone, Sundance, and Haveco as Defendants on the]
14 other hand (hereafter “Cyclone/Sundance/Haveco”), referenced above.

15 **Q. What is Exhibit I?**

16 A. Exhibit I is an email chain which was admitted into evidence in 2015-CV-000081, which
17 substantiates that Newkumet had access to all files concerning the leases and wellbores that
18 were the subject of the transaction, and knowingly assumed the obligation to plug the wells
19 that are the subject of your inquiry.

Certificate of Service
25-CONS-3139-CSHO

I, the undersigned, certify that a true copy of the foregoing Direct Testimony of James Haver on Behalf of Cyclone Petroleum, Incorporated, June 30, 2025, has been served to the following by means of electronic service on June 30, 2025.

Daniel Fox,
Compliance Officer, KCC District 2
Kansas Corporation Commission
District Office No. 2
3450 N. Rock Rd Bldg 600 Ste 601
Wichita, KS 67226
dan.fox@ks.gov

Kelcey Marsh
Litigation Counsel
Kansas Corporation Commission
Central Office
266 N. Main St, Ste 220
Wichita, KS 67202-1513
kelcey.marsh@ks.gov

Jeff Klock
Kansas Corporation Commission
District Office No. 2
3450 N. Rock Rd. Bldg 600 Ste. 601
Wichita, KS 67226
jeff.klock@ks.gov

Jonathan R. Myers
Assistant General Counsel
Kansas Corporation Commission
266 N. Main St., Ste. 220
Wichita, KS 67202-1513
jon.myers@ks.gov

/s/ Martin J. Peck
Martin J. Peck

Conservation Division
266 N. Main St., Ste. 220
Wichita, KS 67202-1513



Phone: 316-337-6200
Fax: 316-337-6211
<http://kcc.ks.gov/>

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Taura Kelly, Governor

July 23, 2024

James M C Haver
Cyclone Petroleum, Incorporated
1030 W. Main St.
Jenks, OK 74037-3525

**Re: Swaim #1, API #15-035-23624; and
Swaim #B-1, API #15-035-23712**

Operator,

Commission Staff have determined that Cyclone Petroleum, Incorporated appears to be a responsible party for the referenced wells located in Section 7, Township 35 South, Range 3 East, Cowley County, Kansas. Cyclone Petroleum appears to be a responsible party for these two wells pursuant to K.S.A. 55-179(b)(2) as the most recent operator to produce from or inject or dispose into the well. Additionally, Cyclone Petroleum appears to be a responsible party pursuant to K.S.A. 55-179(b)(3) as the person that most recently accepted responsibility for the well by accepting an assignment or by signing an agreement or other written document, between private parties, in which the person accepted responsibility. For reference, I have attached the relevant statutory authority and the documentation that was provided indicating that Cyclone Petroleum is responsible for these wells.

There are two ways that this issue can be resolved. First, Cyclone Petroleum can file Well Plugging Application (CP-1) forms for the referenced wells by August 30, 2024. Once the Commission receives the CP-1 forms, you will have 30 days to plug the wells, unless we have agreed to more time. Second, if Cyclone Petroleum fails to timely file CP-1 forms for the referenced wells or fails to timely plug the wells, then Staff will file a motion for show cause where you would be required to appear before the Commission to present evidence why you should not be required to plug the wells or reimburse Staff's incurred costs of plugging the wells. I am hopeful we can resolve this matter without the Commission taking formal enforcement action.

You are welcome to contact me by phone at 316.337.6200 or email at Kelcey.Marsh@ks.gov to discuss this matter in further detail.

Sincerely,

/s/ Kelcey Marsh

Kelcey Marsh, #28300
Litigation Counsel
Conservation Division
Kansas Corporation Commission

cc: Jeff Klock, District #2

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2021 Kansas Statutes

55-179. Same; responsibility for remedial actions; hearings; orders; plugging. (a) If the commission determines that a well is an abandoned well and has reason to believe that any person is legally responsible for the proper care and control of such well, the commission shall cause any such person to come before the commission in accordance with the provisions of the Kansas administrative procedure act. If the commission finds that any person is, in fact, legally responsible for the proper care and control of such well, the commission may issue any orders obligating any such person to plug the well or to otherwise cause such well to be brought into compliance with all rules and regulations of the commission and may order any other remedies as may be just and reasonable. Proceedings for reconsideration and judicial review of any order shall be conducted in the manner provided pursuant to K.S.A. 55-606, and amendments thereto.

(b) A person that is legally responsible for the proper care and control of an abandoned well shall be limited to one or more of the following:

- (1) Any person causing pollution or loss of usable water through the well, including any operator of an injection well, disposal well or pressure maintenance program;
- (2) the most recent operator to produce from or inject or dispose into the well, but if no production or injection has occurred, the person that caused the well to be drilled. A person shall not be legally responsible for a well pursuant to this paragraph if: (A) Such person can demonstrate that the well was physically operating or was in compliance with temporary abandonment regulations immediately before such person transferred or assigned the well to an operator with an active operator's license; and (B) a completed report of transfer was filed pursuant to commission regulations if transferred or assigned after August 28, 1997;
- (3) the person that most recently accepted responsibility for the well by accepting an assignment or by signing an agreement or other written document, between private parties, in which the person accepted responsibility. Accepting an assignment of a lease, obtaining a new lease or signing an agreement or any other written document between private parties shall not in and of itself create responsibility for a well located upon the land covered thereby unless such instrument adequately identifies the well and expressly transfers responsibility for such well;
- (4) the operator that most recently filed a completed report of transfer with the commission in which such operator accepted responsibility for the well or, if no completed report of transfer has been filed, the operator that most recently filed a well inventory with the commission in which such operator accepted responsibility for the well. Any modification made by commission staff of any such documents shall not alter legal responsibility unless the operator was informed of such modification and approved of the modification in writing;
- (5) the operator that most recently plugged the well, if no commission funds were used; and
- (6) any person that does any of the following to an abandoned well without authorization from the commission: (A) Tamper with or removes surface or downhole equipment that was physically attached to the well or inside the well bore; (B) intentionally destroys, buries or damages the well; (C) intentionally alters the physical status of the well in a manner that will result in more than a de minimis increase in plugging costs; or (D) conducts any physical operations upon the well.

(c) If the commission determines that no person is legally responsible for the proper care and control of an abandoned well, or that each legally responsible person is dead, no longer in existence, insolvent or can no longer be found, then the commission shall cause such well

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to be plugged as funds become available. The cost of such plugging shall be paid by the commission from the abandoned oil and gas well fund created pursuant to K.S.A. 55-192, and amendments thereto.

(d) The validity of any order issued by the commission prior to July 1, 2021, shall not be affected by the provisions of this section but shall apply to any determination of responsibility regarding any abandoned well.

(e) As used in this section, "abandoned well" means a well that is not claimed on an operator's license that is active with the commission and is unplugged, improperly plugged or no longer effectively plugged.

History: L. 1986, ch. 201, § 31; L. 1988, ch. 356, § 165; L. 1993, ch. 62, § 1; L. 1996, ch. 263, § 7; L. 2001, ch. 191, § 6; L. 2021, ch. 28, § 6; July 1.

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FORM 88 - (PRODUCER'S SPECIAL) (PAID-UP)

83U (Rev. 1993)

OIL AND GAS LEASE

Recorder No.
09-118
 ARKANSAS BLUE PRINT CO., INC.
 200 S. 10th St. - Ft. Smith, AR 72301-0000

AGREEMENT, Made and entered into the 18th day of July 2002
 by and between William P. Swain, Trustee for
The William P. Swain Revocable Trust Agreement Dated November 1, 1991
 whose mailing address is 2500 Hummingbird Lane - Ponca City, OK 74601 hereinafter called Lessor (whether one or more),
 and MARTIN MCCORGARY hereinafter called Lessee.

Lessor, in consideration of -----Ten and More----- Dollars (\$10.00 & More) to hand paid, receipt of which is here acknowledged and of the covenants herein provided and of the agreements of the Lessee herein contained, hereby grants, leases and lets exclusively unto Lessor for the purpose of investigating, exploring by geophysical and other means, prospecting, drilling, mining and operating for and producing oil, liquid hydrocarbons, all gases, and their respective constituent products, including gas, water, other fluids, and all less mineral substances, lying, being and contained under, within and upon the land, together with any and all other products whatsoever thereof, and including and otherwise owing for its employees, the following described land, together with any and all other rights and after-acquired interests, therein situated in County of Cowley State of Kansas described as follows to-wit:

The Southeast Quarter (SE4)

In Section 7, Township 35 South, Range 3 East, and containing 160 acres, more or less, and all
 hereinafter called the premises.

Subject to the provisions herein contained, this lease shall remain in force for a term of one (1) year from this date called "primary term", and so long thereafter as oil, liquid hydrocarbons, gas or other respective constituent products, or any of them, is produced from said land or land with which said land is pooled.

In consideration of the premises the said Lessor covenants and agrees:

1st. To deliver to the credit of Lessee, free of cost, in the pipe line to which Lessee may connect with on said land, the equal one-eighth (1/8) part of all oil, produced and saved from the leased premises.

2nd. To pay Lessee for gas of whatever nature or kind produced and sold, or used off the premises, or used in the manufacture of any products therefrom, one-eighth (1/8) of the market price at the well, first, as to gas sold by Lessee, in no event more than one-eighth (1/8) of the proceeds received by Lessee after each sale, the then-gas sold, and off the premises, or in the manufacture of products therefrom, said payments to be made monthly. Where gas from a well producing gas only is not sold or used, Lessee may pay or tender in royalty One Dollar (\$1.00) per year per acre not exceeded and retained hereunder, and if such payment or tender is made it will be understood that gas is being produced within the meaning of the preceding paragraph.

This lease may be maintained during the primary term hereof without further payment or drilling operations. If the Lessee shall commence to drill a well within the term of this lease or any extension thereof, the Lessee shall have the right to drill such well to completion with reasonable diligence and dispatch, and if oil or gas, or either of them, be found to produce therefrom, this lease shall continue and be in force with like effect as if such well had been completed within the term of years first mentioned.

If said Lessee owns a lease interest in the above described land then the entire and undivided fee simple estate therein, then the regulations herein provided for shall be paid the said Lessee only in the proportion which Lessee's interest bears to the whole and undivided fee.

Lessee shall have the right to use, flow of water, gas, oil and water produced on said land for Lessee's operation thereon, except water from the wells of Lessee.

When requested by Lessee, Lessee shall bury Lessee's pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the Lessee or have down on said premises without written consent of Lessee.

Lessee shall pay for damages caused by Lessee's operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party herein is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of estate or reversion shall be binding on the Lessee until after the Lessee has been furnished with a written transfer or assignment or a true copy thereof. In case Lessee assigns this lease, in whole or in part, Lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

Lessee may at any time execute and deliver to Lessee or place of record a release or releases covering any portion or portions of the above described premises and thereby surrender this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered.

All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor become voidable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation.

Lessee hereby warrants and agrees to defend the title to the lands herein described, and agrees that the Lessee shall have the right at any time to release for Lessee, by payment any encumbrances, taxes or other liens on the above described lands, in the event of default of payment by Lessee, and be subrogated to the rights of the holder thereof, and the undersigned Lessee, for themselves and their heirs, successors and assigns, hereby covenants and releases all right of Lessee and hereunder in the premises described herein, in so far as said right of Lessee and hereunder may in any way affect the purposes for which this lease is made, as recited herein.

Lessee, at its option, is hereby given the right and power to pool or combine the acreage covered by this lease or any portion thereof with other land, lease or leases in the immediate vicinity thereof, when in Lessee's judgment it is necessary or advisable to do so in order to properly develop and operate said leased premises so as to promote the conservation of oil, gas or other minerals in and under and that may be produced from said premises, such pooling to be of tract acreage to one another and to be into a unit or units not exceeding 80 acres each in the event of no oil well, or into a unit or units not exceeding 80 acres each in the event of a gas well. Lessee shall execute in writing and record in the surveyor's records of the county in which the land herein leased is situated an instrument identifying and describing the pooled acreage. The entire acreage so pooled into a tract or unit shall be treated, for all purposes except the payment of royalties on production from the pooled well, as if it were included in this lease. If production is found on the pooled acreage, it shall be treated as if production is had from this lease, whether the well or wells be located on the premises covered by this lease or not. In lieu of the royalty otherwise herein specified, Lessee shall receive as production from a unit so pooled only such portion of the royalty stipulated herein as the interest of his acreage placed in the unit or his royalty interest therein on an acreage basis bears to the total acreage so pooled in the particular unit involved.

In the event that a compressor is installed on the leased premises, Lessor shall bear no part of the expense for the installation or operation of said compressor. Lessor is to receive a full one-eighth (1/8) of the proceeds received by the Lessee for the sale of oil and gas products produced from the leased premises.

Lessee acknowledges the responsibility for surface damages incurred during drilling. No gravel shall be used on roads.

No drilling shall be done until three(3) existing wells are produced or plugged.

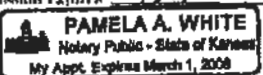
IN WITNESS WHEREOF, the undersigned execute this instrument as of the day and year first above written.

Witness:
 Soc. Sec. No. 514-24-2949

William P. Swain
 (William P. Swain, Trustee of The William P.
 Swain Revocable Trust Agreement Dated
 November 1, 1991)

1208 Martin E. McCorgary, 180 32nd Rd., Arkansas City KS 67005

STATE OF KANSAS COUNTY OF ROCKWELL ACKNOWLEDGMENT FOR INDIVIDUAL (KsOkCoNe)
 The foregoing instrument was acknowledged before me this 22 day of JULY, 2002,
 by William P. Swain, Trustee of The William P. Swain Revocable Trust Agreement
 Dated November 1, 1991

My commission expires 3-1-06 Pamela A. White
 Notary Public


STATE OF _____ COUNTY OF _____ ACKNOWLEDGMENT FOR INDIVIDUAL (KsOkCoNe)
 The foregoing instrument was acknowledged before me this _____ day of _____
 by _____ and _____

My commission expires _____ Notary Public

STATE OF _____ COUNTY OF _____ ACKNOWLEDGMENT FOR INDIVIDUAL (KsOkCoNe)
 The foregoing instrument was acknowledged before me this _____ day of _____
 by _____ and _____

My commission expires _____ Notary Public

STATE OF _____ COUNTY OF _____ ACKNOWLEDGMENT FOR INDIVIDUAL (KsOkCoNe)
 The foregoing instrument was acknowledged before me this _____ day of _____
 by _____ and _____

My commission expires _____ Notary Public

0004130
OIL AND GAS LEASE

TO	FROM	Date	Section	Twp.	Rge.	No. of Acres	Term	County	STATE OF <u>Kansas</u>	This instrument was filed for record on the <u>22nd</u> day of <u>July</u> , 2002 at <u>2:10</u> o'clock <u>P.</u> M., and duly recorded in Book <u>654</u> Page <u>521</u> of the records of this office.	By <u>Harry E. Swain</u>	When recorded, return to <u>1800 S. 1st St. Topeka, KS</u>
									County <u>Rockwell</u>		By <u>William P. Swain</u>	

COMPARED _____
 NUMERICAL _____
 DIRECT _____
 INDIRECT _____
 REGISTRATION _____

STATE OF _____ COUNTY OF _____ ACKNOWLEDGMENT FOR CORPORATION (KsOkCoNe)
 The foregoing instrument was acknowledged before me this _____ day of _____
 by _____
 of _____
 corporation, on behalf of the corporation.
 My commission expires _____ Notary Public

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Minuteman Association Form B

ASSIGNMENT OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned,

MARTIN MCCORGARY

hereinafter called Assignor (whether one or more), for and in consideration of One Dollar (\$1.00) the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over unto SUNDANCE OIL & GAS LLC

(hereinafter called Assignee), all right, title and interest in and to the oil and gas lease dated July 18, 2002, from William P. Swain, Trustee for The William P. Swain Revocable Trust Agreement Dated November 1, 1991

lessor: MARTIN MCCORGARY lessee: MARTIN MCCORGARY
recorded in book 654, page 521 insofar as said lease covers the following described land in Cowley County, State of Kansas:

The Southeast Quarter(SE¼)

COMPARED _____
NUMERICAL /
DIRECT /
INDIRECT /
REGISTRATION /

of Section 7 Township 35 South Range 3 East and containing 160 acres, more or less together with the rights incident thereto and the personal property thereon, appurtenant thereto, or used or obtained in connection therewith.

And for the same consideration the Assignor covenants with the Assignee, its or his heirs, successors or assigns: That the Assignor is the lawful owner of and has good title to the interest above assigned in and to said lease, estate, rights and property, free and clear from all liens, encumbrances or adverse claims; That said lease is a valid and subsisting lease on the land above described, and all rentals and royalties due thereunder have been paid and all conditions necessary to keep the same in full force have been duly performed,

EXECUTED, This 1st day of August, 2002

MARTIN MCCORGARY

STATE OF KANSAS }
COUNTY OF COWLEY } ss. ACKNOWLEDGMENT FOR INDIVIDUAL (Kans. Okla. and Colo.)
Before me, the undersigned, a Notary Public, within and for said County and State, on this 1st day of August, 2002, personally appeared MARTIN MCCORGARY and

to me personally known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.
My commission expires December 20, 2004

Robert W. Morgan Notary Public

STATE OF KANSAS }
COUNTY OF COWLEY } ss. ACKNOWLEDGMENT FOR CORPORATION
Be it remembered that on this 12/20/04, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came _____ president of _____

a corporation of the State of _____, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.
IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.
My commission expires _____

Notary Public

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

Form AGO-1
September 1999
Form Must Be Typed

WELL COMPLETION FORM
WELL HISTORY - DESCRIPTION OF WELL & LEASE

COPY

Operator: License # 30253
Name: CYCLONE PETROLEUM, INC.
Address: 1030 W. Main
City/State/Zip: Jenks, OK 74037
Purchaser: SEMINOLE TRANSPORTATION
Operator Contact Person: James Haver
Phone: (918) 291-3200
Contractor: Name: Summit Drilling **RECEIVED**
License: 30141
Wellsite Geologist: NA **JUL 25 2003**

Designate Type of Completion:
☒ New Well ☐ Re-Entry ☐ Workover

☐ Oil ☐ SWD ☐ SIOW ☐ Temp. Abd.
☒ Gas ☐ ENHR ☐ SIGW
☐ Dry ☐ Other (Core, WSW, Expl., Cathodic, etc)

If Workover/Re-entry: Old Well Info as follows:

Operator: _____
Well Name: _____
Original Comp. Date: _____ Original Total Depth: _____
☐ Deepening ☐ Re-perf. ☐ Conv. to Enhr./SWD
☐ Plug Back ☐ Plug Back Total Depth
☐ Commingled ☐ Docket No. _____
☐ Dual Completion ☐ Docket No. _____
☐ Other (SWD or Enhr.?) ☐ Docket No. _____
9/26/02 10/6/02 10/25/02
Spud Date or Date Reached TD Completion Date or
Recompletion Date Recompletion Date

API No. 15 - 035-24169-00-00
County: COWLEY
SW SW SE/4 Sec. 7 Twp. 35 S. R. 3 ☒ East ☐ West
330 feet from (S) / N (circle one) Line of Section
2310 feet from (E) / W (circle one) Line of Section

Footages Calculated from Nearest Outside Section Corner:

(circle one) NE (SE) NW SW
Lease Name: SWATH-SUNDANCE Well #: 7

Field Name: Murphy

Producing Formation: Cleveland

Elevation: Ground: 1187 Kelly Bushing: _____

Total Depth: 3825 Plug Back Total Depth: _____

Amount of Surface Pipe Set and Cemented at 300 Feet

Multiple Stage Cementing Collar Used? ☒ Yes ☐ No

If yes, show depth set 2300' Feet

If Alternate II completion, cement circulated from _____

feet depth to _____ w/ _____ ex cmt.

Drilling Fluid Management Plan
(Data must be collected from the Reserve Pit)

Chloride content _____ ppm Fluid volume _____ bbls

Dewatering method used _____

Location of fluid disposal if hauled offsite: _____

Operator Name: _____

Lease Name: _____ License No.: _____

Quarter _____ Sec. _____ Twp. _____ S. R. _____ ☐ East ☐ West

County: _____ Docket No.: _____

INSTRUCTIONS: An original and two copies of this form shall be filed with the Kansas Corporation Commission, 130 S. Market - Room 2078, Wichita, Kansas 67202, within 120 days of the spud date, recompletion, workover or conversion of a well. Rule 82-3-130, 82-3-108 and 82-3-107 apply. Information of slide two of this form will be held confidential for a period of 12 months if requested in writing and submitted with the form (see rule 82-3-107 for confidentiality in excess of 12 months). One copy of all wireline logs and geologist well report shall be attached with this form. ALL CEMENTING TICKETS MUST BE ATTACHED. Submit CP-4 form with all plugged wells. Submit CP-111 form with all temporarily abandoned wells.

All requirements of the statutes, rules and regulations promulgated to regulate the oil and gas industry have been fully complied with and the statements herein are complete and correct to the best of my knowledge.

Signature: _____
Title: President Date: 7-23-03
Subscribed and sworn to before me this 23 day of July
2003

Notary Public: B. Hampton Notary Public Oklahoma
OFFICIAL SEAL
B. HAMPTON

Pre-filed Direct Testimony of James Haver
on behalf of Cyclone Petroleum, Inc. EXHIBIT A

KCC Office Use ONLY

☒ Letter of Confidentiality Attached

If Denied, Yes ☐ Date: _____

☒ Wireline Log Received

☒ Geologist Report Received

☐ UIC Distribution

A7

Operator Name: CYCLONE PETROLEUM, INC. Lease Name: SWAIM-SUNDANCE Well #: 7
 c. 7 Twp. 35 S. R. 3 ☒ East ☐ West County: COWLEY

INSTRUCTIONS: Show important tops and base of formations penetrated. Detail all cores. Report all final copies of drill stems tests giving interval tested, time tool open and closed, flowing and shut-in pressures, whether shut-in pressure reached static level, hydrostatic pressures, bottom hole temperature, fluid recovery, and flow rates if gas to surface test, along with final chart(s). Attach extra sheet if more space is needed. Attach copy of all electric Wireline Logs surveyed. Attach final geological well site report.

III Stem Tests Taken ☐ Yes ☒ No
 (Attach Additional Sheets)

Impulse Sent to Geological Survey ☐ Yes ☒ No

Wires Taken ☐ Yes ☒ No

Electric Log Run ☒ Yes ☐ No
 (Submit Copy)

II A/E Logs Run:

Dual Induction Log

Dual Comp. Porosity Log

RECEIVED

JUL 25 2003

KCC WICHITA

☐ Log Formation (Top), Depth and Datum ☐ Sample

Name	Depth	Datum
SEVERY LIME	1428	
SEVERY SAND	1485-1501	
TRIPRA LIME	1650	
TRIPRA LIME	1650*	*possible gas shows in Heavy Sand
TRIPRA LIME	2115	
TRIPRA LIME	2125	
TRIPRA LIME	2240	
TRIPRA LIME	2250	
TRIPRA LIME	2725	* possible to be higher
TRIPRA LIME	2725	* If good drilling break. Drill 10' more.
TRIPRA LIME	2725	Sample 15-25-11' sample
MARTIN LUTHER KING JR. SAND	2855	
MARTIN LUTHER KING JR. SAND	2855-75	Possible oil or gas
MARTIN LUTHER KING JR. SAND	3115	
MARTIN LUTHER KING JR. SAND	3120	(Should have 5' of 20/40 sand below drilling)
MARTIN LUTHER KING JR. SAND	3445	
MARTIN LUTHER KING JR. SAND	3545	
MARTIN LUTHER KING JR. SAND	3765	* Drill 10' drilling bit.
MARTIN LUTHER KING JR. SAND	3845	Core samples 37-41' at 3765

CASING RECORD ☐ New ☐ Used

Report all strings set-conductor, surface, intermediate, production, etc.

Purpose of String	Size Hole Drilled	Size Casing Set (in O.D.)	Weight Lbs. / Ft.	Setting Depth	Type of Cement	# Sacks Used	Type and Percent Additives
SURFACE	12 1/4	8 5/8		318	Class A	175	3% Caci2 & Flocel
PROD.	7 7/8	4 1/2	11.6	3550	Class A	240	2% Gel, 2% Caci2, Gilsonite 4#/sk

ADDITIONAL CEMENTING / SQUEEZE RECORD

Purpose:	Depth Top Bottom	Type of Cement	#Sacks Used	Type and Percent Additives
Perforate				
Protect Casing				
Plug Back TD				
Plug Off Zone				

Shots Per Foot	PERFORATION RECORD - Bridge Plugs Set/Type Specify Footage of Each Interval Perforated	Acid, Fracture, Shot, Cement Squeeze Record (Amount and Kind of Material Used)	Depth
2	2151'-2153'	115 Sks Class A, 20/40 Sand	
2	3074'-3082', Cast Iron # 3150'	100 Sks Class A	

TUBING RECORD		Size	Set At	Packer At	Liner Run
		2 3/8		2137'	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Date of First, Resumed Production, SWD or Enfr.		Producing Method			
NONE		<input type="checkbox"/> Flowing <input type="checkbox"/> Pumping <input type="checkbox"/> Gas Lift <input type="checkbox"/> Other (Explain)			
Estimated Production Per 24 Hours	Oil Bbls.	Gas Mcf	Water Bbls.	Gas-Oil Ratio	Gravity

Disposition of Gas ☐ Ventd ☐ Sold ☐ Used on Lease (If vented, Submit ACO-18.)

METHOD OF COMPLETION ☐ Open Hole ☐ Perf. ☐ Dually Comp. ☐ Concreted ☐ Other (Specify) _____

Production Interval _____

KGS**Oil and Gas
Well
Database****Specific Well--15-035-23712****Oil & Gas****General Well Data**

API: 15-035-23712 KID: 1002905353 Lease: SWAIM 'B' Well: 1 Original operator: PENDULUM PETROLEUM, INC. Current operator: unavailable Field: Murphy Location: T35S R3E, Sec. 7 NE SE 1980 North, 660 West, from SE corner NAD27 Longitude: -97.1315462 NAD27 Latitude: 37.0183897 NAD83 Longitude: -97.131864 NAD83 Latitude: 37.0184189 Lat-long calculated from footages	County: Cowley Permit Date: Spud Date: Oct-24-1986 Completion Date: Nov-05-1986 Plugging Date: Well Type: GAS Status: Inactive Well Total Depth: 790 Elevation: 1191 GL Producing Formation: IP Oil (bbl): IP Water (bbl): IP GAS (MCF): KCC Permit No.:
View well on interactive map View well in the Walter's Digital Library (WDL login required)	

Information from Outside Sources

Please note: The link below takes you away from the web site of the Kansas Geological Survey to the website of the Kansas Geological Society, a library in Wichita. The Survey can not help with information presented by the Walters Digital Library.

[From Kansas Geological Society's Walters Digital Library](#)

Kansas Geological Survey, Oil and Gas Well Database

Comments to webadmin@kgs.ku.edu

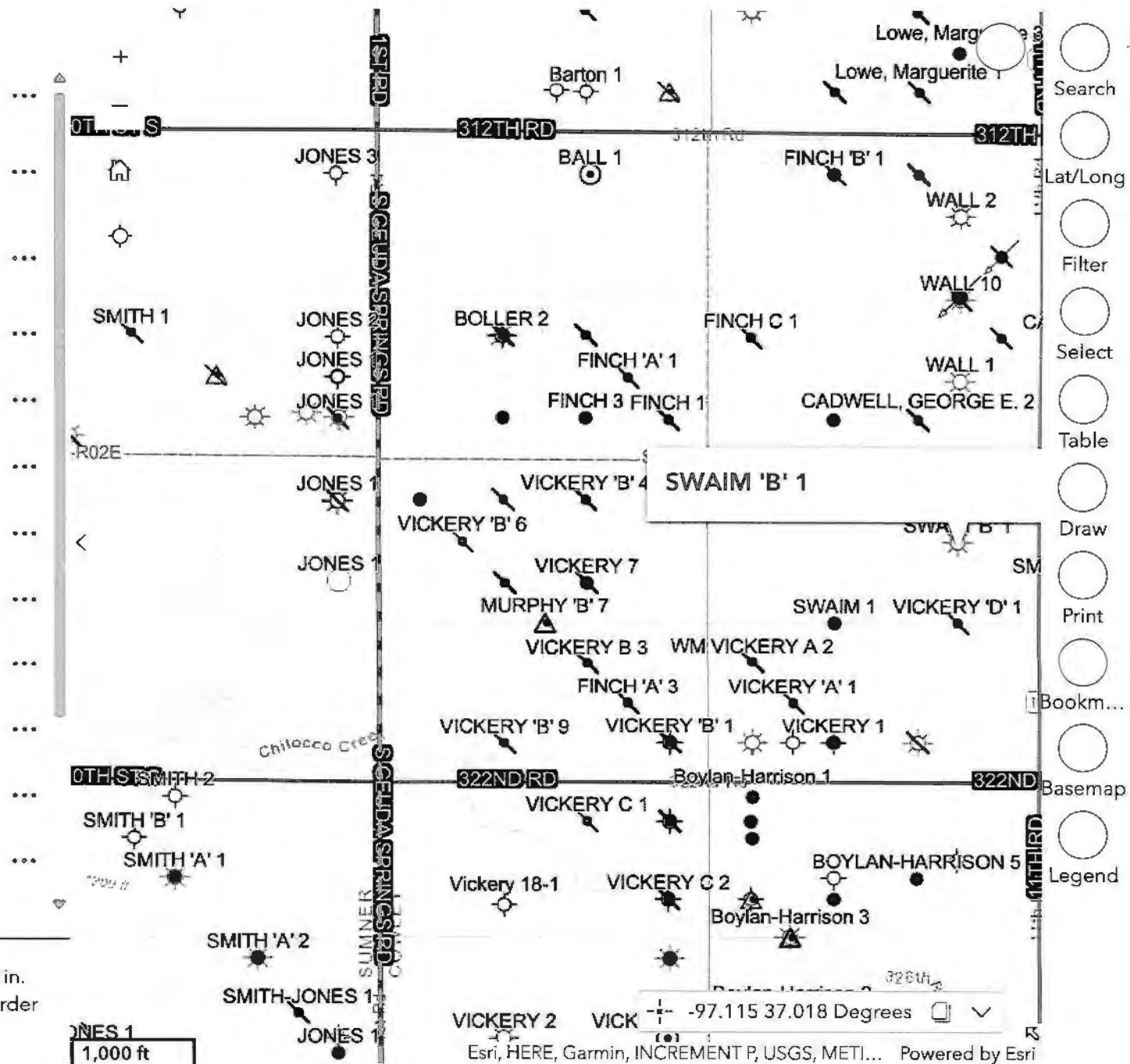
URL=<http://www.kgs.ku.edu/Magellan/Qualified/index.html>

Data added continuously.

**Pre-filed Direct Testimony of James Haver
on behalf of Cyclone Petroleum, Inc.**

- ## EXHIBIT B

Access the old mapper [here](#).



General Well Data

API: 15-035-23624 KID: 1002905273 Lease: SWAIM Well: 1 Original operator: PENDULUM PET Current operator: unavailable Field: Murphy Location: T35S R3E, Sec. 7 E2 W2 SE 1320 North, 1650 West, from SE corner NAD27 Longitude: -97.1349427 NAD27 Latitude: 37.016571 NAD83 Longitude: -97.1352606 NAD83 Latitude: 37.0166003 Lat-long calculated from footages	County: Cowley Permit Date: Spud Date: Sep-25-1985 Completion Date: Feb-26-1986 Plugging Date: Well Type: OIL Status: Inactive Well Total Depth: 3833 Elevation: 1196 KB Producing Formation: IP Oil (bbl): IP Water (bbl): IP GAS (MCF): KCC Permit No.:
View well on interactive map View well in the Walter's Digital Library (WDL login required)	

Wireline Log Header Data

Logger: Great Guns Tool: Correlation Log Operator on log Pendulum Petroleum Top: 2580; Bottom: 2850 Log Date: Oct-30-1985 BHT: F Gamma Ray: Y Spontaneous Potential: Holdings at:	
Logger: Great Guns Tool: Correlation Log Operator on log Pendulum Petroleum Top: 3600; Bottom: 3826 Log Date: Oct-30-1985 BHT: F Gamma Ray: Y Spontaneous Potential: Holdings at:	
For information on software to view and use the files we distribute on our web pages, please view our File Format Tools page.	

Information from Outside Sources

Please note: The link below takes you away from the web site of the Kansas Geological Survey to the website of the Kansas Geological Society, a library in Wichita. The Survey can not help with information presented by the Walters Digital Library.

[From Kansas Geological Society's Walters Digital Library.](#)

Kansas Geological Survey, Oil and Gas Well Database
Comments to webadmin@kgs.ku.edu
URL=<http://www.kgs.ku.edu/Magellan/Qualified/index.html>
Data added continuously.

C2

Oil & Gas Research and Exploration

Oil and Gas Map

Help

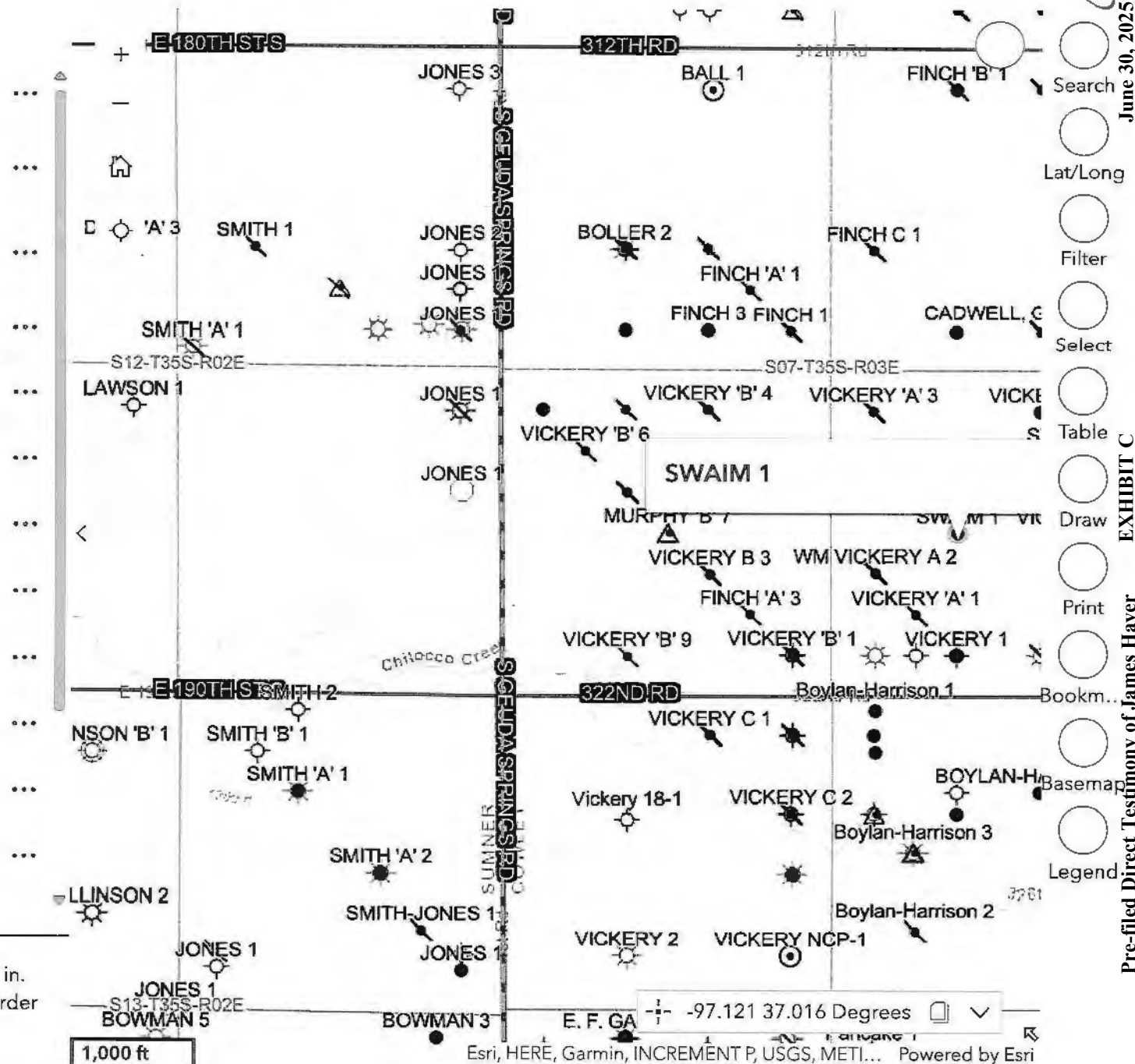
Abc

Display

- ☒ Oil and Gas Wells
- ☒ Label Oil and Gas Wells
- ☒ Other Wells and Energy Data
- ☐ Oil and Gas Leases
- ☒ Counties
- ☒ Road Labels
- ☐ Alternate Road Labels
- ☒ Section-Township-Range
- ☐ Waterflood
- ☐ Oil and Gas Fields
- ☒ Gravity/Magnetic
- ☒ Regional Geology

Some layers are only visible when zoomed in.
Layers draw on top of one another in the order listed.

[Access the old mapper here.](#)



Sellers: CYCLONE PETROLEUM, INC.
HAVECO OIL & GAS PROPERTIES, LLC.
HBF LIMITED PARTNERSHIP
CONCORDE RESOURCES CORPORATION,
ASHTON GAS GATHERING, LLC.
AND SUNDANCE OIL & GAS, LLC

Buyer: Newkumet Exploration, Inc.

For the consideration, mutual promises, and agreements and the benefits to be derived by Sellers and Buyer, named above, the receipt and sufficiency of which are acknowledged, Buyer and Sellers have entered into this Purchase and Sale Agreement (the "Agreement") and agree as follows:

ARTICLE I

PURCHASE AND SALE

Purchase and Sale. Sellers agree to sell and convey to Buyer and Buyer agrees to Purchase from and pay Sellers for all of their interest in those certain oil and gas properties located in Sumner and Cowley County Kansas, as described in the attached Exhibit "A", including all appurtenant equipment, personal property, files and records, less and except the overriding royalty interests identified on Exhibit "B", as per the following terms and conditions:

Handwritten: \$5,525,000 1st 8-29-11

PURCHASE PRICE: Total purchase is \$5,400,000.00 payable as follows: ~~\$85,000.00~~ *\$175,000.00* by wire on or before August 29th as earnest money and part payment of the purchase price. The balance of ~~\$5,315,000.00~~ *\$5,225,000.00* to be paid at closing in certified funds or by wire transfer. All payments shall be made to "Haveco Oil & Gas Properties, LLC as Nominee." If Buyer establishes prior to Closing that the net revenue interests being conveyed are less than the net revenue interests itemized on Exhibit A, Buyer may at its option in writing to Seller, deem this contract null and void and the earnest money shall be returned. If Buyers fail to close for any reason other than as articulated in the preceding sentence, Sellers may keep earnest money and this contract shall become null and void.

FORM OF ASSIGNMENT: See Exhibit C.

NET REVENUE INTEREST (NRI) See Exhibit "A". The interests described therein are for information only and do not constitute any kind of warranty.

WORKING INTEREST (WI) Sellers are agreeing to sell all of their working interests in the leases listed in Exhibit "A". The interests described therein are for information only and do not constitute any kind of warranty.

CLOSING: On October 10, 2011 unless extended by written agreement of Buyers and Seller(s). Seller shall provide a mortgage release from Bank of Oklahoma at Closing.

EFFECTIVE DATE is September 1, 2011. Sellers are entitled to all production and are responsible for all expenses including taxes and all liabilities up to the Effective Date. Buyer is entitled to all production

Sellers: CYCLONE PETROLEUM, INC,
HAVECO OIL & GAS PROPERTIES, LLC,
HBF LIMITED PARTNERSHIP
CONCORDE RESOURCES CORPORATION,
ASHTON GAS GATHERING, LLC,
AND SUNDANCE OIL & GAS, LLC

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EFFECTIVE DATE is September 1, 2011. Sellers are entitled to all production and are responsible for all expenses including taxes and all liabilities up to the Effective Date. Buyer is entitled to all production

and is responsible for all expenses and liabilities (including plugging costs and liabilities associated with the wells on the Leases described in "Exhibit A") with respect to the properties from and after Effective Date. Buyer agrees to pay the monthly compressor lease obligations and the remaining compressor site lease obligations for the remaining term of said leases.

ADDITIONAL PROVISIONS

- Tanks will be gauged at noon on September 1, 2011 and Buyer will purchase oil at the average net monthly posting price for the month prior to closing. Said price (less production taxes) shall be paid at Closing in addition to Purchase Price.
- Equipment is "as is, where is".
- Buyer and Sellers agree to bear their own costs in connection with this proposed transaction.
- Sellers shall resign as operator and deliver at Closing all necessary State regulatory documents signed by Sellers transferring operations of the wells and leases to Buyer.
- Sellers shall not be obligated to undertake any expenses other than normal production and marketing expenses from September 1, 2011 to Closing. Buyer shall reimburse Sellers for any and all reasonable expenses incurred after September 1, 2011 until Closing, and that reimbursement shall be made at Closing in addition to the Purchase Price articulated herein.
- Sellers agree to indemnify, defend, and hold Buyer harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations prior to the Effective Date of this Agreement. Buyer agrees to indemnify, defend, and hold Sellers harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations after to the Effective Date of this Agreement.
- Sellers agree to allow Buyer access to its lease, well, legal and other files for due diligence review at any reasonable time at Sellers' offices and further, to provide access to the wells in the field for Buyer's inspection.
- Notices. All notices and communications required or permitted under this Agreement shall be in writing and shall be effective when delivered addressed as follows:

If to Sellers:

Mr. James Haver
Cyclone Petroleum, Incorporated
1030 W. Main Street
Jenks, OK 74037
(918) 291-3200
(918) 291-3220 facsimile

If to Buyers:

Wayne Newkumet, President
Newkumet Exploration, Inc.
P.O. Box 11330
Midland, Texas 79702
(432) 687-1101
(432) 687-2519 facsimile


Either party may, by written notice delivered to the other, change the address to which delivery shall thereafter be made.

-Entire Agreement. This Agreement (including all Exhibits) constitutes the entire understanding between Buyer and Sellers with respect to the subject matter of this Agreement, and supersedes all negotiations, prior discussions, prior agreements, and understandings relating to such subject matter. No material

representation, warranty, covenant, agreement, promise, inducement or statement, whether oral or written, has been made by Sellers or Buyers and relied upon by other that is not set forth in this Agreement or in the instruments referred to in this Agreement, and Sellers and/or Buyers shall not be bound by or liable for any alleged representation, warranty, covenant, agreement, promise, inducement, or statement not set forth in this Agreement.


This Purchase and Sale Agreement is signed by Sellers and Buyers as of the date their signatures below, but is deemed effective for all purposes as of the Effective Date.

Sellers:



James M. C. Haver
President
Cyclone Petroleum Inc.

Date 8.21.11




James M. C. Haver
Manager
Haveco Oil & Gas Properties, LLC

Date 8.21.11




James M. C. Haver
President, JHBP, Inc., General Partner
HBF limited Partnership

Date 8.21.11



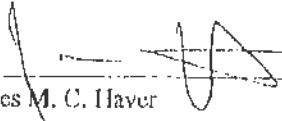
James M. C. Haver, President of Cyclone
Petroleum, Inc.
Manager
Ashton Gas Gathering, LLC

Date 8.21.11



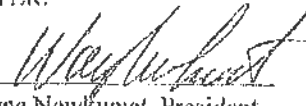
James M. C. Haver, Manager of Haveco
Oil & Gas Properties, LLC
Manager
Sundance Oil & Gas, LLC

Date 8.21.11


James M. C. Haver
President
Concorde Resources Corporation

Date 8.21.11

BUYER:


Wayne Newkumet, President
Newkumet Exploration, Inc.

Date 8/21/11

*FAX signature page to
Tim Haver @ 918-291-3220
Andrew Hartman @ 918-712-5642*

Ds

Fax Confirmation Report

Date & Time : AUG-21-2011 04:41PM SUN
 Fax Number : 2394727541
 Fax Name : Front Desk
 Model Name : WorkCentre 4250

Total Pages Scanned: 1							
No.	Remote Station	StartTime	Duration	Page	Mode	Job Type	Result
001	740319187125042	08-21 04:40PM	00'20	001/001	EC	HS	Success

Abbreviations:

HS: Host Send PL: Polled Local EC: Error Correct TS: Terminated by System
 HR: Host Receive PR: Polled Remote MP: Mailbox Print RP: Report
 WS: Waiting Send MS: Mailbox Save TU: Terminated by User G3: Group3

*Fax signature page to
 Jim Haver 918.291-3200
 Andrew Haver 918-291-3200*

For 8/22/11

[Signature]
 Wayne Haver, President
 Haver Petroleum, Inc.

8-21-11

[Signature]
 James Haver
 Haver Petroleum, Inc.

126

Fax Confirmation Report

Date & Time : AUG-21-2011 04:46PM SUN
 Fax Number : 2394727541
 Fax Name : Front Desk
 Model Name : WorkCentre 4250

No.	Remote Station	Start Time	Duration	Page	Mode	Job Type	Result
001	740319182913220	08-21 04:45PM	00'09	001/001	EC	HS	Success

Abbreviations:

HS: Host Send PL: Polled Local EC: Error Correct TS: Terminated by System
 HR: Host Receive PR: Polled Remote MP: Mailbox Print RP: Report
 WS: Waiting Send MS: Mailbox Save TU: Terminated by User GS: Group

*FAX signature page to
 Jim Haver at 918-741-3220
 Andrew Hartman at 918-712-5042*

8/21/11

W. Haver
 Wayne Haver, General Counsel
 Cyclone Petroleum Corporation, Inc.

James L. Haver
 President
 Cyclone Petroleum Corporation

8-21-11

12

LEASENAME	SPRINT	COUNTY	LAND	FEET
	LOCAL DESCRIPTION		ACR	CHAL
Thomas	NW 1/4 SEC 15 T34S R2E	Butler	80.0000%	7.500000%
McLaughlin	SE 1/4 SEC 15 T34S R2E	Butler	80.0000%	7.500000%
Wick 2 & 3	40 ACRES OF THE NW 1/4 SEC 20 T34S R2E	Butler	78.95481%	
Wick 4	NW 1/4 SEC 20 T34S R2E 60 ACRES OF THE NW 1/4 SEC 20 T34S R2E	Butler	77.40000%	0.781300%
Wick 4-20	SE 1/4 SEC 20 T34S R2E	Butler	78.90000%	
Wick 4-20	SW 1/4 SEC 20 T34S R2E	Butler	78.90000%	
McLain's Leahanna Wick	NW 1/4 SEC 12 T34S R2E & NW 1/4 SEC 31 T34S R2E	Butler	80.0000%	3.040810%
Chapman	NW 1/4 SEC 20 T34S R2E	Butler	80.0000%	7.500000%
(Lester's) Anderson Woods Anderson Woods	N 1/2 SEC 11 T35S R2E	Butler	80.0000%	3.333333%
			80.0000%	3.333333%
(Lester's) Harris 1/2	N 1/2 SEC 12 T35S R2E	Butler	78.0000%	3.333333%
(Lester's) Dew	NE 1/4 & NW 1/4 SEC 14, Sec 17 T34S R2E and SW 1/4 SEC 4 & NW SE 1/4 SEC 16, T34S, R2E	Butler	80.0000%	3.333333%
			80.0000%	3.333333%
Barlow	SE 1/4 SEC 1 T35S R2E	Butler	80.0000%	
Scott's Field	SE 1/4 SEC 20 T34S R2E	Butler	80.0000%	2.075000%
Weather Field	NW 1/4 SEC 20 T34S R2E	Butler	80.0000%	2.075000%
Beck	SE 1/4 SEC 2 T35S R2E	Butler	80.0000%	3.250000%
Cotton	Lot 3 & 4 NW 1/4 SEC 2 T35S R2E	Butler	80.0000%	7.800000%
Stanhall	N 1/2 SEC 11 T35S R2E	Butler	80.0000%	4.375000%
Stanhall	SW 1/4 SEC 21 T35S R2E	Butler	80.0000%	1.250000%
Pick	SE 1/4 SEC 2 T35S R2E	Butler	80.0000%	7.000000%
Teacher	SW 1/4 SEC 34 T34S R3E	Butler	80.0000%	4.375000%
Raynolds	W 1/4 SEC 34 T34S R3E	Butler	78.0000%	8.000000%
Orlando	N 1/2 SEC 34 T34S R3E	Butler	78.0000%	8.250000%
Berry	N 1/2 NW 1/4 SEC 4 T35S R2E	Butler		
Bay	19 mls of gathering pipe 11 mls of gathering pipe SE 1/4 SEC 12 T35S R2E	Butler Butler Butler	100.0000% 100.0000% 100.0000%	
Malinda McCargy	SW 1/4 SEC 24 T34S R2E	Butler	80.0000%	0.495133%
Allen	SW 1/4 SEC 20 T34S R2E	Butler	78.0000%	
Lewison	NE 1/4 SEC 12, R2E	Butler	80.0000%	3.333333%
Edenbrook	N 1/2 NW 1/4 SEC 2 T35S R2E	Butler	80.0000%	0.781355%
Reynolds	SW 1/4 SEC 17 T35S R2E	Butler	80.0000%	
JOHN	SE 1/4 SEC 20 T34S R2E	Butler	78.0000%	4.000000%
Blue (Peters)	NW 1/4 SEC 25 T34S R3E	Butler	78.0000%	3.125000%
Olson	SW 1/4 SEC 3 T34S R3E	Butler	80.0000%	4.750000%
Podack	E 1/2 SEC 15 T35S R2E	Butler	80.0000%	6.797500%
Stanhall	SE 1/4 SEC 21 T34S R2E	Butler	80.0000%	4.375000%

Exhibit "A"

Lease Name	LEGAL DESCRIPTION	COUNTY	ACRES	Cyclone, et al's Working Interest As a % of	LEASE NRI
Thomas	NE 1/4 SEC 18 T31S R2E	SUMMIT	160	100.000000%	80.000%
McLaughlin	NE 1/4 SEC 18 T31S R2E	SUMMIT	160	100.000000%	80.000%
Wolff 4	SW 1/4 SEC 28 T31S R2E 68 ACRES OF THE NANA SEC 28 T31S R2E	SUMMIT	60	92.270000%	77.400%
Wolff 2 & 6	68 ACRES OF THE NANA SEC 28 T31S R2E		40	84.142778%	78.881%
Work, # 438	SE 1/4 SEC 28 T31S R2E	SUMMIT	160	100.000000%	78.900%
Helen Wells	SW 1/4 SEC 28 T31S R2E	SUMMIT	160	100.000000%	78.900%
Hawthorn Leopoldine Ltd	SW 1/4 SEC 28 T31S R2E & NE 1/4 SEC 31 T31S R2E	SUMMIT	320	100.000000%	80.000%
Chapman	NW 1/4 SEC 28 T31S R2E	SUMMIT	160 ^{less 46.00}	100.000000%	80.000%
Anderson Woods (Lewson)	SW 1/4 Sec 11 T31S R2E	SUMMIT	320	100.000000%	80.000%
(Lewson) Hornblower	SW 1/4 Sec 2 T31S R2E	SUMMIT	320	100.000000%	78.000%
(Lewson) Dean	NE 1/4 & NW 1/4 of SE 1/4, Sec 12 T31S R2E and SW 1/4 SEC 4 & NW 1/4 SEC 18 T31S R2E	SUMMIT	240	100.000000%	80.000%
Barton	SE 1/4 Sec 1 T31S R2E	SUMMIT	160	100.000000%	80.000%
Bootham Field	SE 1/4 Sec 36 T31S R2E	SUMMIT	160	100.000000%	80.000%
Bootham Field	NW 1/4 Sec 36 T31S R2E	SUMMIT	160	100.000000%	80.000%
Burke	NE 1/4 Sec 7 T31S R2E	SUMMIT	160	100.000000%	80.000%
Cochran	1/4 Sec 3 & 4 NW SEC 8 T31S R	SUMMIT	80	100.000000%	80.000%
Edwards	SW 1/4 SEC 11 T31S R2E	SUMMIT	80	100.000000%	80.000%
Jackson	SW 1/4 Sec 11 T31S R2E	SUMMIT	160	100.000000%	80.000%
Ross	SE 1/4 Sec 2 T31S R2E	SUMMIT	160	100.000000%	80.000%
Tucker	SW 1/4 SEC 31 T31S R2E	SUMMIT	80	100.000000%	80.000%
Reynolds	SW 1/4 SEC 31 T31S R2E	SUMMIT	80	100.000000%	78.000%
Grubbs	SW 1/4 SEC 31 T31S R2E	SUMMIT	80	100.000000%	78.000%
Bird	SW 1/4 SEC 31 T31S R2E	SUMMIT	80	100.000000%	78.000%
Adrian Gas System Adrian Gas System	1/4 mile of gathering pipe 11 miles of gathering pipe	SUMMIT COWLEY		100.000000%	100.000%
Aix City Oil Field	SE 1/4 Sec 12 T31S R2E	COWLEY		100.000000%	100.000%
Bis	SE 1/4 Sec 12 T31S R2E	SUMMIT	40	100.000000%	100.000%
McIntosh McCarty Adrian	SW SEC 28 T31S R2E SE 1/4 SEC 28 T31S R2E	SUMMIT SUNSHINE	160 160	100.000000% 100.000000%	80.000% 78.000%
Lewson	NE 1/4 SEC 18 T31S R2E	SUMMIT	160	100.000000%	80.000%
Greenham	SW 1/4 SEC 28 T31S R2E	SUMMIT	80	80.834000%	80.000%
Hazenham	SW 1/4 SEC 28 T31S R2E	SUMMIT	80	100.000000%	80.000%
JD Bird	SW SEC 28 T31S R2E	COWLEY	160	100.000000%	78.000%
Bassett (Peters)	NW 1/4 SEC 28 T31S R2E	COWLEY	160	100.000000%	78.000%
Orrell	SW 1/4 SEC 3 T31S R2E	COWLEY	40	100.000000%	80.000%
Forbes	SW 1/4 SEC 18 T31S R2E	SUMMIT	80	80.000000%	80.000%
<u>UNUSED & UNOCCUPIED</u>					
Jackson	SE 1/4 SEC 27 T31S R2E	SUMMIT	320	100.000000%	80.000%
			<u>8478</u>		

EXHIBIT C

ASSIGNMENT AND BILL OF SALE

as of Ev A & Ev B

STATE OF KANSAS }

COUNTIES OF SUMNER AND COWLEY }

This Assignment and Bill of Sale ("Assignment"), dated _____, 2011, is between Cyclone Petroleum, Inc., Haveco Oil & Gas Properties, LLC, HBF Limited Partnership, Concorde Resources Corporation, Ashton Gas Gathering, LLC, and Sundance Oil & Gas, LLC whose address is c/o Cyclone Petroleum Incorporated, 1030 W. Main Street, Jenks, Oklahoma 74037 (collectively "Assignor"), and Newkumet Exploration, Inc. whose address is P.O. Box 11330, Midland, Texas 79702 ("Assignee").

Assignment

For valuable consideration received, and subject to the further provisions hereof, Assignor does hereby assign, transfer, sell, grant and convey unto Assignee an One-Hundred percent (100%) of Assignor's undivided right, title and interest in, to and under the Leases, insofar as the Leases cover the Lands, and in and to the Wells and Equipment, less and except overriding royalty interests of record as of August 1, 2011 in favor of Assignor and/or related parties (collectively, the "Subject Interests").

The Subject Interests shall be owned by Assignee subject to, and shall bear their proportionate share of, the following:

- i. the terms and provisions of the Leases, including, but not limited to, the obligation to pay royalties thereunder;
- ii. the instruments and documents affecting the Leases, Lands and/or Unit, including, but not limited to, assignments of or reserving overriding royalty interests and/or other leasehold burdens, if any, recorded in the official public records of Sumner and Cowley Counties, Kansas, as of August 18, 2011.

Assignor hereby warrants title to the Subject Interests by, through and under Assignor, but not otherwise, all other warranties and all representations, express, implied and/or statutory, including, but not limited to, any warranty or representation as to the quality, quantity, weight, grade, fitness for particular purpose or merchantability of the Wells and Equipment, or the oil, gas or other substances produced from the Unit, being hereby expressly negated.

TO HAVE AND TO HOLD the Subject Interests unto Assignee, its heirs, successors, personal representatives and assigns forever.

This Assignment shall be effective for all purposes on September 1, 2011.

Cyclone Asmt & BOS

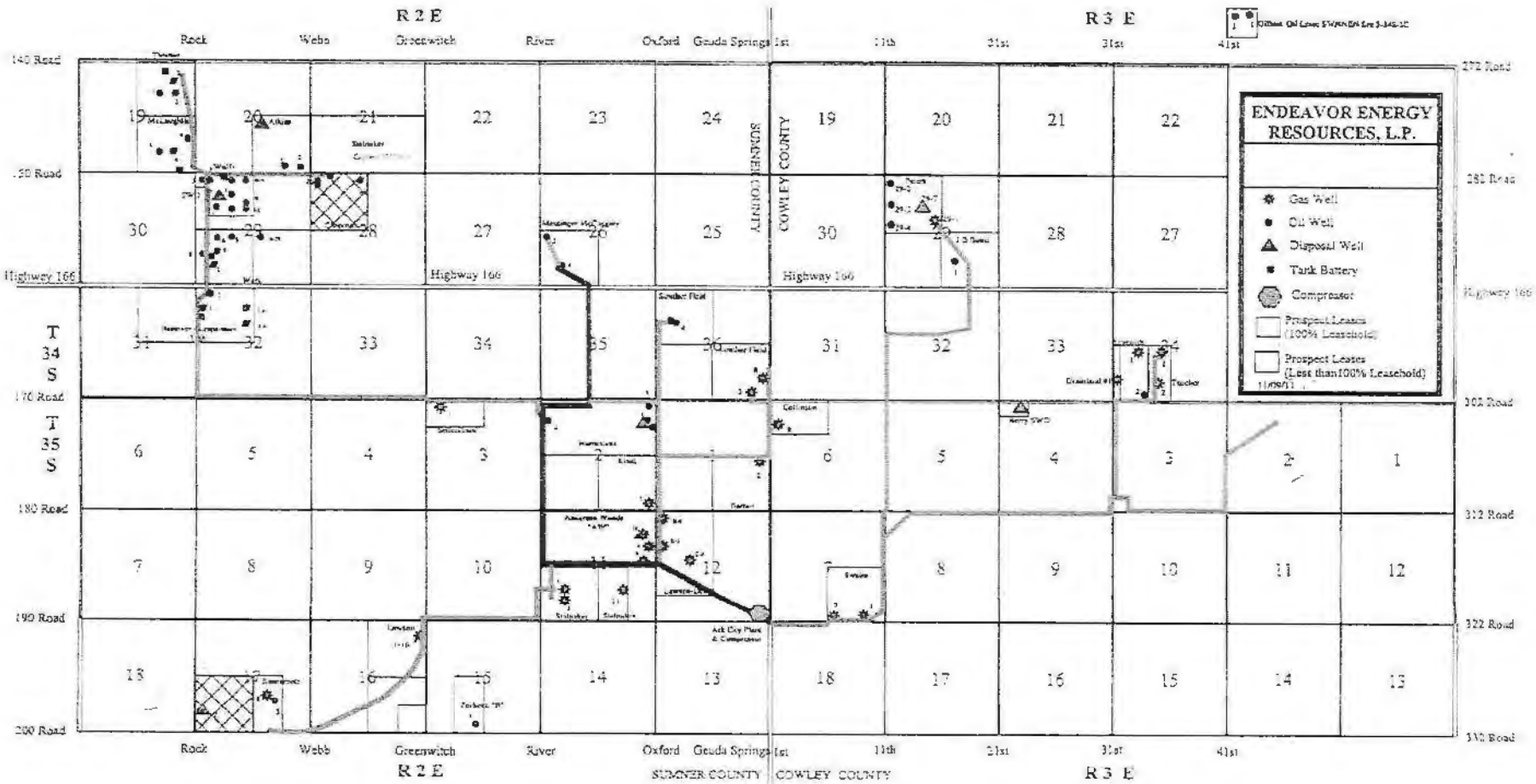
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D₁₀

Attached appropriate Acknowledgment

Cyclone Asmt & BOS

2



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MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED
300 N. Mead, Suite 200
Wichita, Kansas 67202
Telephone: (316) 262-2671

FILED
DISTRICT COURT
2015 AUG 12 AM 10:31
SUMNER COUNTY, KS.

BY:

IN THE THIRTIETH JUDICIAL DISTRICT
DISTRICT COURT, SUMNER COUNTY, KANSAS
CIVIL DEPARTMENT

ENDEAVOR ENERGY RESOURCES, L.P.,
BRADLEY BATES, JOE DRISKILL, &
NEWKUMET EXPLORATION, INC.,

Plaintiffs,

v.

CYCLONE PETROLEUM, INC.,
HAVECO OIL & GAS PROPERTIES, LLC,
HBF LIMITED PARTNERSHIP,
CONCORDE RESOURCES CORPORATION,
ASHTON GAS GATHERINGS, LLC, &
SUNDANCE OIL & GAS, L.L.C.,

Defendants.

Case No. 15CV81

Pursuant to K.S.A. Chapter 60

COPY

PETITION

The Plaintiffs Newkumet Exploration, Inc., Bradley Bates, Joe Driskill, and Endeavor Energy Resources, L.P., for their causes of action against the Defendants, Cyclone Petroleum, Inc., Haveco Oil & Gas Properties, LLC, HBF Limited Partnership, Concorde Resources Corporation, Ashton Gas Gatherings, LLC, and Sundance Oil & Gas, L.L.C., state:

PARTIES

1. Plaintiff Newkumet Exploration, Inc. ("Newkumet") is a Texas corporation.
2. Plaintiff Bradley Bates is an individual residing in Texas.

3. Plaintiff Joe Driskill is an individual residing in Oklahoma.
4. Plaintiff Endeavor Energy Resources, L.P. ("Endeavor") is a Texas limited partnership.
5. Defendant Cyclone Petroleum, Inc. ("Cyclone") is a Kansas corporation maintaining principal business offices at 1030 W. Main, Jenks, Oklahoma 74037. Service of process may be made upon its registered agent Robert D. Robinson at 1870 N. Xavier, Marion, KS 66861.
6. Defendant Haveco Oil & Gas Properties, LLC is an Oklahoma limited liability company maintaining principal business offices at 1030 W. Main, Jenks, Oklahoma 74037. Service of process may be made upon its registered agent Andrew S. Hartman c/o Andrew S. Hartman, P.C. at 320 S. Boston, Suite 2000, Tulsa, OK 74103.
7. Defendant HBF Limited Partnership is an Oklahoma limited partnership maintaining principal business offices at 1030 W. Main, Jenks, Oklahoma 74037. Service of process may be made upon its registered agent Andrew S. Hartman c/o Andrew S. Hartman, P.C. at 320 S. Boston, Suite 2000, Tulsa, OK 74103.
8. Defendant Concorde Resources Corporation is an Oklahoma corporation maintaining principal business offices at 111 South Main St., Bufaula, Oklahoma 74432. Service of process may be made upon its registered agent Registered Agents, Inc. at 4601 E. Douglas, Suite 150, Wichita, KS 67218.
9. Defendant Ashton Gas Gatherings, LLC is an Oklahoma limited liability company maintaining principal business offices at 1030 W. Main, Jenks, Oklahoma 74037. Service of process may be made upon its registered agent Andrew S. Hartman c/o Andrew S. Hartman, P.C. at 320 S. Boston, Suite 2000, Tulsa, OK 74103.

10. Defendant Sundance Oil & Gas, L.L.C. is an Oklahoma limited liability company maintaining principal business offices at 1030 W. Main, Jenks, Oklahoma 74037. Service of process may be made upon its registered agent Andrew S. Hartman c/o Andrew S. Hartman, P.C. at 320 S. Boston, Suite 2000, Tulsa, OK 74103.

JURISDICTION AND VENUE

11. Jurisdiction and venue are proper in the District Court of Sumner County, Kansas, because the causes of action herein arise out of a transaction of mineral leases covering lands located in Sumner County, Kansas.

FACTUAL BACKGROUND

12. This action arises out of Plaintiffs' purchase of an oil and gas prospect ("Prospect") comprised of numerous oil and gas leases covering approximately 5,000 acres of land in Sumner and Cowley Counties, Kansas and the wells, equipment and personal property appurtenant to the Prospect, including a gas gathering system, processing plant and compression station.

13. In August 2011, Newkumet identified, evaluated, and negotiated the acquisition of the Prospect from Defendants on behalf and at the direction of Endeavor.

14. A Purchase and Sale Agreement ("PSA") was entered into between Newkumet and Defendants on August 21, 2011. A copy of the PSA is attached hereto as Exhibit A.

15. The purchase and sale of the Prospect closed on October 10, 2011, effective September 1, 2011.

16. Upon closing the purchase and sale of the Prospect Newkumet immediately assigned the Prospect to Endeavor, reserving an undivided working interest unto itself, Bradley Bates and Joe Driskill, among others.

17. At all times relevant to the purchase of the Prospect, Plaintiffs did not know that approximately 37 unplugged and abandoned wells existed on the Prospect.

18. In July of 2014, Endeavor began receiving Notice of Violations from the Kansas Corporation Commission ("KCC") for failure to comply with KCC regulations relating to the unplugged and abandoned wells on the Prospect.

19. Shortly thereafter, the KCC initiated enforcement proceedings against Endeavor, demanding that Endeavor either plug or return the noncompliant wells to production, or pay penalties and risk suspension of its operator's license.

20. In July of 2014, Endeavor plugged two of the noncompliant wells.

21. The KCC identified 35 additional oil and gas wells ("Subject Wells") on the Prospect that were not in compliance with KCC regulations.

22. Endeavor and the KCC reached a Compliance Agreement ("KCC agreement") wherein Endeavor agreed to plug or return to production each of the 35 noncompliant wells over an extended compliance schedule. A Copy of the KCC agreement is attached hereto as Exhibit B.

23. As of the present date, Endeavor has plugged wells on the Prospect.

24. Pursuant to the terms of the KCC agreement, Endeavor must either plug or return to production all 35 wells by October 30, 2016.

COUNT I- EXPRESS CONTRACTUAL INDEMNIFICATION

25. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 24.

26. The PSA includes the following indemnification provision:

"Sellers agree to indemnify, defend, and hold Buyer harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations prior to the Effective Date of this [PSA]."

27. The KCC enforcement proceedings which resulted in the KCC agreement were directly attributable to Defendants' operations on the Prospect prior to the effective date of the PSA, September 1, 2011.

28. To date, Endeavor has incurred expenses plugging wells on the Prospect, and Endeavor will continue to incur expenses to plug wells which cannot be returned to production.

29. By reason of the foregoing, Endeavor is entitled to be indemnified by Defendants for the expenses it has incurred and will incur in plugging wells on the Prospect.

30. On October 31, 2014, S.J. Glaves, Trustee of the S.J. Glaves Revocable Trust under Agreement dated September 28, 1990 filed an action numbered 2014-CV-115 in the District Court of Sumner County, Kansas against the Plaintiffs and other parties (the "Glaves action").

31. The Glaves action sought to terminate oil and gas leases Plaintiffs acquired from Defendants pursuant to the PSA.

32. The allegations against Plaintiffs in the Glaves action arose primarily from the Defendants' operation of the leases prior to September 1, 2011.

33. On July 2, 2015, judgment was entered in favor of Plaintiffs as to each and every claim alleged in the Glaves action.

34. Endeavor has incurred necessary and reasonable attorney's fees and other legal costs in defending the KCC enforcement proceedings and the Glaves action, and it will continue to incur such fees and costs in complying with the KCC agreement. By the terms of the PSA, Endeavor is entitled to recover these fees and costs from Defendants.

COUNT II-IMPLIED INDEMNIFICATION

35. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 34.

36. Per K.A.R. 82-3-111, an oil and gas well must be plugged, returned to production, or temporarily abandoned within 90 days after the date it is brought out of production, and a well may only be temporarily abandoned for a period of 10 years.

37. Per K.S.A. 55-156, failure to plug an abandoned well in compliance with commission rules and regulations is a felony offense.

38. Defendants failed to plug or return the 37 abandoned wells on the Prospect to production within 90 days after the dates upon which they were brought out of production.

39. Furthermore, Defendants abandoned the Subject Wells for a period in excess of 10 years prior to September 1, 2011.

40. In light of the penalties for noncompliance and the environmental risks associated with unplugged and abandoned wells, a reasonably prudent operator would have either plugged or returned the Subject Wells to production prior to the expiration of the 10-year regulatory limit.

41. The KCC enforcement proceedings against Endeavor that resulted in the KCC agreement were directly attributable to Defendants' failure prior to September 1, 2011 to comply with KCC regulations.

42. Endeavor is not at fault for the KCC violations and should not be compelled to pay to plug the wells that Defendants improperly abandoned.

COUNT III- UNJUST ENRICHMENT

43. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 42 and, in the alternative, state:

44. Equitable relief is appropriate because Plaintiffs have no adequate remedy at law.

45. At all times relevant to the purchase of the Prospect, Plaintiffs did not know that unplugged and abandoned wells existed on the Prospect.

46. At the time they sold the Prospect, Defendants had operated the Prospect for more than 20 years and knew that unplugged and abandoned wells existed in violation of K.A.R. 82-3-111.

47. Plaintiffs and Defendants did not bargain for well-plugging liabilities existing on the Prospect prior to September 1, 2011 when negotiating the terms of the PSA.

48. By purchasing the Prospect subject to the undisclosed and unknown well-plugging liabilities, Plaintiffs conferred a benefit upon the Defendants which was not contemplated by the terms of the PSA.

49. Defendants have accepted and retained the benefit conferred to it by Plaintiffs, and it would be inequitable under the circumstances for Defendants to avoid liability for plugging the wells that they improperly abandoned.

COUNT IV- FRAUD

50. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 49.

51. At the time it sold the Prospect, Defendants knew that unplugged and abandoned wells existed on the Prospect in violation of K.A.R. 82-3-111.

52. At all times relevant to the purchase of the Prospect, Plaintiffs did not know that unplugged and abandoned wells existed on the Prospect.

53. Defendants were under an obligation to disclose the existing well-plugging liabilities to Plaintiffs.

54. Defendants intentionally failed to disclose the well-plugging liabilities in order to induce Plaintiffs to purchase the Prospect at the price offered by Defendants.

55. Plaintiffs justifiably relied on Defendants to disclose the well-plugging liabilities existing on the Prospect at the time of the sale, and Plaintiffs were thereby induced to purchase the Prospect at the price offered by Defendants.

56. Plaintiffs suffered damages as a result of Defendants' fraudulent conduct.

WHEREFORE, Plaintiffs pray for indemnity of the full amount of expenses it has already incurred plugging wells on the Prospect, which expenses currently exceed \$75,000, a declaration that Plaintiffs are entitled to indemnity for the full amount of expenses it will incur plugging wells on the Prospect, and for recovery of the attorney's fees and costs Plaintiffs have incurred in defending the KCC enforcement proceedings and complying with the KCC agreement, for defending the Graves action, and for preparing and prosecuting this action, for any additional damages warranted by the evidence in this case, and such further relief as the Court deems just and proper.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK &
KENNEDY, CHARTERED

By: 

Robert W. Coykendall, #10137

Jonathan A. Schlatter, #24848 ✓

300 N. Mead, Suite 200

Wichita, Kansas 67202

Telephone: (316) 262-2671

Facsimile: (316) 262-5991

jschlatter@morrislaing.com

*Attorneys for Endeavor Energy Resources, L.P.,
Bradley Bates, Joe Driskill, & Newkumet
Exploration, Inc.*

PURCHASE AND SALE AGREEMENT

BETWEEN

CYCLONE PETROLEUM, INC.,
HAVECO OIL & GAS PROPERTIES, LLC,
HBF LIMITED PARTNERSHIP,
CONCORDE RESOURCES CORPORATION,
ASHTON GAS GATHERING, LLC,
AND SUNDANCE OIL & GAS, LLC
As Sellers

And

NEWKUMET EXPLORATION, INC.
As Buyer

PURCHASE AND SALE AGREEMENT



Sellers: CYCLONE PETROLEUM, INC.,
HAYCOO OIL & GAS PROPERTIES, LLC,
RST LIMITED PARTNERSHIP
CONCORDIA RESOURCES CORPORATION,
AUSTON GAS GATHERING, LLC,
AND BLINDANCE OIL & GAS, LLC

Buyer: Newformat Exploration, Inc.

For the consideration, mutual promises, and agreements and the benefits to be derived by Sellers and Buyer, recited above, the receipt and sufficiency of which are acknowledged, Buyer and Sellers have entered into this Purchase and Sale Agreement (the "Agreement") and agree as follows:

ARTICLE I

PURCHASE AND SALE

~~Purchase and Sale~~ Sellers agree to sell and convey to Buyer and Buyer agrees to Purchase from and pay Sellers for all of their interest in those certain oil and gas properties located in Sumner and Cowley County Kansas, as described in the attached Exhibit "A", including all appurtenant equipment, personal property, files and records, less and except the overriding royalty interests identified on Exhibit "B", as per the following terms and conditions:

Handwritten: \$15,000.00 1st 8-29-11

PURCHASE PRICE: Total purchase is \$3,400,000.00 payable as follows: \$25,000.00 by wire on or before August 29th as earnest money and part payment of the purchase price. The balance of \$3,375,000.00 to be paid in closing in certified funds or by wire transfer. All payments shall be made to "Haycoo Oil & Gas Properties, LLC as Nominee." If Buyer establishes prior to Closing that the net revenue interests being conveyed are less than the net revenue interests itemized on Exhibit A, Buyer may at its option in writing to Seller, deem this contract null and void and the earnest money shall be returned. If Buyers fail to close for any reason other than as articulated in the preceding sentence, Sellers may keep earnest money and this contract shall become null and void.

FORM OF ASSIGNMENT: See Exhibit C.

NET REVENUE INTEREST (NRI) See Exhibit "A". The interests described therein are for information only and do not constitute any kind of warranty.

WORKING INTEREST (WI) Sellers are agreeing to sell all of their working interests in the leases listed in Exhibit "A". The interests described therein are for information only and do not constitute any kind of warranty.

CLOSING: On October 10, 2011 unless extended by written agreement of Buyers and Seller(s). Seller shall provide a mortgage release from Bank of Oklahoma at Closing.

EFFECTIVE DATE is September 1, 2011. Sellers are entitled to all production and are responsible for all expenses including taxes and all liabilities up to the Effective Date. Buyer is entitled to all production

and is responsible for all expenses and liabilities (including plugging costs and liabilities associated with the wells on the Leases described in "Exhibit A") with respect to the properties from and after Effective Date. Buyer agrees to pay the monthly compressor lease obligations and the remaining compressor site lease obligations for the remaining term of said leases.

ADDITIONAL PROVISIONS

- Tanks will be tagged at noon on September 1, 2011 and Buyer will purchase oil at the average net monthly posting price for the month prior to closing. Said price (less production taxes) shall be paid at Closing in addition to Purchase Price.
- Equipment is "as is, where is".
- Buyer and Sellers agree to bear their own costs in connection with this proposed transaction.
- Sellers shall resign as operator and deliver at Closing all necessary State regulatory documents signed by Sellers transferring operations of the wells and leases to Buyer.
- Sellers shall not be obligated to undertake any expenses other than normal production and marketing expenses from September 1, 2011 to Closing. Buyer shall reimburse Sellers for any and all reasonable expenses incurred after September 1, 2011 until Closing, and that reimbursement shall be made at Closing in addition to the Purchase Price articulated herein.
- Sellers agree to indemnify, defend, and hold Buyer harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations prior to the Effective Date of this Agreement. Buyer agrees to indemnify, defend, and hold Sellers harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations after to the Effective Date of this Agreement.
- Sellers agree to allow Buyer access to its lease, well, legal and other files for due diligence review at any reasonable time at Sellers' offices and further, to provide access to the wells in the field for Buyer's inspection.
- Notices. All notices and communications required or permitted under this Agreement shall be in writing and shall be effective when delivered addressed as follows:

If to Sellers:

Mr. James Haver
Cyclone Petroleum, Incorporated
1030 W. Main Street
Jenks, OK 74037
(918) 291-3200
(918) 291-3220 facsimile

If to Buyers:

Wayne Newkomet, President
Newkomet Exploration, Inc.
P.O. Box 11330
Midland, Texas 79702
(432) 687-1101
(432) 687-2519 facsimile


Either party may, by written notice delivered to the other, change the address to which delivery shall thereafter be made.

-Entire Agreement. This Agreement (including all Exhibits) constitutes the entire understanding between Buyer and Sellers with respect to the subject matter of this Agreement, and supersedes all negotiations, prior discussions, prior agreements, and understandings relating to such subject matter. No material


representation, warranty, covenant, agreement, promise, inducement or statement, whether oral or written, has been made by Sellers or Buyers and relied upon by either that is not set forth in this Agreement or in the instruments referred to in this Agreement, and Sellers and/or Buyers shall not be bound by or liable for any alleged representation, warranty, covenant, agreement, promise, inducement, or statement not set forth in this Agreement.

This Purchase and Sale Agreement is signed by Sellers and Buyers as of the date their signatures below, but is deemed effective for all purposes as of the Effective Date.

Sellers:


James M. C. Haver
President
Cyclone Petroleum Inc.


Date 8.21.11


James M. C. Haver
Manager
Havoco Oil & Gas Properties, LLC


Date 8.21.11


James M. C. Haver
President, JHBP, Inc., General Partner
JHBP Limited Partnership

Date 8.21.11



James M. C. Haver, President of Cyclone
Petroleum, Inc.
Manager
Ashton Gas Gathering, LLC

Date 8.21.11


James M. C. Haver, Manager of Havoco
Oil & Gas Properties, LLC
Manager
Sundance Oil & Gas, LLC

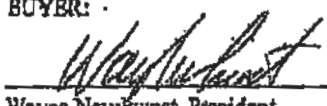
Date 8.21.11

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James M. C. Haver
President
Concorde Resources Corporation

Date 8.21.11

BUYER:


Wayne Newkumet, President
Newkumet Exploration, Inc.

Date 8/21/11

*FAX signature page to
Tim Haver 918-291-3220
Andrew Hartman 918-712-5642*

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Shari Feist Albrocht, Chair
Jay Scott Emler
Pat Apple

In the matter of a compliance agreement) Docket No.: 15-CONS-442-CMSC
between Endeavor Energy Resources, LP)
("Operator") regarding 35 wells in Cowley and) CONSERVATION DIVISION
Sumner Counties, Kansas,)
_____) License No.: 32887

ORDER APPROVING SETTLEMENT AGREEMENT

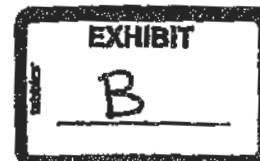
The above-captioned matter comes before the State Corporation Commission of the State of Kansas. Having examined the files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On December 2, 2014 Commission Staff filed a Motion for the Commission to Approve a Settlement Agreement. The Settlement Agreement has been signed by both parties and creates deadlines to bring 35 wells into compliance with K.A.R. 82-3-111, prescribing automatic penalties in the event of noncompliance with specific deadlines.

2. The Commission finds and concludes that the settlement agreement provides a fair and efficient resolution of the issues in this docket.

THEREFORE, THE COMMISSION ORDERS:

- A. The attached Settlement Agreement is approved and incorporated into this Order.
- B. Any party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a). The petition shall be filed within 15 days after service of this Order. If service of this Order is by mail, three days are added to the deadline. The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202. Pursuant to K.S.A. 55-606 and K.S.A. 77-529(a), reconsideration is prerequisite




for judicial review of this Order. Any party taking an action permitted by this summary proceeding before the deadline for a petition for reconsideration does so at their own risk of further proceedings.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair, Emier, Commissioner, Apple, Commissioner

Dated: JAN 13 2015


Neysa Thomas
Acting Secretary of the Commission

Mailed Date: 1/14/15

LRP

I CERTIFY THE ORIGINAL
COPY IS ON FILE WITH
The State Corporation Commission

JAN 13 2015

COMPLIANCE AGREEMENT

This Compliance Agreement is between Endeavor Energy Resources, LP ("Operator") and Staff of the Corporation Commission of the State of Kansas ("Staff"). The effective date of this Compliance Agreement shall be the date it is approved by an Order of the Commission. If the Commission does not approve this Agreement by a signed Order, this Agreement shall not be binding on either party.

A. Background

1. Operator has accepted responsibility for the wells scheduled in Paragraph 3 ("the Subject Wells"), all of which are out of compliance with K.A.R. 82-3-111. Operator has approached Staff, seeking to memorialize a compliance schedule, so as to avoid potential penalties for non-compliance with K.A.R. 82-3-111 while Operator works to either plug or return to production the Subject Wells.

2. Operator acquired the oil and gas leases the subject wells are located on in late 2011. Many of the Subject Wells will likely need to be plugged. Staff is cognizant of the expense and time involved in plugging wells. Given the size of Operator's holdings in Kansas (approximately 176 wells), the apparent size of Operator's holdings outside of Kansas, and Operator's current compliance record, Staff is comfortable with an extended compliance schedule in this matter.

3. The following schedule of 35 wells are the Subject Wells:

a. Anderson Woods #1	API 15-191-19058
b. Anderson Woods #3	API 15-191-19059
c. Anderson-Woods #4	API 15-191-11213
d. Anderson-Woods #10	API 15-191-22333
e. Atkins #2	API 15-191-21237
f. Atkins #3	API 15-191-21281
g. Atkins Joe #1	API 15-191-21099
h. Chapman #2	API 15-191-21250
i. Chapman #3	API 15-191-21333
j. Homestead #1	API 15-191-11371
k. Homestead #2	API 15-191-11372
l. Horton #1	API 15-191-10888
m. Horton #2	API 15-191-10889
n. Horton #5	API 15-191-11656
o. Horton #EH-1	API 15-191-22291
p. Lawson #1-16	API 15-191-22446
q. Lawson Dean #1	API 15-191-19063
r. Lawson Dean #B1	API 15-191-19062
s. Lawson Dean #B2	API 15-191-19061
t. Lawson Dean #B3	API 15-191-11316
u. Lesperance #1	API 15-191-20702
v. McLaughlin #4	API 15-191-21298
w. McLaughlin Virginia F #6	API 15-191-21761
x. Peters #1-29	API 15-035-23373
y. Peters #29-7	API 15-035-19432
z. Reynolds #1	API 15-035-23385
aa. Stalnaker #4	API 15-191-22334
bb. Stalnaker/Kuchler #2	API 15-191-47031
cc. Strogger-Sundance #8	API 15-191-22383
dd. Swain A #1	API 15-035-23678
ee. Tauscher #2	API 15-035-24180
ff. Thomas #2	API 15-191-21380
gg. Thomas Willis T #1	API 15-191-21364
hh. Wells #1	API 15-191-21310
ii. Work #2	API 15-191-21402

4. Operator reports that it intends to return 5 wells to production, to plug 23 wells, and to swab 7 wells and then decide whether to plug them or return them to production. Operator reports that it intends to first return as many wells to production as possible, and then to plug the remaining wells.

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B. Terms of Compliance Agreement

5. By April 30, 2015, Operator shall have either returned to production or plugged a total of 5 of the subject wells. If Operator fails to meet this deadline, then Operator shall be assessed a \$5,000 penalty.

6. By October 30, 2015, Operator shall have either returned to production or plugged a total of 12 of the subject wells. If Operator fails to meet this deadline, then Operator shall be assessed a \$5,000 penalty.

7. By April 30, 2016, Operator shall have either returned to production or plugged a total of 24 of the subject wells. If Operator fails to meet this deadline, then Operator shall be assessed a \$5,000 penalty.

8. By October 30, 2016, Operator shall have either return to production or plugged all 35 of the subject wells. If Operator fails to meet this deadline, then Operator shall be assessed a \$5,000 penalty.

9. If any of the subject wells have not been either returned to production or plugged by December 31, 2016, then Operator shall be assessed an additional \$20,000 penalty, and Staff is directed to plug the wells and assess the costs to Operator.

10. If Operator fails to comply with Paragraph 5, 6, 7, or 8, or if penalties or costs are owed under Paragraph 5, 6, 7, 8, or 9, then Staff shall suspend Operator's license until compliance is obtained and the penalties or costs are paid. Operator agrees to waive its right to appeal any future orders of the Commission regarding this matter, or any suspension of Operator's license implemented by Commission Staff due to Operator's failure to comply with this Settlement Agreement.

11. While this Compliance Agreement is in effect, Operator shall not be required to file annual temporary abandonment applications for the Subject Wells. Except as described under the terms of this Compliance Agreement, Staff will not pursue Operator for any violation of K.A.R. 82-3-111 at the Subject Wells that occurred, or occurs, prior to December 31, 2016.

C. Conclusion

Both parties believe that this Settlement Agreement represents a fair and appropriate resolution to the matters in this docket, and that the Settlement Agreement accomplishes the Commission's duty to enforce Kansas laws pertaining to the protection of usable waters and the prevention of pollution caused by oil and gas activities.

This Settlement Agreement has been agreed to by the undersigned:

Commission Staff

By: [Signature]

Printed Name: JON MYERS

Title: LITIGATION COUNSEL

Date: 12/1/14

Endeavor Energy Resources, LP

By: [Signature]

Printed Name: Ashley C. Stephens

Title: Sole Member of Endeavor Petroleum, LLC as General Partner

Date: 11/25/2014

F21

CERTIFICATE OF SERVICE

I certify that on 1/14/15, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

Jonathan A. Schlatter
Morris Laing Evans Brock & Kennedy, Chtd.
300 N. Mead, Suite 200
Wichita, Kansas 67202
Attorney for Endeavor

Cherl Prince
Endeavor Energy Resources, LP
110 N. Maricfeld, Ste. 200
Midland, Texas 79701

Jeff Klock, KCC District #2

And delivered by hand to:

Jon Myers
KCC Conservation Division

/s/ Lane R. Palmateer
Lane R. Palmateer
Litigation Counsel
Kansas Corporation Commission

ELECTRONICALLY FILED
2018 Jan 09 PM 1:16
CLERK OF THE SUMNER COUNTY DISTRICT COURT
CASE NUMBER: 2015-CV-000081



Court: Sumner County District Court
Case Number: 2015-CV-000081
Case Title: Endeavor Energy Resources Lp, et al. vs. Cyclone Petroleum, Inc, et al.
Type: Pretrial Order

SO ORDERED.

A handwritten signature in black ink, appearing to read "R. Scott McQuinn", is written over a horizontal line.

/s/ Honorable R. Scott McQuinn, District Court
Judge

Electronically signed on 2018-01-09 13:16:21 page 1 of 40

**IN THE THIRTIETH JUDICIAL DISTRICT
DISTRICT COURT, SUMNER COUNTY, KANSAS
Division 3**

ENDEAVOR ENERGY RESOURCES, L.P.,)	
BRADLEY BATES, JOE DRISKILL, &)	
NEWKUMET EXPLORATION, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2015-CV-81
)	
CYCLONE PETROLEUM, INC.,)	
HAVECO OIL & GAS PROPERTIES, LLC,)	
HBF LIMITED PARTNERSHIP,)	
CONCORDE RESOURCES CORPORATION,)	
ASHTON GAS GATHERING, LLC,)	
SUNDANCE OIL & GAS, LLC, &)	
JAMES M.C. HAVER,)	
)	
Defendants.)	
)	

PRETRIAL ORDER

On September 20, 2017, a pretrial conference was held in the above-captioned matter. Plaintiffs Endeavor Energy Resources, L.P. (“Endeavor”), Bradley Bates, Joe Driskill, and Newkumet Exploration, Inc. (“Newkumet”) (collectively, “Plaintiffs”), appeared by and through their counsel of record Jonathan A. Schlatter of Morris, Laing, Evans, Brock & Kennedy Chtd. Defendants Cyclone Petroleum, Inc. (“Cyclone”), Haveco Oil & Gas Properties, LLC, HBF Limited Partnership, Concorde Resources Corporation, Ashton Gas Gathering, LLC (collectively, “Entity Defendants”), and James M. C. Haver (“Haver”), appeared by and through their counsel of record Andrew S. Hartman and Martin J. Peck. There were no other appearances. After reviewing the record and hearing statements and arguments of counsel, the Court finds as follows:

1. Theories of Recovery and Contentions

PLAINTIFFS

A. Contractual Indemnification against Entity Defendants

Plaintiffs are entitled to contractual indemnity from Entity Defendants for the following costs and expenses incurred by Plaintiffs: (a) defending the KCC enforcement proceedings, and plugging the Orphan Wells, and (b) defending the Graves litigation. Plaintiffs are entitled to recover their attorneys' fees incurred in defending the KCC enforcement proceedings and the Graves litigation, as well as their attorneys' fees incurred prosecuting this action.

Background

In the Fall of 2011, the parties entered into a purchase and sale agreement ("PSA") in which the Entity Defendants—all of which are owned and controlled by Haver—sold all of their working interests in a number of oil and gas leases located in Sumner and Cowley Counties, Kansas ("Prospect")¹, to Plaintiffs. In the negotiations leading up to the sale, Defendants, through Jim Haver, represented that Cyclone operated 46 producing wells and 5 salt water disposal wells on the Prospect—a total of 51 wells. After closing, Cyclone ultimately transferred responsibility for 87 wells to Endeavor, and 33 of those wells were nothing but liabilities that should have been plugged years ago. They had absolutely no economic value. The additional 33 wells are termed "Orphan Wells" and were never disclosed to Plaintiffs prior to closing. Plaintiffs did not want, and never bargained to assume this mass plugging liability.

The parties negotiated, and both parties agreed upon the following provision in the PSA: "Sellers agree to indemnify, defend, and hold Buyer harmless for all complaints, charges, **enforcement proceedings or litigation attributable to operations prior to the Effective Date**

¹ Entity Defendants also sold a gas gathering system, processing plant and compression station to Plaintiffs as part of the sale.

of the Agreement².” This term was very important to the Plaintiffs. The Plaintiffs proposed this term, and repeatedly resisted defendant’s suggestions that would have limited this term. The transaction closed on October 7, 2011, when Plaintiffs paid approximately \$5.4 Million to Defendants for the Prospect.

KCC Enforcement Proceedings

In July of 2014, the Kansas Corporation Commission (“KCC”) initiated **enforcement proceedings** against Plaintiffs related to 30 wells located on the Prospect that were unplugged, abandoned and out of compliance with Commission regulations. Subsequent **enforcement proceedings** were initiated by the KCC in January of 2016, related to 3 additional wells on the Prospect that were also unplugged, abandoned and out of compliance. Just prior to the July 2014 KCC enforcement proceedings, a landowner³ complained to Plaintiffs about 2 other wells that were unplugged abandoned and out of compliance with Commission regulations. In total, 35 wells located on the Prospect were identified as unplugged, abandoned, and out of compliance with KCC regulations. Prior to this time, Plaintiffs were not aware of the existence of these Orphan Wells. Plaintiffs thoroughly evaluated the mechanical integrity and production capability of each of the 35 wells, and were ultimately able to return 2 wells to production. The 33 Orphan Wells, however, were not salvageable for any purpose and required plugging. Plaintiffs incurred costs and expenses searching for and plugging the Orphan Wells in order to bring them into compliance with KCC regulations.

The **enforcement proceedings** related to the 33 Orphan Wells were not the result of any operations of Plaintiffs. Entity Defendants admit the Orphan Wells were out of compliance with KCC well plugging regulations as of the effective date of the PSA. Kansas statutes and KCC

² Emphasis added. The “Effective Date” of the PSA is September 1, 2011.

³ The landowner at issue is Graves from the Graves litigation discussed below.

regulations obligated Entity Defendants to plug the 33 Orphan Wells prior the effective date of the PSA. As such, the enforcement proceedings related to the 33 Orphan Wells and the associated plugging costs are “attributable to operations prior to” September 1, 2011. Under the PSA, Entity Defendants are required to indemnify, defend, and hold Plaintiffs harmless from the costs and expenses of the KCC **enforcement proceedings** and the resulting well plugging liability. Entity Defendants have breached this provision of the PSA by failing to defend and by refusing to pay indemnity to Plaintiffs.

Glaves Litigation

In October of 2014, a mineral interest owner, the S. J. Glaves Revocable Trust (“Glaves”), sued Plaintiffs to terminate two Prospect leases. Glaves claimed that from 1996 through 2000 no production was sold from the leases and, as a result, the two leases expired during that time. Plaintiffs ultimately succeeded in defending the Glaves litigation.

The Glaves litigation is clearly attributable to operations prior to September 1, 2011, because Entity Defendants operated the leases at all times during the 1996-2000 time period at issue. The PSA obligates Entity Defendants to indemnify Plaintiffs for their costs and expenses incurred in defending the Glaves litigation.

Orphan Wells

The Orphan Wells are tabulated below, along with the date the operation to plug each Orphan Well was completed and the total cost of the plugging procedure. As noted above, Entity Defendants salvaged two wells that were unplugged, abandoned and out of compliance with KCC regulations.⁴

“Orphan Wells” Plugged and Abandoned by Plaintiffs

⁴ The Peters 29-7 (API 15-03519432-0001) was salvaged as a saltwater disposal wells, and the Stalnaker #4 (API 15-191-22334-0000) was salvaged as a gas well.

	Lease_Name	Well #	API_No	Plugging Cost	P&A Date
1	Anderson-Wood	1	1519119058	\$ 15,450.50	9/16/2015
2	Anderson-Wood	3	1519119059	\$ 11,211.99	9/15/2015
3	Anderson-Wood	4	1519111213	\$ 9,881.72	9/15/2015
4	Anderson-Wood	8	1519119060	\$ 441.98	1/28/2016
5	Anderson-Wood	10	1519122333	\$ 7,447.62	9/15/2015
6	Atkins	1	1519121099	\$ 7,664.17	8/18/2016
7	Atkins	2	1519121237	\$ 11,013.22	8/18/2016
8	Atkins	3	1519121281	\$ 7,887.80	4/6/2016
9	Berry	1	15035191260002	\$ 15,832.40	7/28/2016
10	Chapman	2	1519121250	\$ 8,007.34	4/6/2016
11	Chapman	3	1519121333	\$ 11,592.98	4/6/2016
12	Haslouer-Lesperance	1A	1519120685	\$ 8,071.42	5/20/2014
13	Haslouer-Lesperance	2A	1519120703	\$ 23,073.50	7/29/2014
14	Homestead	1	1519111371	\$ 12,210.17	9/18/2015
15	Homestead	2	1519111372	\$ 12,566.36	9/18/2015
16	Homestead	4	1519119056	Does Not Exist	11/18/2015
17	Lawson	1-16	1519122446	\$ 6,743.40	8/18/2016
18	Lawson Dean	1	1519119063	\$ 10,251.86	4/7/2016
19	Lawson Dean 'B'	1	1519119062	\$ 231.64	1/28/2016
20	Lawson Dean 'B'	2	1519119061	\$ 231.64	1/28/2016
21	Lawson Dean 'B'	3	1519111316	\$ 15,527.11	4/7/2016
22	Lesperance	1	1519120702	\$ 6,915.92	7/28/2016
23	McLaughlin	4	1519121298	\$ 22,413.70	4/7/2016
24	McLaughlin	6	1519121761	\$ 9,609.56	4/6/2016
25	Peters	1-29	15035233730001	\$ 8,701.74	1/29/2015
26	Reynolds	1	1503523385	\$ 7,895.86	7/28/2016
27	Stalnaker-Kuchler	2	1519147031	\$ 24,409.62	9/17/2015
28	Strother-Sundance	8	1519122383	\$ 11,961.40	9/16/2015
29	Swaim 'A'	1	1503523678	\$ 12,657.61	9/7/2016
30	Tauscher	2	1503524180	\$ 14,357.11	1/30/2015
31	Thomas	1	1519121364	\$ 17,233.85	1/29/2015
32	Thomas	2	1519121380	\$ 10,715.86	1/29/2015
33	Work	2	1519121402	\$ 6,825.11	4/7/2016
				\$ 349,036.16	

B. Unjust Enrichment against Entity Defendants

Plaintiffs assert that there are reasons beyond the contract provisions of the PSA that entitle them to recover the Orphan Well plugging expenses and associated attorneys' fees from Entity Defendants. Because the costs associated with plugging the wells were an obligation of

Entity Defendants under Kansas statutes and regulations, Entity Defendants were unjustly enriched when Plaintiffs shouldered that burden without payment of consideration from Entity Defendants. Under the equitable theory of unjust enrichment, Plaintiffs are entitled to recover these costs and expenses from Entity Defendants. At equity, those costs and expenses should include attorneys' fees incurred in defending the KCC enforcement proceedings and the Glaves litigation.

C. Fraud against Haver

Plaintiffs have also asserted that Defendants perpetrated a fraud on them when they misrepresented the number of wells that were on the Prospect and inconspicuously transferred responsibility to plug the Orphan Wells to Plaintiffs after the purchase transaction closed. By falsely representing that there were some 51 wells on the Prospect and that only a few were "temporarily abandoned," Defendants were committing fraud. It is clear that Defendants knew that there were many more abandoned wells on the Prospect, that none of the wells had been granted temporary abandonment status by the KCC, that plugging the Orphan Wells would be costly, and if Defendants disclosed the truth the sale price for the Prospect would have been substantially less. Defendants knew that the Orphan Wells would not be found from a visit to the Prospect, and when Defendant Haver took Plaintiffs' representative for a tour of the properties, he did not point out any of the abandoned wells. Defendant Haver did his best to conceal from Plaintiffs the existence of the Orphan Wells, repeatedly producing lists that did not show the wells or that misrepresented the status of the wells, and by refusing to produce documents that did show the Orphan Wells prior to closing. Haver also concealed many of the Orphan Wells from the KCC or misrepresented their status to the KCC so as to confuse the public well databases. The incidents of fraud go on and on and are summarized below.

Plaintiffs believed they were purchasing what Defendants said they were selling. Plaintiffs conducted reasonable diligence under the circumstances and their reliance on Defendants to tell the truth was reasonable. Newkumet reviewed months of revenue statements to confirm the daily oil and gas production from the Prospect was accurately represented by Haver. Newkumet hired Mitch McFarland, a landman, to confirm Entity Defendants owned record title to the leasehold interests being sold. Mr. McFarland identified several title issues which were either resolved or resulted in an adjustment to the Prospect purchase price. Newkumet hired Greg Rasmussen, a petroleum engineer, to inspect the Prospect leases, evaluate the leasehold equipment and production, and to search for potential environmental issues and liabilities, such as unplugged and abandoned wells. Haver led Mr. Rasmussen on his inspection of the Prospect leases, never once making mention of or identifying any of the Orphan Wells he knew were scattered across the approximate 5100 acres of leased lands.

Newkumet asked Mitch McFarland to review available public well databases to further evaluate the leases. Mitch McFarland advised that the public databases were of little use, likely because the lands comprising the Prospect had been developed over generations, with many wells previously drilled and abandoned and virtually all production numbers aggregated on a lease basis rather than well-by-well basis. Further compromising the reliability of the public databases was the fact that Defendants misled the KCC as to the wells Cyclone operated. Defendants deliberately omitted Orphan Wells from its annual well inventory report, and misrepresented the status of the Orphan Wells it did disclose.

As a result of Defendants' conduct, Plaintiffs were harmed. Because Defendants knew what they were doing, and intended to foist onto Plaintiffs their own liability for plugging the wells, Plaintiffs seek actual and punitive damages from Haver for his fraud.

Incidents of Fraud

1. Plaintiffs were unaware, and at no time relevant to the purchase of the Prospect did Haver inform them that the Orphan Wells on the Prospect were unplugged, abandoned and out of compliance with KCC regulations, and otherwise of no economic value to Plaintiffs.
2. Haver knew of the existence of Orphan Wells he concealed from Plaintiffs and that the Orphan Wells were out of compliance with KCC well plugging regulations prior to the effective date of the PSA.
3. Haver admits no consideration was paid for Plaintiffs' assuming the massive Orphan Well plugging liability, obviously because the existence and status of the Orphan Wells was never disclosed.
4. Haver provided information he knew to be false and misleading beginning from his initial contact with Newkumet. In an August 10, 2011 email to Newkumet he furnished a sale teaser stating the Prospect included "46 - PRODUCING WELLS - 15 Gas - 31 Oil" and "5 Salt Water Disposal Wells". The email in which Haver provided this teaser to Plaintiffs indicated the sale teaser was "an updated summary, more to follow".
5. Immediately following that email (i.e., the "more to follow"), Haver sent another email to Newkumet with an attached spreadsheet. The spreadsheet contained a worksheet titled "WELL DATA" that represented the following:

Sumner and Cowley, County, Kansas wells: Producing 37 = oil 19 + gas 18; T&A 5; SWD 2; Total Wells 44.

The spreadsheet contained another worksheet titled "BOPD" that represented there were 48 producing wells, 46 "equipped", and that there were 31 oil wells, 15 gas wells, 5 SWD wells on the Prospect—a total of 51 wells.

The WELL DATA and BOPD worksheets contained false information concerning the production status of the wells or altogether omitted wells. T&A is an acronym for temporarily abandoned, a permission granted by the KCC for wells temporarily out of production. None of the wells identified as T&A had been granted such status by the KCC and all appear to have been permanently abandoned.

6. During telephone conversations, Newkumet asked Haver if there were any wells on the Prospect that needed to be plugged. Haver told Newkumet the lists were complete and that there were not any plugging issues on the Prospect leases.
7. Between August 18 and August 21, 2011, Haver, Haver's attorney Andrew Hartman, and Newkumet exchanged emails regarding the proposed terms of the PSA. Hartman transmitted the initial draft of the PSA. From the initial draft, Haver and Hartman sought to expressly have the PSA cover the Orphan Well abandoned well liability that Haver did not disclose—a provision Haver maintains applies today notwithstanding there is no evidence of his

disclosure of this liability or of any bargain to assume such massive plugging liability. Newkumet did not want to assume any undisclosed liability, and insisted upon an indemnity provision that required Entity Defendants to remain obligated for all liabilities attributable to operations prior to the September 1, 2011 effective date of the PSA. Haver and his attorney Andrew Hartman repeatedly tried to modify the language Newkumet insisted upon so as to ensure it did not cover the undisclosed Orphan Well plugging liability. Newkumet ultimately obtained the indemnity provision he sought.

8. Throughout the course of the transaction Newkumet repeatedly requested a complete list of wells on the Prospect. Haver did not supply Newkumet with a complete list, but instead with multiple versions of partial lists that omitted nearly half of the wells Haver knew were on the Prospect and that further misrepresented the status of the Orphan Wells.
9. Newkumet retained Greg Rasmussen, a petroleum engineer, to physically inspect the Prospect leases and wells. Jim Haver guided Mr. Rasmussen on a tour of the leases. Haver intentionally did not show Mr. Rasmussen 32 of the 33 Orphan Wells and fraudulently caused the other Orphan Well to be transferred to Plaintiffs nearly a year after closing. At one point in time Haver identified two wells that were equipped and pumping oil as the McLaughlin #4 and McLaughlin #6. It is not possible that the wells Haver represented to Mr. Rasmussen were in fact the McLaughlin #4 and McLaughlin #6 because those wells were unequipped and incapable of producing oil or gas at closing.
10. The Orphan Wells were not readily apparent from a visit to the approximately 5100 acres of land comprising the Prospect. The Orphan Wells were located in pastures, fields, and cropland, sometimes with only a fence stake marking the location of the wells, other times with no monument at all. Most of the Orphan Wells were left open hole or only had short pieces of broken pipe, valves or swedges sticking from the ground. Many had to be searched for. A backhoe was eventually required in some of the searching and 4 of the Orphan Wells were never found.
11. Defendants employed an unusual lease naming and well numbering scheme to further confuse the location and identity of the Orphan Wells. The Collinson, Stalnaker, Barton, Strother and Swaim leases were sometimes called the Sundance. The Anderson-Wood, Lawson, Dean, and Homestead lease names were seemingly used interchangeably. The Stalnaker lease was sometimes called the Kuchler; the Berry lease sometimes called the Somers; the Peters lease sometimes called the Bruce, and the Metzinger lease sometimes called McCorgary. The well numbering system employed by Defendants was later determined to be inconsistent with KCC records or Defendants' own internal records. None of the lists furnished by Defendants to Plaintiffs prior to closing contained API numbers, so there was no way to reconcile the foregoing inconsistencies with the actual wells on the Prospect. All of this led to confusion regarding which wells Plaintiffs purchased and became responsible for, which wells were producing and which were unplugged and abandoned.
12. Defendants also misinformed the KCC about the Orphan Wells. Orphan Wells were omitted from Cyclone's well inventory report or characterized as producing when they in fact were not. Defendants did this so as to evade their obligation to timely plug and abandon the

Orphan Wells. By omitting wells from Cyclone's inventory report or misrepresenting their production status, Defendants caused the public well databases to be inaccurate and unreliable.

13. Defendants filed plugging applications for some of the Orphan Wells, further evidencing Haver knew they were of no economic use and nothing more than a liability.
14. Despite repeated requests by Newkumet and despite a provision requiring that the T-1 notice of transfer of operator forms be delivered at closing, Haver refused to provide the T-1 notices until after closing. As explained in detail below, the T-1 notices prepared by Haver contained all of the Orphan Wells that were not previously disclosed to Plaintiffs.
15. Haver unquestionably knew of the existence and status of the Orphan Wells prior to closing. Although he never represented to Newkumet that there were more than 51 wells on the Prospect, Haver listed 83 wells on the initial T-1 notices he prepared in advance of closing. The T-1 notices were the only documents that listed all of the wells on the Prospect and all of the Orphan Wells, and they were deliberately withheld from Plaintiffs until after closing. Haver delivered the completed T-1 notices to his attorney Andrew Hartman prior to closing. Andrew Hartman refused to produce copies of the T-1's to Newkumet until after "receipt of wired funds in the amount of \$5,445,614.55" to close the transaction. The transaction closed remotely on October 7, 2011. Sometime thereafter, Andrew Hartman mailed the T-1 notices to Newkumet.
16. The T-1 notices falsely represented the status of nearly all of the Orphan Wells, listing many as producing or temporarily abandoned, when in fact none were producing or granted temporary abandonment status by the KCC. In some instances the status of the Orphan Wells was omitted from T-1 notice. API numbers were also omitted, and the location of the Orphan Wells was often not accurate.
17. Haver's fraud concerning the T-1 notices continued through at least August 20, 2012. Without the knowledge, consent or agreement of Plaintiffs, Haver and the Kansas Corporation Commission substantially modified the T-1 notices after Endeavor had countersigned and filed them with the Commission. In all, Haver saw that 4 wells were added to the T-1 notices, and the status, location and/or API number of 23 of the Orphan Wells were changed. In fact, 4 of the Orphan Wells listed on the T-1 notices were ultimately determined not to exist after time and resources (including the use of a backhoe) were spent attempting to locate them. Plaintiffs were unaware of these behind the scenes and unauthorized changes to the T-1 notices until it was discovered during the course of this litigation.
18. Defendants' claim they provided maps disclosing the existence and status of the Orphan Wells. The maps furnished are worthless for communicating the well information sought, were not created for that purpose, and were not provided for that purpose. The maps are not dated, appeared to be outdated, identified only a few of the leases and wells included in the Prospect, and identified wells and leases off the Prospect. None of the Orphan Wells were identified as unplugged, abandoned and out of compliance with KCC regulations on the

maps. Although the maps were allegedly based on lists, those lists were not provided to Plaintiffs. It is utterly disingenuous to claim the maps furnished by Defendants constitute a modicum of disclosure of the well plugging liability associated with the Orphan Wells.

19. Haver apparently possessed a complete list of the wells on the Prospect, which he used in preparing the T-1 forms, and which he furnished to Entity Defendants' expert Martin Black. He never furnished this list to Plaintiffs. It seems the lists he furnished to Newkumet prior to closing were altered to conceal and misrepresent the status of the Orphan Wells. Entity Defendants' Martin Black agrees the number of wells being purchased is "absolutely" important to know when purchasing oil and gas properties.
20. Haver continued to mislead Plaintiffs regarding the number and status of the wells on the Prospect after closing. On October 17, 2011 he emailed a "cheat sheet" purporting to be a list of the wells on the Prospect. The "cheat sheet" listed 44 wells, 42 producing and 2 temporarily abandoned. The "cheat sheet" likewise contained false information concerning the production status of the wells and their equipment. Once again, no reference was made to the 33 Orphan Wells on the Prospect and none of the wells had been granted temporary abandonment status by the KCC.
21. Additional records concerning the wells on the Prospect were requested from Haver after closing, but Haver did not respond to those emails.
22. Haver's misrepresentations and omissions were intentional. He deliberately and knowing failed to disclose the existence of the Orphan Wells on the Prospect, because he knew that they represented an enormous liability to anyone purchasing the prospect and that disclosing the existence of the orphan wells would substantially reduce the purchase price for the Prospect.
23. Plaintiffs relied on Defendants to correctly state the number of wells located on the Prospect, relied upon Haver's representations as to the number and status of the wells, and relied on Haver to disclose the significant well-plugging liability he knew to exist on the Prospect at the time of sale. Further, Plaintiffs were entitled to assume Defendants operated the wells on the Prospect in compliance with Kansas law.
24. Defendants were obligated to disclose the status of the wells, as well plugging is significant in negotiating any transaction, establishing the consideration to be paid, and it is expected to be disclosed in good faith.

D. Punitive Damages against Haver

Plaintiffs are entitled to recover punitive damages from Defendant Haver because his actions towards Plaintiffs were willfully wrong, and exhibited wantonly fraudulent and malicious conduct towards Plaintiffs.

E. Itemized Damages

Actual Damages of \$611,667.19 (as detailed below), plus attorneys' fees and costs incurred after August 31, 2017, plus prejudgment and post-judgment interest, and punitive damages awarded.

Costs to search for and plug the Orphan Wells.....	\$349,036.16
Attorneys' Fees and Costs thru 8/31/17:	
KCC Enforcement Proceedings	\$16,101.10
Glaves litigation	\$48,145.53
Instant Action.....	<u>\$198,384.40</u>
Subtotal Attorneys' Fees and Costs	<u>\$262,631.03</u>
Total Actual Damages.....	<u><u>\$611,667.19</u></u>

F. Defendants' Counterclaim

As to Defendants' counterclaim, Plaintiffs contend that the parties' contract makes Defendants liable for everything "attributable to operations prior to the Effective Date." The Orphan Well plugging liability at issue in this action is attributable to operations prior to the effective date of that agreement, and thus is the responsibility of Defendants, not anyone else.

DEFENDANTS' CONTENTIONS.

A. Plaintiffs' Claims against Entity Defendants Cannot Be Supported in Contract Law, in Tort Law or in Equity

Plaintiffs are not entitled to indemnity from Entity Defendants for costs and expenses incurred by Plaintiffs in: (a) defending the KCC enforcement proceedings, and plugging the Orphan Wells, and (b) defending the Glaves litigation. Plaintiffs are not entitled to recover their attorneys' fees incurred in defending the KCC enforcement proceedings or the Glaves litigation, nor are they entitled to their attorneys' fees incurred prosecuting this action.

Background

Defendants agree that in the Fall of 2011, the parties entered into a purchase and sale agreement ("PSA") in which the Entity Defendants—all of which are owned and controlled by

Haver—sold their working interests (exclusive of certain overriding royalty interests) in a number of oil and gas leases and certain equipment and certain gathering systems located in Sumner and Cowley Counties, Kansas (“Prospect”), to Plaintiff Newkumet. In the negotiations leading up to the sale, Defendants, through Jim Haver, made certain representations to Plaintiff Newkumet, but made no representations to any of the other Plaintiffs. Haver represented that Cyclone operated producing wells and salt water disposal wells on the Prospect—but at no time was Haver asked to specify the total number of wellbores on the Prospect, nor was he asked to identify wells that needed to be plugged. In fact, Haver will testify that he and Wayne Newkumet discussed the fact that there were “cased holes” out on the Prospect which could be evaluated for workover potential and or re-completion. Those cased holes were seen as “value” by the Entity Defendants because they allow for exploration and development with new recompletion techniques without having to permit and drill a new well. Prior to Closing, Newkumet engaged the services of a petroleum engineer (Greg Rasmussen), a geologist (Jim Newkumet), and others to inspect the Prospect and conduct due diligence in the field and in the log library. Plaintiff Newkumet never disclosed that he was an agent of Plaintiff Endeavor (or anyone else). Haver and the Entity Defendants knew that Jim Newkumet was a geologist, that there was a field inspection being completed by Rasmussen (alongside pumpers used by Defendants) and that those individuals had available to them as resources (a) publicly available data and information concerning the Prospect which would give them a complete profile of the Prospect, and (b) commercial data services concerning the Prospect which would give them a complete profile of the Prospect, and (c) had access to data and information concerning the Prospect in the Oklahoma City log library concerning the Prospect which would give them a complete profile of the Prospect, and (d) had access through the Kansas Corporation

Commission to data and information concerning the Prospect which would give them a complete profile of the Prospect, and (e) had access through the Kansas Geological Survey to production data and information concerning the Prospect which would give them a complete profile of the Prospect, and (f) a base map and other maps provided by Haver. As a consequence of all of the resources available to Plaintiff Newkumet, Newkumet was willing to accept Haver's broad overview of the Prospect. Newkumet made no inquiry of Haver regarding the specific location of all of the wellbores on the Prospect, largely because of the map of wells and leases provided by Haver to Plaintiff's representative. In addition, Newkumet accepted the following language which is part of the final Purchase and Sale Agreement ("Agreement"):

"No material representation, warranty, covenant, agreement, promise, inducement or statement, whether oral or written, has been made by Sellers or Buyers and relied upon by other that is not set forth in this Agreement..."

Agreement at page 4. Importantly, there is no representation of the number of wellbores in the Agreement. The Agreement goes on to provide:

"...Sellers and/or Buyers shall not be bound by or liable for any alleged representation, warranty, covenant, agreement, promise, inducement, or statement not set forth in this Agreement."

Agreement at page 4. Then on page 3 of the Agreement, it clearly says:

"Buyer is entitled to all production and is responsible for all expenses and liabilities (*including plugging costs and liabilities associated with the wells on the Leases described in Exhibit "A"*) with respect to the properties from and after Effective Date."

(emphasis added). These provisions resolve all of Plaintiffs' claims (including fraud, unjust enrichment, and contract), in Defendants' favor. Plaintiffs' unjust enrichment claim is precluded by the express contractual provisions.

At Closing (not after Closing), Cyclone transferred responsibility for 84 wells to

Endeavor. Endeavor accepted operations, responsibility, and liability with respect to those wells by its signature on those Change of Operator Forms (T-1s). The parties negotiated, and both parties agreed upon the following provision in the PSA:

“Sellers agree to indemnify, defend, and hold Buyer harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations prior to the Effective Date of this Agreement. Buyer agrees to indemnify, defend, and hold Sellers harmless for all complaints, charges, enforcement proceedings or litigation attributable to operations after to the Effective Date of this Agreement⁵.”

Importantly for purposes of the contract claims, the term “Sellers” does not include Jim Haver, individually. Importantly for purposes of the contract claims, the term “Buyer” is only Newkumet Exploration, Inc. The Agreement was signed on August 21, 2011. Approximately forty-five (45) days later, the transaction closed (on October 7, 2011).

KCC Enforcement Proceedings

Endeavor Energy Resources, L.P. had complete dominion and control of operations on the Prospect for almost three (3) years. Then, Plaintiffs allege that in July of 2014, the Kansas Corporation Commission (“KCC”) initiated **enforcement proceedings** against Plaintiffs related to 30 wells located on the Prospect that were unplugged, abandoned and out of compliance with Commission regulations. In fact, the proceedings were only against Endeavor Energy Resources, L.P. Plaintiffs allege that subsequent **enforcement proceedings** were initiated by the KCC in January of 2016, related to 3 additional wells on the Prospect that were also unplugged, abandoned and out of compliance. Plaintiffs allege that in total, 35 wells located on the Prospect were identified as unplugged, abandoned, and out of compliance with KCC regulations. Unbelievably, Plaintiffs allege that there never knew that those 35 wellbores existed. Specifically, Plaintiffs have represented to this Court that: “Prior to this time, Plaintiffs were not

⁵ Emphasis added. The “Effective Date” of the PSA is September 1, 2011.

aware of the existence of these Orphan Wells.” They make this unbelievable representation to the Court in spite of the fact that they had available to them as resources:

(a) publicly available data and information concerning the Prospect which would give them a complete profile of the Prospect; and

(b) commercial data services concerning the Prospect which would give them a complete profile of the Prospect; and

(c) access to data and information concerning the Prospect in the Oklahoma City log library concerning the Prospect which would give them a complete profile of the Prospect; and

(d) access through the Kansas Corporation Commission to data and information concerning the Prospect which would give them a complete profile of the Prospect; and

(e) access through the Kansas Geological Survey to data and information concerning the Prospect which would give them a complete profile of the Prospect; and

(f) engaged the services of a geologist by the name of Jim Newkumet to go to the log library and review maps of the Prospect; and

(g) engaged the services of Greg Rasmussen, a petroleum engineer to conduct a field visit with the pumpers on the Prospect to evaluate it; and

(h) were provided a detailed map that identified all acreage and wellbores on the Prospect, and Plaintiffs were therefore provided 45 days to do whatever due diligence they wanted to; and

(i) Endeavor signed Change of Operator Forms on 84 wells in November of 2011 and Endeavor submitted those forms to the Kansas Corporation Commission; and

(j) an email from Wayne Newkumet to Jim Haver dated Wednesday September 21, 2011 that contained attachments that specifically named seventeen (17) of those allegedly “Orphan

Wells”; and

(k) a report from Greg Rasmussen (the petroleum engineer hired by Newkumet) that identified two (2) of the “Orphan Wells”; and

(l) received twenty (20) well files for the “Orphan Wells” from Haver at Closing which included well files clearly marked; and

(m) had enough information in the files and reports for a map to be created for Endeavor’s benefit in or around November of 2011 that located twenty-six (26) of the alleged “Orphan Wells”; and

(n) had enough information in the files and reports for a Revenue Deck to be created by Endeavor around January 16 of 2012 for twelve (12) of the alleged “Orphan Wells”; and

(o) had enough information in the files and reports for a Revenue Deck to be created by Endeavor around February 10 of 2012 for eighteen (18) of the alleged “Orphan Wells”; and

(p) had enough information in the files and reports for a Revenue Deck to be created by Endeavor around January 13-17 of 2012 for three (3) of the alleged “Orphan Wells”; and

(q) had enough information in their own well files (maintained by Endeavor) showing work done on “Orphan Wells” by Endeavor in 2011 and 2012 for thirteen (13) of the alleged “Orphan Wells”; and

(r) immediately hired and had full access immediately after Closing to the same pumpers that the Entity Defendants had used for years (Pedro and Ronnie); and

(s) had other information that will be presented at the time of trial through Defendants’ exhibits and the testimony of witnesses at trial.

The Statute of Limitations has clearly run on all fraud claims and unjust enrichment claims and quasi contract claims. Plaintiffs had actual knowledge of all or nearly all of the open

wellbores before or shortly after closing. Plaintiffs' actual knowledge triggered a duty to investigate, which would have disclosed the existence of the remaining wells no later than early 2012. Plaintiffs had actual knowledge of all or almost all of the open wellbores at closing or shortly thereafter. Plaintiffs are also charged with having knowledge of the public records regarding the open wellbores. Further, with respect to fraud, Plaintiffs have not alleged an inability to have discovered the alleged fraud through reasonable diligence.

Plaintiffs allege that they incurred costs and expenses searching for and plugging the Orphan Wells in order to bring them into compliance with KCC regulations. Their own expert testified that the cost of plugging a well in that area is approximately \$2,500.00 per well. If the ultimate finder of fact finds that there are ten (10) Orphan Wells, that would be Twenty-Five Thousand Dollars (\$25,000.00). Hardly a "massive plugging liability". Nevertheless, Plaintiffs claim damages of hundreds of thousands of dollars. Plaintiffs have failed to present admissible evidence of their damages. They have only offered inadmissible summaries.

The **enforcement proceedings** were brought after the Effective Date. Newkumet was required to plug all of the wells on all leases on the Prospect, and that obligation was imposed upon Newkumet from and after the effective date. Endeavor signed the Forms T-1, became the operator of all 84 wells, and assumed the primary liability with the KCC to plug any wells necessary to comply with regulations. Endeavor had operations for almost three (3) years. Endeavor, Bates and Driscoll may have a claim, but it is against Newkumet Exploration, Inc., not the Entity Defendants or Jim Haver. Newkumet and Endeavor failed to act for almost three (3) years, and now Newkumet Exploration, Inc. seeks to rewrite the contract and avoid their respective plugging liabilities. Under the PSA, Newkumet is required to indemnify, defend, and hold the Entity Defendants harmless from the costs and expenses of the KCC **enforcement**

proceedings and the resulting well plugging liability.

Glaves Litigation

Plaintiffs allege that in October of 2014, a mineral interest owner, the S. J. Glaves Revocable Trust (“Glaves”), sued Plaintiffs to terminate two Prospect leases. Glaves claimed that from 1996 through 2000 no production was sold from the leases and, as a result, the two leases expired during that time. Plaintiffs ultimately succeeded in defending the Glaves litigation. The Petition in the case makes no allegation of a cessation of production *attributable to operations*. The Journal Entry of Final Judgment makes no mention of a cessation of production *attributable to operations*. The Plaintiffs have offered no admissible evidence of damages. The Plaintiffs never tendered the defense of the case to the Entity Defendants. There is no basis for a claim with respect to the Glaves action against Jim Haver.

B. Unjust Enrichment against Entity Defendants

Plaintiffs assert that there are reasons beyond the contract provisions of the PSA that entitle them to recover the Orphan Well plugging expenses and associated attorneys’ fees from Entity Defendants. Plaintiffs allege that because the costs associated with plugging the wells were allegedly an obligation of Entity Defendants under Kansas statutes and regulations, Entity Defendants were unjustly enriched when Plaintiffs shouldered that burden without payment of consideration from Entity Defendants. Here there is a written contract. The contract provides that Buyer shall pay the costs of plugging all of the wells on the Prospect. No “unjust enrichment” theory can reverse or undermine an express contractual obligation. The statute of limitations has run on those claims. The contract specifically provides:

“...Sellers and/or Buyers shall not be bound by or liable for any alleged representation, warranty, covenant, agreement, promise, inducement, or statement not set forth in this Agreement.”

Agreement at page 4. The unjust enrichment claim cannot survive. The statute of limitations has run on that claim.

C. Fraud against Haver

Plaintiffs have also asserted that Defendants perpetrated a fraud on them. Specifically, Plaintiffs allege:

Alleged Incidents of Fraud

1. Plaintiffs were unaware, and at no time relevant to the purchase of the Prospect did Haver inform them that the Orphan Wells on the Prospect were unplugged, abandoned and out of compliance with KCC regulations, and otherwise of no economic value to Plaintiffs.

Defendants' Response: Haver discussed the cased non-productive holes generally, but he was never asked to identify them all. The Plaintiffs had unlimited resources and means to find those cased non-productive holes as evidenced by (a) thru (s), above. Plaintiff Newkumet specifically discussed use of those holes with Jim Haver. The Plaintiffs knew of virtually all of the cased holes as recited in (a) thru (s) above. The statute of limitations has run on any fraud claim. Plaintiff Newkumet expressly assumed the obligation to plug the cased holes in the Agreement. Plaintiff Endeavor expressly assumed the obligation to plug the cased holes by accepting operations of all wells on the Prospect by signing the forms T-1.

2. Haver knew of the existence of Orphan Wells he concealed from Plaintiffs and that the Orphan Wells were out of compliance with KCC well plugging regulations prior to the effective date of the PSA.

Defendants' Response: Haver concealed nothing. The Agreement specifically states that Buyer is not relying on any representation of Sellers, other than as specifically stated in the Agreement.

3. Haver admits no consideration was paid for Plaintiffs' assuming the massive Orphan Well plugging liability, obviously because the existence and status of the Orphan Wells was never disclosed.

Defendants' Response: Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

4. Haver provided information he knew to be false and misleading beginning from his initial contact with Newkumet. In an August 10, 2011 email to Newkumet he furnished a sale teaser stating the Prospect included "46 - PRODUCING WELLS - 15 Gas - 31 Oil" and "5

Salt Water Disposal Wells”. The email in which Haver provided this teaser to Plaintiffs indicated the sale teaser was “an updated summary, more to follow”.

Defendants’ Response: There were 46 Producing Wells. That statement is true. Haver concealed nothing. This is not a new or independent “Incident of Fraud”. It is simply a restatement of #1 and #2.

5. Immediately following that email (i.e., the “more to follow”), Haver sent another email to Newkumet with an attached spreadsheet. The spreadsheet contained a worksheet titled “WELL DATA” that represented the following:

Sumner and Cowley, County, Kansas wells: Producing 37 = oil 19 + gas 18; T&A 5; SWD 2; Total Wells 44.

The spreadsheet contained another worksheet titled “BOPD” that represented there were 48 producing wells, 46 “equipped”, and that there were 31 oil wells, 15 gas wells, 5 SWD wells on the Prospect—a total of 51 wells.

The WELL DATA and BOPD worksheets contained false information concerning the production status of the wells or altogether omitted wells. T&A is an acronym for temporarily abandoned, a permission granted by the KCC for wells temporarily out of production. None of the wells identified as T&A had been granted such status by the KCC and all appear to have been permanently abandoned.

Defendants’ Response: There were 46 Producing Wells. The spreadsheet identified many of the other wellbores that were not producing. See September 21, 2011 email and attachment. Haver concealed nothing. This is not a new or independent “Incident of Fraud”. It is simply a restatement of #1 and #2.

6. During telephone conversations, Newkumet asked Haver if there were any wells on the Prospect that needed to be plugged. Haver told Newkumet the lists were complete and that there were not any plugging issues on the Prospect leases.

Defendants’ Response: Denied. Haver concealed nothing. In fact, Jim Haver will testify that he described to Wayne Newkumet the fact that the development of the Prospect over the last few years was primarily based upon reworking and recompleting existing open non-productive wellbores. In fact, virtually all of the alleged “orphan” wells were drilled by predecessors of the Entity Defendants and the Entity Defendants had been gradually improving the Prospect over the course of time.

7. Between August 18 and August 21, 2011, Haver, Haver’s attorney Andrew Hartman, and Newkumet exchanged emails regarding the proposed terms of the PSA. Hartman transmitted the initial draft of the PSA. From the initial draft, Haver and Hartman sought to expressly have the PSA cover the Orphan Well abandoned well liability that Haver did not disclose—a

provision Haver maintains applies today notwithstanding there is no evidence of his disclosure of this liability or of any bargain to assume such massive plugging liability. Newkumet did not want to assume any undisclosed liability, and insisted upon an indemnity provision that required Entity Defendants to remain obligated for all liabilities attributable to operations prior to the September 1, 2011 effective date of the PSA. Haver and his attorney Andrew Hartman repeatedly tried to modify the language Newkumet insisted upon so as to ensure it did not cover the undisclosed Orphan Well plugging liability. Newkumet ultimately obtained the indemnity provision he sought.

Defendants' Response: Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2. Hartman has obtained judgment in his favor.

8. Throughout the course of the transaction Newkumet repeatedly requested a complete list of wells on the Prospect. Haver did not supply Newkumet with a complete list, but instead with multiple versions of partial lists that omitted nearly half of the wells Haver knew were on the Prospect and that further misrepresented the status of the Orphan Wells.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2. Haver provided maps that identified all the wells.

9. Newkumet retained Greg Rasmussen, a petroleum engineer, to physically inspect the Prospect leases and wells. Jim Haver guided Mr. Rasmussen on a tour of the leases. Haver intentionally did not show Mr. Rasmussen 32 of the 33 Orphan Wells and fraudulently caused the other Orphan Well to be transferred to Plaintiffs nearly a year after closing. At one point in time Haver identified two wells that were equipped and pumping oil as the McLaughlin #4 and McLaughlin #6. It is not possible that the wells Haver represented to Mr. Rasmussen were in fact the McLaughlin #4 and McLaughlin #6 because those wells were unequipped and incapable of producing oil or gas at closing.

Defendants' Response: Denied. Haver concealed nothing. Haver provided maps that identified all the wells.

10. The Orphan Wells were not readily apparent from a visit to the approximately 5100 acres of land comprising the Prospect. The Orphan Wells were located in pastures, fields, and cropland, sometimes with only a fence stake marking the location of the wells, other times with no monument at all. Most of the Orphan Wells were left open hole or only had short pieces of broken pipe, valves or swedges sticking from the ground. Many had to be searched for. A backhoe was eventually required in some of the searching and 4 of the Orphan Wells were never found.

Defendants' Response: Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2. In addition, Plaintiffs had the resources of (a) thru (s), above. Haver provided maps that identified all the wells.

11. Defendants employed an unusual lease naming and well numbering scheme to further confuse the location and identity of the Orphan Wells. The Collinson, Stalnaker, Barton, Strother and Swaim leases were sometimes called the Sundance. The Anderson-Wood, Lawson, Dean, and Homestead lease names were seemingly used interchangeably. The Stalnaker lease was sometimes called the Kuchler; the Berry lease sometimes called the Somers; the Pcters lease sometimes called the Bruce, and the Metzinger lease sometimes called McCorgary. The well numbering system employed by Defendants was later determined to be inconsistent with KCC records or Defendants' own internal records. None of the lists furnished by Defendants to Plaintiffs prior to closing contained API numbers, so there was no way to reconcile the foregoing inconsistencies with the actual wells on the Prospect. All of this led to confusion regarding which wells Plaintiffs purchased and became responsible for, which wells were producing and which were unplugged and abandoned.

Defendants' Response: Denied. Haver concealed nothing. This is not a misrepresentation of fact or a new or independent "Incident of Fraud". In addition, Plaintiffs had the resources of (a) thru (s), above. Wells often and leases often have a number of names. Plaintiffs never asked for API numbers. Haver provided maps that identified all the wells.

12. Defendants also misinformed the KCC about the Orphan Wells. Orphan Wells were omitted from Cyclone's well inventory report or characterized as producing when they in fact were not. Defendants did this so as to evade their obligation to timely plug and abandon the Orphan Wells. By omitting wells from Cyclone's inventory report or misrepresenting their production status, Defendants caused the public well databases to be inaccurate and unreliable.

Defendants' Response: Denied.

13. Defendants filed plugging applications for some of the Orphan Wells, further evidencing Haver knew they were of no economic use and nothing more than a liability.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent incident of fraud.

14. Despite repeated requests by Newkumet and despite a provision requiring that the T-1 notice of transfer of operator forms be delivered at closing, Haver refused to provide the T-1 notices until after closing. As explained in detail below, the T-1 notices prepared by Haver contained all of the Orphan Wells that were not previously disclosed to Plaintiffs.

Defendants' Response: Denied.

15. Haver unquestionably knew of the existence and status of the Orphan Wells prior to closing. Although he never represented to Newkumet that there were more than 51 wells on the Prospect, Haver listed 83 wells on the initial T-1 notices he prepared in advance of closing. The T-1 notices were the only documents that listed all of the wells on the Prospect and all of the Orphan Wells, and they were deliberately withheld from Plaintiffs until after closing. Haver delivered the completed T-1 notices to his attorney Andrew Hartman prior to closing. Andrew Hartman refused to produce copies of the T-1's to Newkumet until after "receipt of wired funds in the amount of \$5,445,614.55" to close the transaction. The transaction closed remotely on October 7, 2011. Sometime thereafter, Andrew Hartman mailed the T-1 notices to Newkumet.

Defendants' Response: Denied. Hartman has obtained judgment in his favor.

16. The T-1 notices falsely represented the status of nearly all of the Orphan Wells, listing many as producing or temporarily abandoned, when in fact none were producing or granted temporary abandonment status by the KCC. In some instances the status of the Orphan Wells was omitted from T-1 notice. API numbers were also omitted, and the location of the Orphan Wells was often not accurate.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

17. Haver's fraud concerning the T-1 notices continued through at least August 20, 2012. Without the knowledge, consent or agreement of Plaintiffs, Haver and the Kansas Corporation Commission substantially modified the T-1 notices after Endeavor had countersigned and filed them with the Commission. In all, Haver saw that 4 wells were added to the T-1 notices, and the status, location and/or API number of 23 of the Orphan Wells were changed. In fact, 4 of the Orphan Wells listed on the T-1 notices were ultimately determined not to exist after time and resources (including the use of a backhoe) were spent attempting to locate them. Plaintiffs were unaware of these behind the scenes and unauthorized changes to the T-1 notices until it was discovered during the course of this litigation.

Defendants' Response: Denied.

18. Defendants' claim they provided maps disclosing the existence and status of the Orphan Wells. The maps furnished are worthless for communicating the well information sought, were not created for that purpose, and were not provided for that purpose. The maps are not dated, appeared to be outdated, identified only a few of the leases and wells included in the Prospect, and identified wells and leases off the Prospect. None of the Orphan Wells were identified as unplugged, abandoned and out of compliance with KCC regulations on the maps. Although the maps were allegedly based on lists, those lists were not provided to

Plaintiffs. It is utterly disingenuous to claim the maps furnished by Defendants constitute a modicum of disclosure of the well plugging liability associated with the Orphan Wells.

Defendants' Response: Denied.

19. Haver apparently possessed a complete list of the wells on the Prospect, which he used in preparing the T-1 forms, and which he furnished to Entity Defendants' expert Martin Black. He never furnished this list to Plaintiffs. It seems the lists he furnished to Newkumet prior to closing were altered to conceal and misrepresent the status of the Orphan Wells. Entity Defendants' Martin Black agrees the number of wells being purchased is "absolutely" important to know when purchasing oil and gas properties.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

20. Haver continued to mislead Plaintiffs regarding the number and status of the wells on the Prospect after closing. On October 17, 2011 he emailed a "cheat sheet" purporting to be a list of the wells on the Prospect. The "cheat sheet" listed 44 wells, 42 producing and 2 temporarily abandoned. The "cheat sheet" likewise contained false information concerning the production status of the wells and their equipment. Once again, no reference was made to the 33 Orphan Wells on the Prospect and none of the wells had been granted temporary abandonment status by the KCC.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

21. Additional records concerning the wells on the Prospect were requested from Haver after closing, but Haver did not respond to those emails.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

22. Haver's misrepresentations and omissions were intentional. He deliberately and knowing failed to disclose the existence of the Orphan Wells on the Prospect, because he knew that they represented an enormous liability to anyone purchasing the prospect and that disclosing the existence of the orphan wells would substantially reduce the purchase price for the Prospect.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

23. Plaintiffs relied on Defendants to correctly state the number of wells located on the Prospect, relied upon Haver's representations as to the number and status of the wells, and relied on

Haver to disclose the significant well-plugging liability he knew to exist on the Prospect at the time of sale. Further, Plaintiffs were entitled to assume Defendants operated the wells on the Prospect in compliance with Kansas law.

Defendants' Response: Denied. Haver concealed nothing. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2. The PSA expressly prohibits Plaintiffs from relying upon any representation not contained in the PSA.

24. Defendants were obligated to disclose the status of the wells, as well plugging is significant in negotiating any transaction, establishing the consideration to be paid, and it is expected to be disclosed in good faith.

Defendants' Response: Denied. This is not a new or independent "Incident of Fraud". It is simply a restatement of #1 and #2.

D. Defendants' Contentions Regarding Plaintiffs' Claims of Punitive Damage against Haver.

Plaintiffs are not entitled to recover punitive damages from Defendant Haver because:

- (i) Punitive damages are not recoverable for breach of contract, unjust enrichment, or quasi contract; and
- (ii) Plaintiffs failed to exercise ordinary care, as such, cause of this loss, is the plaintiff's conduct and not defendants' conduct; and
- (iii) No fraud occurred because there are no representations as per the contract that would support a claim and fraud; and
- (iv) Plaintiffs could have discovered the existence of all well bores through the diligence and ordinary care that is described in subparagraphs (a) through (s), above; and
- (v) Statute of limitations has run on Plaintiffs' fraud claim.

E. Defendants' response to Plaintiffs' Claim for Itemized Damages.

Plaintiffs are not entitled to recover any of the itemized damages for the following reasons:

- (i) Plaintiffs have failed to show that the Graves litigation is associated with operations prior to the effective date; and
- (ii) The plugging responsibilities are the responsibilities of Plaintiff Newkumet per the contract; and
- (iii) Plaintiffs have only offered inadmissible summaries in support of their claim of damages; and
- (iv) The PSA does not provide for attorney's fees, as such, plaintiffs are not entitled to attorney fees in connection with the instant action; and
- (v) Plaintiffs' own expert, Remsberg, testified that the cost to plug the "orphan" wells would be approximately \$2,500 per well; and

(vi) Endeavor expressly assumed the obligation to operate and plug the wells by its signature on the forms T-1 and Endeavor had complete dominion and control of the wells for almost three years before receiving notices from the KCC.

F. Defendants' Contentions Regarding Defendants' Counterclaims. To the extent that there is any finding of liability for any of the claims of any of the Plaintiffs against any of the Defendants, Defendants contend that Plaintiff Newkumet Exploration, Inc. assumed the obligation to satisfy those claims pursuant to the contract that is the subject of this litigation.

G. Defendants' Defenses

This dispute arises out of a 2011 contract for sale of lease prospects from Cyclone, Haveco, HBF, Concorde, Ashton, and Sundance to plaintiff Newkumet Exploration, Inc. None of the other plaintiffs were a party to that contract. The plaintiffs allege that there were 37 wells of which they were unaware, which the plaintiffs now call "orphan wells." The plaintiffs' claims fail for several reasons:

- A. The plaintiffs were aware of the "orphan" wells prior to closing the sale for the reasons recited in (a) through (s) above.
- B. The written contract in this case precludes the claims made in this case.
 - i. The contract provides that "No material representation, warranty, covenant, agreement, promise, inducement or statement, whether oral or written has been made by Sellers" at p. 2. The contract also provides "Sellers and/or Buyers shall not be bound by or liable for any alleged representation, warranty, covenant, agreement, promise, inducement, or statement not set forth in this Agreement." at p. 4. These exculpatory and integrating provisions are enforceable as a matter of law. Therefore, any claim by Plaintiffs of breach of contract, warranty or misrepresentation and/or fraud is barred.
 - ii. The contract also provides that Newkumet is to bear the liability for plugging wells and defendant any action by the KCC in both the specific and general language of the PSA.
 - iii. The written contract precludes equitable relief, including the plaintiffs' implied indemnification and unjust enrichment claims.
- D. The plaintiffs' claims are barred by statutes of limitations, including
 - i. Statute of limitations on fraud claims;
 - ii. Statute of limitations on implied contract and unjust enrichment claims; and
 - iii. With respect to Haver, any claim based on the written contract for the reasons cited in (a) through (s) above

E. There is no duty owed by any of the Defendants to any of the Plaintiffs and there is no breach of any duty by any of the Defendants as evidenced by the Contract which specifically provides that Buyer is not relying on Sellers, except as specified in the Contract; and in addition, the common law requirements of fraud by silence provide that there is no duty to the plaintiffs from the defendants to disclose material facts;

F. [Omitted]

G. There are no damages suffered by any of the Plaintiffs attributable to the conduct of any of the Defendants, all alleged damages are related to Plaintiffs' failure to exercise due diligence in connection with the acquisition. None of the damages allegedly suffered by Plaintiffs are "attributable to operations." The damages claimed by the Plaintiffs are not supported by the evidence.

H. [Omitted]

I. [Omitted.]

J. [Omitted]

K. The plaintiffs are not entitled to attorney fees because the PSA contains no provision for attorney's fees, and the Graves is not "attributable to operations," and plaintiff Newkumet expressly took on the obligation on all of the leases that are the subject of this action.

L. [Omitted.]

M. Any costs and or damages suffered by Plaintiffs were not caused by the conduct of any of the Defendants.

H. Additional Contentions.

A. There was no duty owed by any Defendant to any Plaintiff. Any such duty was not breached.

B. No damages suffered by Plaintiffs were the result of any conduct by any Defendant.

C. Plaintiffs will have the burden of proof on all issues except for those supporting Defendants' defense of statute of limitations.

2. Amendments to Pleadings

Plaintiffs were granted leave to amend their petition to add a claim for punitive damages against Defendant Haver. Defendants have answered the amended petition. The Court granted judgment in favor of Hartman.

No other amendments to the pleadings shall be permitted.

3. Admissions and Stipulations

- A. The Court has jurisdiction over the parties and the subject matter.
- B. Venue is proper in Sumner County, Kansas.
- C. The following documents may be submitted as evidence without the necessity of showing additional foundation:
 - i. The Court's file from *Case No. 14-CV-115, S. J. Glaves, Trustee of the S. J. Glaves Revocable Trust under agreement dated September 28, 1990 v. Endeavor Energy Resources, L.P., et al.*
 - ii. Records from the Kansas Corporation Commission that have been date-stamped received.
- E. Plaintiffs are sophisticated oil and gas professionals that are held to exercise a degree of care that is the same level of care that other sophisticated oil and gas professionals would use under similar circumstances
- D. At all relevant times, defendant James Haver knew of the existence of all 84 wells on the Prospect, including all 33 Orphan Wells.
- F. Witnesses listed by one party may be called by the other party.
- G. Exhibits listed by one party may be utilized by the other party.

4. Witnesses

PLAINTIFFS

- A. Cherl Prince, 110 N Marienfield Street, Suite 200, Midland, TX.
- B. Jess Gilmour, 400 N Marienfield Street, Suite 109, Midland, TX.
- C. Jim Remsberg, P.E. (Designated Expert), 1313 N Webb Road, Suite 210, Wichita, KS.
- D. Wayne Newkumet, 500 W Texas, Suite 1410, Midland, TX.
- E. Joe Driskill, 10 S Elm, Delaware, OK.
- F. Bruce Locke, 10 S Elm, Delaware, OK.
- G. James M.C. Haver, Defendant
- H. Lester Sheets, T&L Well Service, LLC, 102 S Main Street, Tonkawa, OK 74653

DEFENDANTS

- a. James Haver, reachable through undersigned;; and
- b. Wayne Newkumet, reachable through counsel for Plaintiffs;; and
- c. Martin Black, (designated expert)
- d. David Trumbo, (designated expert); and
- e. Pumpers of the wells that were the subject of the transaction;

Ronnie Blaylock
PO Box 145
South Haven, KS 67140
(620) 446-0397, and

Pedro Gauna
901 N. Briarwood Rd.
Derby, KS 67037
(316) 304-4108; and

- h. Darren Broyles; and
- i. Service providers and vendors;

Jim Newkumet
Oklahoma City, Oklahoma City,

- j. Mr. Remsberg; and
- k. Jon Schlatter, as a post trial matter in the event the jury finds the attorneys' fees attributable to litigation are recoverable by Plaintiffs; and
- l. Brad Bates; and
- m. Joe Driskill.

5. Exhibits

The parties shall exchange marked exhibits on or before October 31, 2017. Any objection a party has to the exhibit of the other party shall be made to the Court on or before November 14, 2017. The Court shall hold a hearing in the Sumner County District Court at 9:30 a.m. on November 28, 2017, to rule on any such objections.

Exhibits have been exchanged.

6. Motions

Plaintiffs' motion for leave to amend to add a claim for punitive damages against Defendant Haver is GRANTED.

7. Trial

Trial is scheduled for two calendar weeks beginning Tuesday, January 9, 2018 and concluding January 19, 2018. Trial shall be to a jury of 12 with a verdict rendered by not less than 10. The case shall receive priority setting due to the number of out of state witnesses.

8. Guardian *ad litem*

None

9. Expert or Cumulative Witness Limitations

None

10. Findings of Law and Issues of Fact

Findings of Fact

- A. The wells situated on the Horton lease and the Walin-Stalnaker lease were not part of the transaction at issue, and Plaintiffs may not bring claims against Defendants related to those wells in this lawsuit.

Issues of Fact from Plaintiffs

- A. Did Defendants breach the PSA when they failed indemnify Plaintiffs for the expense of plugging the Orphan Wells in accordance with Kansas law and regulations?
- B. Did Defendants breach the PSA when they failed to defend and indemnify Plaintiffs from the KCC enforcement proceedings?
- C. Did Defendants breach PSA when they failed to defend and indemnify Plaintiffs from the Graves litigation?
- D. Should the Orphan Wells have been plugged and abandoned prior to the effective date of the PSA (September 1, 2011)?
- E. Were the KCC enforcement proceedings and Graves litigation attributable to operations before the effective date of the PSA (September 1, 2011)?
- F. Did Defendants bargain for, and did Plaintiffs knowingly assume, the obligation to plug the Orphan Wells under the terms of the PSA?
- G. Were Plaintiffs entitled to assume that Defendants operated the Orphan Wells in compliance with Kansas laws and regulations?
- H. Were Defendants unjustly enriched when they transferred massive well plugging liability to Plaintiffs without payment of consideration?
- I. Did Defendants intentionally communicate false or untrue statement of fact to Plaintiffs or fail to communicate material facts to Plaintiffs?
- J. Did Plaintiffs reasonably rely and act upon the false or untrue statements of fact made by Defendants?
- K. Were Plaintiffs justified in relying upon Defendants to communicate material facts to Plaintiffs?
- L. When did Plaintiffs first suffer substantial injury as a result of Haver's fraudulent conduct, and when did Plaintiffs discover or should have discovered Haver's fraud?
- M. When did Plaintiffs first suffer more than paper damages as a result of Haver's fraud?

- N. What amount of contractual damages are Plaintiffs entitled to in contract?
- O. What amount of damages for unjust enrichment are Plaintiffs entitled to?
- P. What amount of damages for Haver's fraud are Plaintiffs entitled to?
- Q. What amount of punitive damages are Plaintiffs entitled to?
- R. Are Defendants entitled to recover damages from Plaintiffs in the event a judgment is awarded to Plaintiffs against Defendants for the costs to plug the Orphan Wells?
- S. What amount of damages are Defendants entitled to recover from Plaintiffs under the PSA?

Issues of Fact from Defendants

The defendants believe that most or all of the issues of fact are stated by their factual contentions, beginning at page 12, above. To reduce the likelihood of an issue not being understood to be in contention, the following additional issues of fact are identified:

- A. When did Plaintiffs have actual knowledge of the "orphan" wells?
- B. Whether Plaintiffs would have discovered the "orphan" wells and the associated plugging liability through the exercise of reasonable diligence.
- C. Whether any Plaintiff justifiably relied upon Haver or his companies to communicate material facts relating to the transaction.
- D. Whether any Plaintiff suffered damages as a result of Haver or his companies' failure to communicate the material facts to the Plaintiff.
- G. What caused any cost or loss?
- H. What was the amount of any cost or loss suffered by Plaintiffs which was caused by any of the Defendants?
- I. When did the plaintiffs have actual or constructive knowledge of the open wellbores and any liability associated with those wellbores?
- J. What is the reasonable cost of plugging an open well in this area?

- K. [Omitted.]
- L. [Omitted.]
- M. Do the cased, non-productive wellbores have value?
- N. Are the claims in the Graves litigation “attributable to operations?”
- O. [Omitted.]
- P. Did Plaintiff Newkumet assume all plugging responsibilities for wellbores on the leases that are the subject of the PSA?
- Q. [Omitted.]
- R. [Omitted.]
- S. Is the cause of Plaintiffs’ claims in this case actually related to the substantial drop in oil and gas prices over the course of the last six years?
- T. [Omitted.]
- U. [Omitted.]
- W. What well files were picked up by Plaintiffs at closing?
- X. When were the T-1s sent to Newkumet and in what form were they sent?

11. Findings of Law and Issues of Law

Findings of Law

The Court makes the following findings of law:

- A. Plaintiffs Endeavor Energy Resources, L.P., Joe Driskill, and Bradley Bates are the principals of agent Plaintiff Newkumet Exploration, Inc. from the inception of the negotiations, and may enforce the PSA against Entity Defendants.
- B. The indemnification provision of the purchase and sale agreement does not contain a “tender” requirement, and Plaintiffs were not required to tender defense of the KCC enforcement proceedings or Graves litigation to Defendants as a prerequisite to being entitled to indemnification.
- C. The terms of the PSA are ambiguous and parole evidence shall be permitted to interpret the terms of the PSA.

- D. Entity Defendants are granted summary judgment on Plaintiffs' implied indemnity claim.
- E. Plaintiffs and Defendants are not entitled to rescission of the PSA as a remedy for breach of that agreement.
- F. Summary judgment is granted to Defendant Hartman on Plaintiffs' claims against him.
- G. Defendants' counterclaim against Plaintiffs is dismissed

Issues of law from plaintiffs

- A. When did the statute of limitations for Plaintiffs fraud claim against Haver begin to accrue?
- B. When did Plaintiffs unjust enrichment claim against Haver begin to accrue?
- C. Was the responsibility to plug the Orphan Wells attributable to operations prior to the effective date of the PSA (September 1, 2011)?

Issues of law from defendants

The defendants believe that most or all of the issues of law are clearly stated by their contentions above beginning at page 12. To reduce the likelihood of an issue not being understood to be in contention, the following additional issues of law are identified:

- A. Whether Haver or his companies were under a duty to communicate material facts relating to the transaction to any Plaintiff.
- B. [Omitted.]
- C. Should the PSA be construed against any party?
- D. Is Remsberg qualified to offer an opinion based upon his limited review of information and the limited information provided to him by Morris Laing?
- E. What is the extent of the privilege with respect to communications between Remsberg and Morris Laing?
- F. [Omitted.]
- G. Is any tolling of the statute of limitations appropriate based upon the facts of this case and what facts will support a tolling?

- H. Does the specific govern the general in interpretation of the PSA?

Mixed Issues of Law and Fact from Defendants

- A. When did the fraud statute of limitations begin to run?
- B. When did the unjust enrichment statute of limitations begin to run?
- C. When did Plaintiffs have constructive knowledge of the “orphan” wells?
- D. Whether the indemnification provision in the PSA permits recovery of any damages arising directly or indirectly from plugging expenses.
- E. Whether the indemnification provision in the PSA permits recovery of attorney fees.
- F. Are plugging responsibilities “attributable to operations”?
- G. Whether the Graves action is a claim “attributable to operations”?

12. Questions of Evidence or Procedure

Motions *in limine* shall be filed on or before December 6, 2017. Responses to motions *in limine* shall be filed by December 13, 2017. The Court shall hold a hearing in the Sumner County District Court at 9:30 a.m. on December 20, 2017, to hear arguments and rule on motions *in limine*.

Objections concerning exhibits will be heard during the hearing described above in Section 5.

All other motions concerning evidence or procedure shall be filed on or before January 2, 2017.

Counsel for the parties will work together to generate the final pretrial order. Objections and disputes concerning the final pretrial order will be heard during the December 20, 2017 hearing.

Plaintiffs shall furnish to Defendants the invoices supporting their summary of plugging costs.

13. Jury Instructions

The parties shall exchange proposed jury instructions on or before December 6, 2017. Objections to proposed jury instructions shall be filed by December 13, 2017. The Court shall hold a hearing in the Sumner County District Court at 9:30 a.m. on December 20, 2017, to hear arguments on proposed jury instructions and will thereafter issue a ruling establishing jury instructions.

14. Settlement and Alternative Dispute Resolution

An unsuccessful mediation took place on September 1, 2017. It is unlikely mediation would result in a settlement.

15. Trial Briefs

Trial briefs, if any, must be submitted by December 27, 2017.

16. Other Matters

- A. Defendants may further depose Plaintiffs Expert Witness, Jim Remsburg. The deposition shall be limited in scope to questioning concerning the errata Mr. Remsburg submitted correcting his earlier deposition testimony. Defendant Haver's expert, David Trumbo, may accompany counsel to that deposition.
- B. Defendants are permitted to conduct the trial depositions of Jim Newkumet and Lester Sheets, and Plaintiffs' motion for protective order concerning the same is denied. Documents produced during the trial depositions of Jim Newkumet and Lester Sheets are not admissible as direct evidence.

C. Plaintiffs shall itemize the incidents of fraud committed by Haver and submit the itemization to Defendants on or before October 13, 2017.

D. All of Defendants' affirmative defenses are stricken except the affirmative defense of statute of limitations with respect to Plaintiffs' fraud claim and unjust enrichment claim.

17. Orders

In addition to the foregoing, the Court made these additional orders:

- A. This Pretrial Order supersedes all pleadings and shall control the trial of this matter.
- B. The trial of this case shall be limited to the issues listed; and no deviation therefrom will be permitted except for rebuttal or impeachment purposes or by special order of the court to prevent manifest injustice.

SO ORDERED as of the date of the electric signature on the cover page to this order.

APPROVED:

MORRIS, LAING, EVANS, BROCK &
KENNEDY, CHARTERED

By: /s/ Robert W. Coykendall
Robert W. Coykendall, #10137
Jonathan A. Schlatter, #24848
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Hartman & Moore
P.O. Box 700690
Tulsa, OK 74170-0690

Attorneys for Defendants

**IN THE DISTRICT COURT OF SUMNER COUNTY, KANSAS
THIRTIETH JUDICIAL DISTRICT**

2018 JAN 22 AM 7:39

CLERK OF DISTRICT COURT

BY: *[Signature]*

ENDEAVOR ENERGY RESOURCES, L.P.,)
BRADLEY BATES, JOE DRISKILL, &)
NEWKUMET EXPLORATION, INC.,)

Plaintiffs,)

v.)

Case No. 2015 CV 81

CYCLONE PETROLEUM, INC.,)
HAVECO OIL & GAS PROPERTIES, LLC,)
HBF LIMITED PARTNERSHIP,)
CONCORDE RESOURCES CORPORATION,)
ASHTON GAS GATHERINGS, LLC, &)
SUNDANCE OIL & GAS, LLC,)
JAMES M.C. HAVER,)

Defendants.)

Pursuant to K.S.A. Chapter 60

INSTRUCTIONS BY THE COURT

INSTRUCTION NUMBER: 1

MEMBERS OF THE JURY: It is your duty to follow these instructions. These instructions are the law in this case and they all must be considered and applied to the evidence.

You must consider and weigh only evidence which was admitted during the trial, including exhibits, admissions, stipulations, and witness testimony either in person or by deposition.

During the trial I have ruled upon objections to the admission of evidence. You must not concern yourselves with the reasons for these rulings and you must consider only the evidence which is admitted. I have not intended to indicate any opinion as to what your verdict should be by any ruling that I have made or anything that I have said or done.

Statements and arguments of counsel are not evidence, but may help you understand the evidence and apply the law. However, you should disregard any comments of counsel that are not supported by the evidence.

You must decide this case without favoritism for or prejudice against any party. Sympathy should not influence your decision.

Corporations are entitled to the same fair and impartial treatment as an individual.

Whenever the word "he" is used in these instructions, you may consider it as applying equally to a woman or an entity, such as a corporation. Also, the use of the singular of a word may be taken equally to mean the plural.

INSTRUCTION NUMBER: 2

Burden of proof means burden of persuasion.

For most kinds of claims, the party that has the burden to prove a claim must persuade you that the claim is more probably true than not true. This standard governs plaintiffs' contract and unjust enrichment claims.

It is the law of this state that to prove fraud it is necessary for the party claiming fraud to prove it by evidence that is clear and convincing. Evidence is clear and convincing if it shows that the truth of the fact asserted is highly probable. This standard governs plaintiffs' fraud claims.

In deciding whether the required burden of proof has been met, you must consider all admitted evidence, whether presented by the plaintiff or the defendant.

INSTRUCTION NUMBER: 3

It is for you to decide whether the testimony of each witness is believable and what weight to give that testimony. In making these decisions, you have a right to use your common knowledge and experience.

INSTRUCTION NUMBER: 4

Certain testimony has been given in this case by experts. Experts are persons who, from experience, education or training have specialized knowledge on matters not common to people in general. The law permits experts to give their opinions about such matters. The testimony of experts is to be considered like any other testimony and is to be evaluated by the same tests. You should consider it in connection with all the other facts and circumstances. You should give it the weight and credit you determine are appropriate.

INSTRUCTION NUMBER: 5

Plaintiffs claim that they sustained damages due to the breach of a contract by the corporate defendants. Plaintiffs also claim that they assumed costs and burdens that were properly the costs of the defendants, such that the defendants were unjustly enriched. Plaintiffs further claim that the defendants' actions constituted fraud. What Plaintiffs need to show to recover on these claims is explained in instructions No. 6, 8, 10 and 11.

Plaintiffs have the burden to prove their claim of breach of contract or unjust enrichment claim is more probably true than not true. Plaintiffs have the burden to prove their claim of fraud by clear and convincing evidence.

The corporate defendants deny that they breached their contract with plaintiffs. The defendants deny that the actions of the plaintiffs unjustly enriched them. All defendants deny that their actions constituted fraud. In addition, the defendants assert the affirmative defense of statute of limitations to the claims for unjust enrichment and fraud. What the defendants need to prove to succeed on their defenses are stated in Instructions No. 9 and 13.

The defendants have the burden of proving their defenses of statute of limitations by a preponderance of the evidence.

INSTRUCTION NUMBER: 6

A contract is an agreement between two or more persons consisting of sets of promises that are legally enforceable.

There is no dispute in this case that a contract between plaintiffs and the corporate defendants existed. The parties entered into the Purchase and Sale Agreement, and related assignments. Plaintiffs and defendants disagree whether the corporate defendants breached the contract, and if so whether plaintiffs were damaged by that breach.

In this case, the parties disagree on the meaning of the contract. On the one hand, the plaintiffs contend that the corporate defendants promised, as stated in the Additional Provisions, that they would “indemnify, defend, and hold [Plaintiffs] harmless for all complaints, charges, enforcement proceedings or litigations attributable to operations prior to” September 1, 2011. Plaintiffs contend that this provision requires the corporate defendants to bear the costs of (1) the lawsuit that was brought by the landowner against Endeavor to cancel an oil and gas lease that the defendants had assigned the plaintiffs (the *Glaves* case); (2) the enforcement action brought by the KCC and resulting plugging costs stemming from the “orphan wells” that were on the leases, and (3) the attorney fees that were incurred in this case.

The defendants deny that these costs are “attributable to operations” prior to September 1, 2011, and further contend that the parties intended that all plugging costs were to be assumed by the Plaintiffs pursuant to a provision that is included in the paragraph titled EFFECTIVE DATE. The provision states: Plaintiffs are “entitled to all production and [are] responsible for all expenses and liabilities (including plugging costs and liabilities associated with the wells on the Leases described in ‘Exhibit A’) with

INSTRUCTION NUMBER: 6 (continued)

respect to the properties from and after" September 1, 2011. Plaintiffs deny that they ever intended to assume plugging liabilities for the "orphan wells".

The Court has found that the Contract is ambiguous, meaning that it can be read to have more than one meaning. It is your duty to determine what the parties to this contract intended their respective rights and obligations about these matters to be. This requires you to consider all of the evidence and determine what the parties intended when they agreed to the contract.

INSTRUCTION NUMBER: 7

If you find for plaintiffs on their breach of contract claim, then you should award plaintiffs the sum you find will fairly and justly compensate them for the damages you find were sustained as a direct result of the breach of contract by the corporate defendants.

In determining plaintiffs' damages you should consider any of the following elements of damage that you find were the result of the breach:

1. Cost to locate and plug wells, and to restore the surface to its original condition.
2. Cost to defend the KCC enforcement proceedings, including reasonable attorneys' fees and costs.
3. Cost to defend the *Glaves* litigation, including reasonable attorneys' fees and costs.

In addition, it is your obligation to determine if attorney fees incurred by the plaintiffs in the present case were the result of a breach of the contract by the corporate defendants. The parties have agreed that if you find for the Plaintiffs, the Judge will set the amount of the attorney fees.

INSTRUCTION NUMBER: 8

Plaintiffs claim to have benefited the corporate defendants by paying to plug wells that defendants were under an obligation by Kansas law to plug.

The elements for an unjust enrichment claim are that a benefit was conferred on defendants, defendants appreciated or knew of the benefit, and defendants accepted or retained the benefit under such circumstances as to make it inequitable to retain the benefit without payment of its value.

The substance of an action for unjust enrichment lies in a promise in law that one will restore to the person entitled that which in equity and good conscience belongs to him.

The corporate defendants deny that any benefit was conferred other than what was called for in the PSA and contend that the amounts expended on litigation and enforcement proceedings and plugging orphan wells were unreasonably high.

INSTRUCTION NUMBER: 9

Defendants contend that plaintiffs did not file their unjust enrichment claim within the time set by law. To succeed on this defense, defendants must prove by a preponderance of the evidence that plaintiffs' injuries, if any, resulted prior to August 12, 2012, which is three years before they filed this suit.

The statute of limitations on an unjust enrichment claim in Kansas is three years. The statute of limitations begins when a claim has accrued. A claim for unjust enrichment accrues when all of the elements are present and the plaintiff could have filed and maintained a successful lawsuit. Therefore, this claim did not accrue in this case until all three elements given in the prior instruction were met. Kansas law specifies that a cause of action for unjust enrichment does not accrue when the enrichment occurs, but only when the enrichment becomes unjust.

Defendants contend that more than three years before filing this suit, any injury alleged by plaintiffs had already occurred.

Plaintiffs contend that they did not have knowledge of the well plugging liability due to defendants' misconduct, and that the enrichment defendants' obtained was not unjust until such time as plaintiffs had to incur costs to plug wells and defend itself from the KCC enforcement action, which was less than three years before plaintiffs filed the unjust enrichment claim.

If you find that the injuries claimed by the plaintiffs began accruing prior to August 12, 2012, you must rule in favor of defendants as to plaintiffs' unjust enrichment claim on the basis that it is barred by the statute of limitations. If you find

INSTRUCTION NUMBER: 9 (CONTINUED)

that the injuries claimed by the plaintiffs began accruing after August 12, 2012, you must deny defendants' statute of limitations claim.

INSTRUCTION NUMBER: 10

The essential elements required to sustain an action for fraud are:

1. That false or untrue representations were made as a statement of existing and material fact.
2. That the representations were known to be false or untrue by the party making them, or were recklessly made without knowledge concerning them.
3. That the representations were intentionally made for the purpose of inducing another party to act upon them.
4. That the other party reasonably relied and acted upon the representations made.
5. That the other party sustained damage by relying upon them.

A representation is material when it relates to some matter that is so substantial as to influence the party to whom it was made.

INSTRUCTION NUMBER: 11

The plaintiff claims fraud through silence on the part of the defendant. To constitute fraud by silence the plaintiff must prove:

1. The defendant has knowledge of material facts which plaintiff did not have and which the plaintiff could not have discovered by the exercise of reasonable diligence;
2. The defendant was under an obligation to communicate the material facts to the plaintiff;
3. The defendant intentionally failed to communicate to plaintiff the material facts;
4. The plaintiff justifiably relied upon the defendant to communicate the material facts to the plaintiff; and
5. The plaintiff sustained damages as a result of the defendant's failure to communicate this to the plaintiff.

A fact is material if it is one to which a reasonable man would attach importance in determining his or her choice of action in the transaction in question.

A party is justified in relying without investigation upon another to communicate the facts material to a transaction unless he or she knows or has reason to know of facts which make his or her reliance unreasonable.

INSTRUCTION NUMBER: 12

In this case the plaintiffs claim the defendants acted in a fraudulent manner toward plaintiffs. If you award the plaintiffs actual damages, then you may consider whether punitive damages should be allowed. Punitive damages may be allowed in the jury's discretion to punish a defendant and to deter others from like conduct.

The plaintiffs must prove by clear and convincing evidence that the defendant acted in a fraudulent manner toward plaintiffs. Evidence is clear and convincing if it shows that the truth of the fact asserted is highly probable.

If you find the defendants did one or more of the acts claimed by the plaintiffs you should then determine whether the plaintiffs have presented clear and convincing evidence that the defendants acted in a fraudulent manner toward plaintiffs. If you determine punitive damages should be allowed, your finding must be entered in the verdict form. After the trial, the court will conduct a separate hearing to determine the amount of punitive damages to be allowed.

INSTRUCTION NUMBER: 13

Defendants contend that plaintiffs did not file their fraud claim within the time set by law. To succeed on this defense, defendants must prove by a preponderance of the evidence that plaintiffs' injuries, if any, resulted prior to two years before they filed this suit.

The statute of limitations on a fraud claim in Kansas is two years. The statute of limitations begins when a claim has accrued. A claim in a fraud lawsuit accrues at the later of: 1) the time of the fraudulent act; 2) when the plaintiff suffers substantial injury (that is reasonably ascertainable); or 3) when the plaintiffs discover, or should have discovered, the essential material facts of the fraud. The phrase "reasonably ascertainable" requires application of an objective standard that takes into account all of the surrounding circumstances. The plaintiffs are charged with any and all knowledge of any and all employees and agents of any plaintiff acting within the scope of their authority.

Defendants contend that prior to August 12, 2013, plaintiffs had either actual knowledge of the unplugged orphan wells and the condition of said wells, or they could have had knowledge by the exercise of reasonable diligence.

Plaintiffs contend that they did not have knowledge of defendants' fraud and exercised reasonable diligence, but also contend that they were not damaged until the KCC commenced enforcement proceedings against plaintiffs to plug the wells, which was after August 12, 2013.

INSTRUCTION NUMBER: 13 (CONTINUED)

If you find that the injuries claimed by the plaintiffs began accruing prior to August 12, 2013, you must rule in favor of defendants as to plaintiffs' fraud claim on the basis that it is barred by the statute of limitations. If you find that the injuries claimed by the plaintiffs began accruing after August 12, 2013, you must deny defendants' statute of limitations claim.

INSTRUCTION NUMBER: 14

The parties have agreed upon certain facts that you are instructed to consider as true. These agreed facts, called stipulations, are as follows:

1. At all relevant times, defendant James Haver knew of the existence of the “orphan wells” on the leases.
2. Plaintiffs are sophisticated oil and gas professionals that are held to exercise a degree of care that is the same level of care that other sophisticated oil and gas professionals would use under similar circumstances.

INSTRUCTION NUMBER: 15

When you retire to the jury room you will first select one of your members to preside over your deliberations, speak for the jury in court, and sign the verdict upon which you agree.

In this case your verdict will be returned in the form of written answers to special written questions submitted by the court. Your answers will constitute your verdict.

Your answer to each question must be by the agreement of ten or more jurors.

Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

01/19/2018
Date

[Signature]
District Judge

IN THE DISTRICT COURT OF SUMNER COUNTY, KANSAS
THIRTIETH JUDICIAL DISTRICT

2016 JAN 19 PM 4:31

ENDEAVOR ENERGY RESOURCES, L.P.,
BRADLEY BATES, JOE DRISKILL, &
NEWKUMET EXPLORATION, INC.,

Plaintiffs,

v.

CYCLONE PETROLEUM, INC.,
HAVECO OIL & GAS PROPERTIES, LLC,
HBF LIMITED PARTNERSHIP,
CONCORDE RESOURCES CORPORATION,
ASHTON GAS GATHERINGS, LLC, &
SUNDANCE OIL & GAS, LLC,
JAMES M.C. HAVER,

Defendants.

COURT CLERK

BY: *[Signature]*

Case No. 2015 CV 81

Pursuant to K.S.A. Chapter 60

VERDICT

We, the jury, impaneled and sworn in the above entitled case, upon our oaths, do make the following answers to the questions propounded by the court:

1. Do you find that the corporate defendants breached their contract with plaintiffs?

Yes _____

No X

2. Do you find that the plaintiffs are entitled to recover their attorney fees in this case as a result of a breach of contract by the defendants?

Yes _____

No X

3. Do you find that the plaintiffs are entitled to recover under their unjust enrichment claim?

Yes _____

No X

4. Do you find that the plaintiffs are entitled to recover under their fraud claim against the defendants?

Yes _____

No X

5. Do you find that plaintiffs are entitled to recover under their fraud by silence claim against the defendants?

Yes _____

No X

6. If you answered 'yes' to question 1, 3, 4, or 5, what amount of damages do you find was sustained by plaintiffs?

a. Cost to locate and plug wells, and to restore the surface to its original condition: \$ 0

b. Cost to defend KCC enforcement proceedings, including reasonable attorneys' fees and costs: \$ 0

c. Cost to defend the *Glaves* litigation, including reasonable attorneys' fees and costs: \$ 0

Total Damages [add a + b + c]: \$ 0

7. If you answered 'yes' to questions 4 or 5, do you find that punitive damages should be assessed against defendants for fraud?

Yes _____

No X

Agreement on each of the above questions was by ten or more jurors?

Yes X

No _____

K. E. Smith
Presiding Juror

Rita Lowe

From: Wayne Newkumet <wnewkumet@gmail.com>
Sent: Friday, May 20, 2016 12:33 PM
To: Carnella Anderson
Subject: Fwd: Field Superintendent will call

81

Wayne Newkumet



Newkumet Exploration, Inc.
P.O. Box 11330
Midland, Texas 79702
(o) 432-687-1101
(c) 432-288-3000



Forwarded message

From: Jim Newkumet <jimnewkumet@sbcglobal.net>
Date: Thu, Oct 6, 2011 at 12:56 PM
Subject: Ré: Field Superintendent will call
To: Wayne Newkumet <wnewkumet@gmail.com>, jim newkumet <jimnewkumet@cox.net>

OK thats cool , no Tulsa tomorrow.

Original Message

From: Wayne Newkumet
To: JIM NEWKUMET
Sent: Thursday, October 06, 2011 12:49 PM
Subject: Re: Field Superintendent will call

Jim, Go through me, I think too many people calling and emailing. Let me get it closed tomorrow. Endeavor will pick up files and make their copies and then ship to you. You can visit with Haver anytime after I get it closed

Wayne Newkumet
PO Box 11330
Midland, Texas 79702
O) 432-687-1101
C) 432-288-3000

May the Lord richly bless both you and your children. May you be blessed by the Lord who made heaven and earth. Ps 115:14-15

On Oct 6, 2011, at 11:17 AM, JIM NEWKUMET <jimnewkumet@sbcglobal.net> wrote:

Hello Brad and Mr. Haver, Brad and Joe at endeavor , Joe , if you wish to take the well file boxes to your office, then I would like to coordinate a time when I could come to your office and spend a day or so and copy all mudlogs , logs, any non IHS production data, any water

production data , any daily drilling and completion or recompletion reports , any type of seismic and in particularly any possible dip meters. I will carefully copy this geologic info and place it exactly back the way it was. Another alternative would be for me to take the boxes in my pickup truck back to OKC and carefully copy any info that will help me as the geologist and place it carefully and exactly back in the boxes and ship them to you. Either way is fine. Also Hello Mr. Haver, I would like to come up and meet all the guys from Endeavor and meet you . I dont want to take up alot of your time but it would be good just to meet you and the endeavor guys. Mr. Haver when convenient for you , would you mind replying to me with your address . I dont want to take up your time , but I would be interested in hearing your ideas and thoughts on what could be drilled or recompleted and if your schedule is busy , then I will just meet you and head out. If you have Manny redifers email or phone , I am curious if he has some old maps that he would not mind me copying or he may want to keep his work confidential, I understand either way. When you hear from Joe and Joe when you guys line up your time , please send me an email jimnewkumet@sbcglobal.net or call my cell 405 919 7291. Thanks guys and let me know of your agendas . And Joe if you want to take the boxes with you , then hopefully you and I can line up a time for me to come by and copy helpful geological stuff or as I mentioned , I could take them back to OKC and carefully and in a timely fashion copy my needs and send the boxes to wherever you would like. If that is possible that I could take the boxes, that is very convenient in that I have a good fast copy machine and would copy my info of interest and carefully put it back in the boxes and ship them to you in a very timely fashion. But you as I may be wanting to work on it and you may need to be going through the boxes yourself. I understand . Lets all keep our lines of communication open in that we need to work together and make this a good profitable venture for us all. thanks Regards Jim Newkumet.

From: Wayne Newkumet <wnewkumet@gmail.com>
To: James Haver <lordhaver@hotmail.com>
Cc: Jim Newkumet <jimnewkumet@sbcglobal.net>; "brad@eeronline.com" <brad@eeronline.com>
Sent: Thu, October 6, 2011 10:24:53 AM
Subject: Field Superintendent will call

Jim, Joe from Endeavor will be calling you to come over to get copies from files. When you set up the time, please let Me and Jim Newkumet know as Jim Newkumet would like to attend.
Wayne

Wayne Newkumet
PO Box 11330
Midland, Texas 79702
O) [432-687-1101](tel:432-687-1101)
C) [432-288-3000](tel:432-288-3000)

May the Lord richly bless both you and your children. May you be blessed by the Lord who made heaven and earth. Ps 115:14-15