

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

In the matter of whether the license of Thor) Docket No. 24-CONS-3001-CSHO
Operating, LLC (Operator) should be revoked.)
) CONSERVATION DIVISION
)
) License No. 36020

In the matter of the failure of Quito, Inc.) Docket No. 24-CONS-3072-CPEN
(Operator) to comply with K.A.R. 82-3-120.)
) CONSERVATION DIVISION
)
) License No. 33594

In the matter of the failure of Quito, Inc. and/or) Docket No. 24-CONS-3086-CMSC
Thor Operating, LLC to comply with K.A.R.)
82-3-120 and K.A.R. 82-3-133.) CONSERVATION DIVISION
)
) License No. 33594 & 36020

**RESPONSE TO MOTION OF THOR OPERATING, LLC
FOR SUMMARY JUDGMENT**

Comes Now Staff of the Kansas Corporation Commission (Staff and Commission, respectively), in response to the Motion for Summary Judgment (Motion) submitted by Thor Operating, LLC (Thor) on May 10, 2024, regarding Docket 24-CONS-3001-CSHO (Docket 24-3001) and Docket 24-CONS-3086-CMSC (Docket 24-3086). Staff respectfully requests that Thor's Motion be denied. In support of its response, Staff states the following:

1. Kansas courts have determined that summary judgment is appropriate when the documentation on file shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.¹ The court is required to resolve all facts and inferences which may be reasonably drawn from the evidence in favor of the party against

¹ *Matter of Est. of Brodbeck*, 22 Kan. App. 2d 229, 235, 915 P.2d 145, 150-151 (1996).

whom summary judgment is sought.² When reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied.³

2. Kansas law provides the Commission the exclusive jurisdiction and authority to regulate oil and gas activities in Kansas.⁴ Under K.S.A. 55-152, the Commission is provided with the jurisdiction to regulate the construction, operation, and abandonment of any well, and also the protection of the usable water of this state from any actual or potential pollution from any well. K.S.A. 55-155 gives the Commission authority to license oil and gas operators. Additionally, the Commission has previously found that it has broad authority under K.S.A. 74-623, K.S.A 55-604, and K.S.A. 55-704 to approve or deny forms submitted by operators.⁵

Docket 24-CONS-3001-CSHO

3. On July 3, 2023, Commission Staff filed a show cause motion requesting the designation of a presiding officer and the scheduling of a prehearing conference. Staff raised two issues in its motion. First, Staff took the position that Thor's operator license needed to be revoked due to the connections between Mr. Scott Goetz, who is listed as the sole member of Thor, and Mr. Mark McCann of Quito, Inc. (Quito). Second, Staff took the position that Thor's request to transfer wells onto its license from Quito should be denied.

4. Operator's Motion states that although the authority of the Commission to regulate various aspects of the oil and gas industry is broad, it is not limitless.⁶ As stated above, the Commission has the exclusive jurisdiction and authority to regulate oil and gas activities in Kansas.

² *Id.*

³ *Id.*

⁴ See K.S.A. 74-623.

⁵ See Docket 23-CONS-3109-CPEN, *Final Order*, ¶30 (Oct. 3, 2023).

⁶ Motion of Thor Operating, LLC for Summary Judgment, p. 4 (May 10, 2024).

The Commission also has authority over the licensing of operators and authority to approve or deny forms, including Request for Change of Operator (T-1) forms, submitted by operators.

5. Under K.S.A. 55-155(c)(4), operators not registered with the federal securities and exchange commission are required to show to the Commission's satisfaction that (A) the applicant, (B) any officer, director, partner, or member of the applicant; (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in-law comply with all requirements of chapter 55 of the Kansas Statutes Annotated and amendments thereto, all rules and regulations adopted thereunder and all commission orders and enforcement agreements. Operator's Motion states that nothing in Staff's Motion suggests that Thor did not comply with any of those four subparts in obtaining an operator's license.⁷ However, Staff's motion stated that Staff sought the opportunity to further investigate the applicability of K.S.A. 55-155(c)(4) and K.A.R. 82-3-120(g)(2).⁸ Here, there is evidence that shows that while Mr. McCann may not be officially listed on Thor's license he has the ability to direct Thor's actions and control over what actions Thor can and cannot take.

6. When the T-1 forms at issue were submitted, there were operating agreements attached to each form. The operating agreement attached to the T-1 form for the Sears Lease was included with Mr. Troy Russell's pre-filed direct testimony.⁹ The operating agreement attached to Mr. Russell's testimony is between Thor and Kansas Production Company, Inc., which is another company registered to Mr. McCann. The operating agreement shows that Thor is subject to Mr. McCann's direction. For example, paragraph 2 of the Operating Agreement provides that Kansas Production Company is responsible for all costs and liabilities incurred in operations under

⁷ *Id.* at p. 7.

⁸ Docket 24-CONS-3001-CSHO, Motion for the Designation of a Presiding Officer and the Scheduling of a Prehearing Conference, ¶4 (July 3, 2023).

⁹ Pre-Filed Testimony of Troy Russell on Behalf of Commission Staff, Exhibit TR-1 (May 17, 2024).

this agreement.¹⁰ Paragraph 7 provides that no well shall be drilled, deepened, re-worked or plugged back without the consent of all parties if the reasonably estimated cost is in excess of the sum of \$5,000.¹¹ Paragraph 8 provides that without the consent of the remaining parties, no party shall sell, encumber, transfer or make other disposition of its interest in the leases, wells, equipment and production unless such disposition covers the entire interest of the party in all leases, equipment and production.¹² The verbiage from the physical contractual agreement indicates that Mr. McCann still has a say over what actions Thor can take at his leases.

7. Additionally, through the process of discovery, Staff obtained text message communications between Mr. McCann and Mr. Goetz after the leases were supposedly transferred to Thor. The messages provided appear to indicate that Mr. McCann is still actively involved in the operation of the leases, and that Mr. Goetz's work on the lease is akin to a pumper's.¹³ For example, one message from Mr. McCann to Mr. Goetz stated that they were pulling the Sears #2 well, that they needed to determine why it failed, and that it never made oil since the last time it was pulled.¹⁴ In another message, Mr. McCann directed Mr. Goetz to focus on getting the Morton lease fixed and running and changing a pulley at the Dearmond lease.¹⁵ A different message indicates that Mr. McCann is also working on the leases. The message from Mr. McCann stated that he had to shut the Morton lease down due to a tank and swivel leaking.¹⁶ There is also communication from Mr. Goetz to Mr. McCann seeking direction on whether Mr. McCann wanted the pump jack to run slower.¹⁷ These communications among others are a clear indication that

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Exhibit A.

¹⁴ *Id.* at p. 1 of 16.

¹⁵ *Id.* at p. 3 of 16.

¹⁶ *Id.* at p. 7 of 16.

¹⁷ *Id.* at p. 4 of 16.

Mr. McCann is directing Mr. Goetz/Thor's operations on the leases regardless of the costs involved.

8. Operator's Motion states that Mr. Goetz has never worked for Quito Inc., but both Mr. McCann and Mr. Goetz's testimony acknowledge that Mr. Goetz has worked for other McCann owned companies.¹⁸ Further, there is evidence that Mr. Goetz has appeared on the leases in a representative role for Quito. Both Mr. Duane Sims and Mr. Thad Triboulet testified that Mr. Goetz has appeared on Quito's behalf in order to conduct various integrity tests at Quito's wells.¹⁹ Operator's Motion states that Mr. Mark McCann holds no ownership interest in, and is not an officer, director, partner, or member of Thor.²⁰ However, this situation could be considered comparable to *State ex rel. Fatzer v. Zale Jewelry Co. of Wichita* case where the Court found that Zale Jewelry Company was practicing optometry without a license.²¹ Zale Jewelry rented space within its store to a registered optometrist. The Court found that Zale Jewelry controlled the actions of the optometrist to such a degree that the optometrist was actually an employee of the company. Consequently, the Court found Zale to be practicing optometry without a license. Here, Thor is similarly operating specific wells on behalf of Quito/Kansas Production Company under direction of Mr. McCann who is the sole shareholder of those companies. The evidence suggests that there is a principle-agent relationship where Mr. McCann is improperly conducting oil and gas operations through Thor.

9. K.S.A. 55-155(c) states, "[n]o application or renewal application shall be approved until the applicant has" met the following criteria. The language of the statute clearly creates the

¹⁸ See Direct and Rebuttal Testimony of Mark W. McCann, p. 2:7-3:2 (June 7, 2024); see also Testimony of Scott Joe Goetz, p. 2:16-18 (June 7, 2024).

¹⁹ Pre-Filed Testimony of Duane Sims on Behalf of Commission Staff, p. 3:20-5:6 (May 17, 2024); see also Pre-Filed Testimony of Thad Triboulet of Behalf of Commission Staff, p. 3:22-4:9 (May 17, 2024).

²⁰ Motion for Summary Judgment, p. 3.

²¹ 179 Kan. 628 (1956).

minimum requirements for obtaining a license. If the Kansas Legislature had meant the Commission to automatically grant a license when certain minimum requirements were met, the Legislature could have clearly indicated as much by including language such as, “all applications or renewal applications shall be approved when the applicant has”. By stating in the statute that no license shall be approved “until” the applicant has met several requirements, the Kansas Legislature meant the requirements listed in K.S.A. 55-155 to be a floor, not a ceiling.

10. Further, in order to determine the applicability of K.S.A. 55-155(c)(4) and K.A.R. 82-3-120(g)(2), it is important to look at the purpose behind that statute and regulation. It is reasonable to infer that the purpose behind the statute and regulation is to prevent operators from circumventing their regulatory obligations by having someone close to them obtain a license in order to be able to continue to operate wells. Here, the evidence indicates that Mr. McCann is attempting to use someone close to him in order to continue conducting oil and gas operations in Kansas. Mr. McCann also has a history of being associated with operating companies belonging to family members where wells on the licenses have since been abandoned and placed on the state’s plugging list.²² Here, Mr. McCann chose to operate through a former employee as opposed to a family member. It is no coincidence that Thor submitted a license application right after the Commission issued an order denying Quito’s license renewal. Mr. Goetz’s pre-filed testimony even states, “Thor was formed to operate oil and gas leases formerly operated by Quito, Inc.”²³ Mr. Goetz’s testimony also indicates that Thor specifically picked and chose Quito’s wells which presented the fewest regulatory issues.²⁴ This caused the wells with greater regulatory issues to be left on Quito’s inactive and revoked license. The situation that the Commission has before it is the

²² See McC Oil Company, Inc., License #31411 and Wildcat Energy, Inc., License #31507.

²³ Testimony of Scott Joe Goetz, p. 5:2-3.

²⁴ *Id.* at p. 7:12 - 8:4.

exact situation that the statute intends to avoid. If Thor is allowed to maintain a license and cherry-pick specific wells under Quito's inactive license to transfer to its license, then it would make regulatory enforcement practically impossible. The wells with regulatory issues would remain unaddressed on Quito's inactive license which may never be reissued if Mr. McCann doesn't bring the wells into compliance.

11. Operator's Motion also states that there is no suggestion that Thor or Scott Goetz are non-compliant with the statutes under chapter 55, or the rules and regulations adopted thereunder.²⁵ However, this is incorrect as Thor is subject to the Commission's Shut-In Order in Docket 24-CONS-3086-CMSC (Docket 24-3086). Thor also admits to actively operating the Sears #30 well on July 18, 2023, while the well was not on its license but instead the inactive and revoked license of Quito. Staff's testimony also points out compliance issues with the wells that are listed on the T-1 forms from Quito to Thor, and Staff is skeptical that Thor will be able to maintain any form of compliance based on Mr. McCann's involvement in the lease operations.

12. In conclusion, Commission has the ability to exercise exclusive jurisdiction over the oil and gas industry. This includes operator licensing and the transfer of wells. Considering the facts and evidence in a light most favorable to Staff it is reasonable to believe that there is a potential conflict with the intention of K.S.A. 55-155 regarding Mr. McCann's involvement with the leases at issue. Additionally, there is enough evidence to believe that the transaction between Quito and Thor was not made at arms-length, and that the T-1 forms should be denied by the Commission. The T-1 forms only cover a portion of the wells on the leases at issue. Allowing Thor to continue to have a license and transfer only the productive wells onto its license would allow

²⁵ Motion for Summary Judgment at p. 8.

future operators to avoid compliance by having their employees obtain licenses in order to continue operations and leave undesirable wells on the licenses with compliance issues.

Docket 24-CONS-3086-CMSC

13. On October 3, 2023, the Commission issued a Shut-In and Show Cause Order against Quito for operating wells under an inactive and revoked license and/or Thor for conducting oil and gas operations on wells listed under Quito's inactive and revoked license.²⁶ The Commission's Order in Docket 24-3086 was based on Commission Staff's field inspection report where Staff documented a well in operation on Quito's Sears lease.²⁷ The Commission's Order allowed Staff to seal any of the wells listed under Quito's license and directed Quito and Thor to appear before the Commission to demonstrate why each should not be assessed a \$25,000 penalty.²⁸

14. Operator's Motion states that it is not necessary to determine whether K.S.A. 55-155(f) and K.A.R. 82-3-136 confer authority to review and approve or disapprove such transfers, but that the Commission is limited to only considering whether the new operator has the eligibility to accept the wells being transferred.²⁹ Operator's Motion also states there was no basis under the existing statute and regulations to decline to approve such transfers.³⁰ However, as stated above, the Commission has broad authority under K.S.A. 74-623, K.S.A 55-604, and K.S.A. 55-704 to approve or deny forms submitted by operators, including T-1 forms. There is a distinction between an operator transferring ownership and responsibility for the operation of a well and an operator transferring responsibility for ensuring any given well meets Commission regulatory

²⁶ Shut-In and Show Cause Order, Designating a Presiding Officer and Setting a Prehearing Conference, ¶12 (Oct. 3, 2023).

²⁷ *Id.* at ¶9 and Exhibit A.

²⁸ *Id.* at ¶12-13.

²⁹ Motion for Summary Judgment at p. 12.

³⁰ Motion for Summary Judgment at p. 16.

requirements.³¹ Even if the Commission determined that Thor can have a license, it should still deny the T-1 forms that have been submitted based on the evidence that has been provided. As the evidence clearly indicates that this transaction was not conducted at arms-length. Further, there is information in the record that indicates the T-1 forms would not be processed because Thor had not provided sufficient financial assurance to add wells onto the license, and Staff had submitted its motion in Docket 24-CONS-3001-CSHO (Docket 24-3001) stating that the wells on Quito's leases should not be transferred to Thor. Staff's motion in Docket 24-3001 was filed prior to Staff finding Quito's wells in operation. It is also important to note that Thor has admitted to actively operating the Sears #30 well on July 18, 2023.³²

15. The Motion states that administrative inactivity cannot supply the factual grounds for penalty assessment.³³ However, Staff's position is that there are sufficient facts that support a penalty being assessed. On February 9, 2023, the Commission issued a Final Order in Docket 22-CONS-3115-CMSC affirming its denial of Quito's license renewal application.³⁴ On July 3, 2023, Commission Staff filed a motion in Docket 24-3001 requesting the designation of a presiding officer and the scheduling a prehearing conference for the purpose of determining whether Thor's license should be revoked and to contest the transfer of wells from Quito's license to Thor's. After Staff filed its motion, on July 18, 2023, Staff conducted a field inspection of Quito's Sears lease. All of the wells on the lease were still listed under Quito's inactive and revoked license. While Quito's wells should have been shut-in, Commission Staff found at least one well producing at the

³¹ Docket 23-3109 Final Order at ¶30.

³² Testimony of Scott Joe Goetz, p. 13:11-12.

³³ Motion for Summary Judgment at p. 17.

³⁴ Docket 22-CONS-3115-CMSC, *Final Order* (Feb. 9, 2023).

time of inspection. There is also no indication that Thor received Staff approval to operate the wells listed on the T-1 forms.³⁵

16. Before an operator is allowed to add wells onto its license, it must provide adequate financial assurance. This requirement is necessary as it is required by K.S.A. 55-155(d) and K.A.R. 82-3-120(f). Financial assurance allows Staff to recuperate some of the plugging costs when an operator leaves unplugged wells on its license. Thor in its motion stated that it was an uncontroverted fact that it had provided sufficient financial assurance to Commission Staff. However, that statement is inaccurate based on the testimony that has been provided. Ms. Nancy Borst, in her direct testimony, stated that Thor had not provided sufficient financial assurance because Thor did not follow the specific instructions given to operators who choose to provide a letter of credit as financial assurance.³⁶ Additionally, there is no evidence that Staff approved the letter of credit provided by Thor. In reviewing the letter of credit that was provided by Thor it is clear that Thor did not follow the required instructions of what needed to be included in a letter of credit prior to operating the wells listed under Quito's revoked and inactive license.

17. In conclusion, Thor has failed to show that anything in the Commission's Order in Docket 24-3086 is inaccurate nor provided any reason why a penalty should not be assessed. When viewing the facts in a light most favorable to Staff it is clear that summary judgment should not be granted. Thor would have been aware of Staff's motion regarding its license and the wells it proposed to add to its license at the time that Staff found Quito's wells in operation. Additionally, the Commission was aware that there were pending T-1 forms at the time that it issued its order in Docket 24-3086. Thor has also admitted to operating the wells on Quito's leases. Given the

³⁵ Testimony of Troy Russell, p. 6:10-13; *see also* Testimony of Thad Triboulet, p. 3:19-21.

³⁶ Pre-filed Testimony of Nancy Borst on Behalf of Commission Staff, p. 4:16-5:9 (May 17, 2024).

information provided above it appears inappropriate to grant summary judgment in this docket at this time.

WHEREFORE, for the reasons described above, Staff respectfully requests the Commission deny Thor's Motion for summary judgment and for any other relief the Commission determines to be just and equitable.

Respectfully Submitted,

/s/ Kelcey Marsh

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11:36



Aaa Thor



faster

Ok

Do we have any pipe sold ?

Pump on the McFarland
needs packing. It is a Kerr
duplex. With 1 3/4
plungers

The packing is at shop and
I'm at Pete's

Ok. Next week. Not urgent
today

Ok

We are pulling sears number
2 today. The pump will be
on the back of the red ford.
We need to determine why it
failed. It never made any
oil since last pulling.
Possible pump issue



iMessage

11:34



A

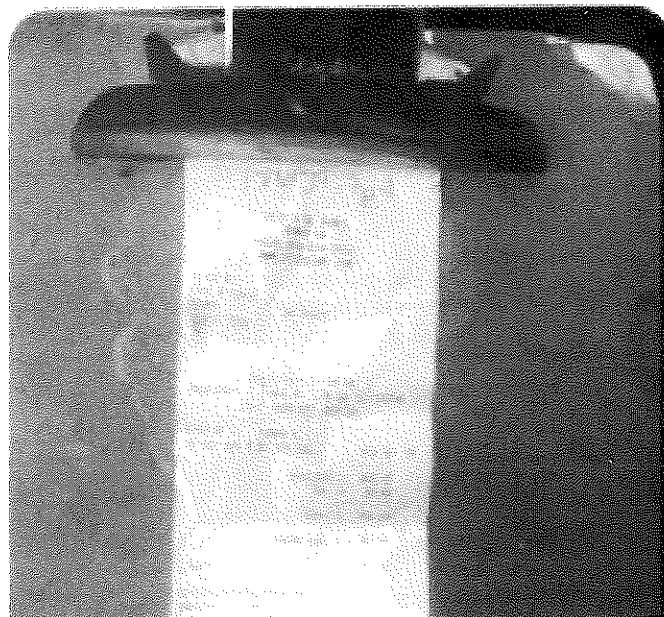


Aaa Thor



Sat, Jun 10 at 1:29PM

The DeArmond is 6' 8 gain
is 2 1/2 " in 6 days and need
to slow down M3 has 4 3/4
" on it right now and needs
pit pump Have pulley with
you for. Dearmond m-3.
Can change it to a 4 inch.
When going to fix Morton



iMessage





Aaa Thor



Give me a few min

Ok. Just call. Thank you

Sun, Jun 11 at 8:31 PM

Tomorrow let's focus on getting the Morton. Fixed and running. And Also. Changing the Dearmond. Pulley. (m-4). And on the speed up of the equity. After equity. If there is time to install the part that Steve welded and confirm the rig id working 100 percent

Planning on edmond on Tuesday.

Sun, Jun 11 at 9:12 PM

The weg motor in my truck was a 1750 rpm. So the one on the equity must be a 1160 rpm.



iMessage



11:32



Aaa Thor



**M3 is hitting on top. You
want it slower?**



**Wait for 12 1/2 strokes to 10
1/2 strokes**



iMessage



11:31



Aaa Thor



Call me

Call me

Sat, Jun 17 at 7:40 PM



Fancy

No leaks. Getting sump pump working. Emptying pit and getting pump ready to



iMessage



11:31

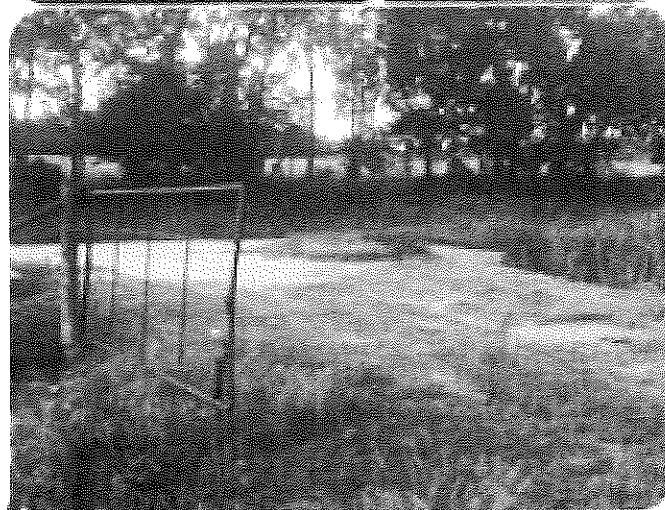


Aaa Thor

yo

Ok great. Head to domes.
No one has beef there today
and the water pump will
need oil

Text Message



if any one



11:30

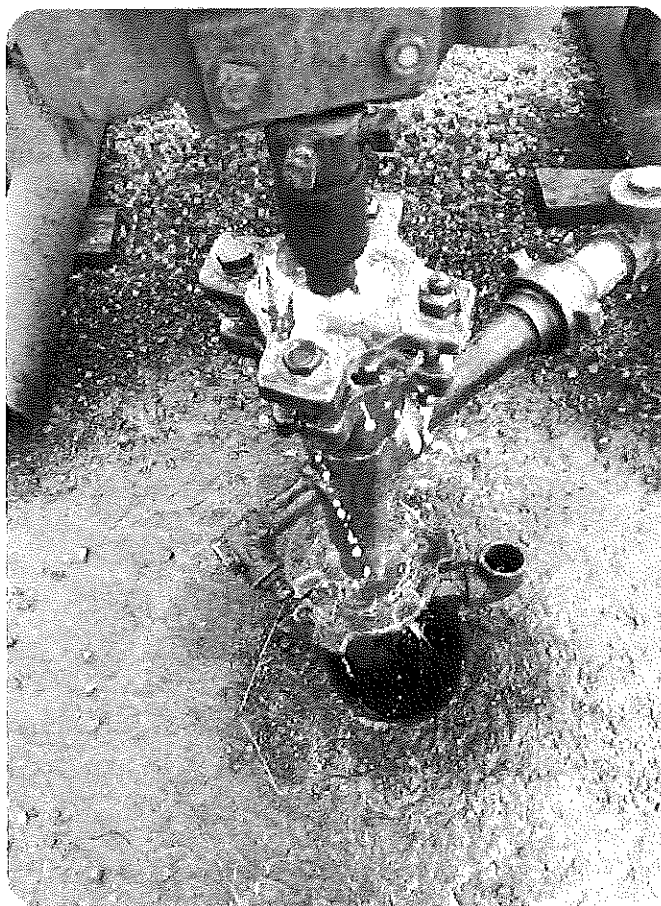


Aaa Thor

I'm getting dressed

Ok had to shut Morton down. Tank leak. And swivel leaking

Also the stuffing box was not tightened. And. Was just the same



Morton well leaking



iMessage

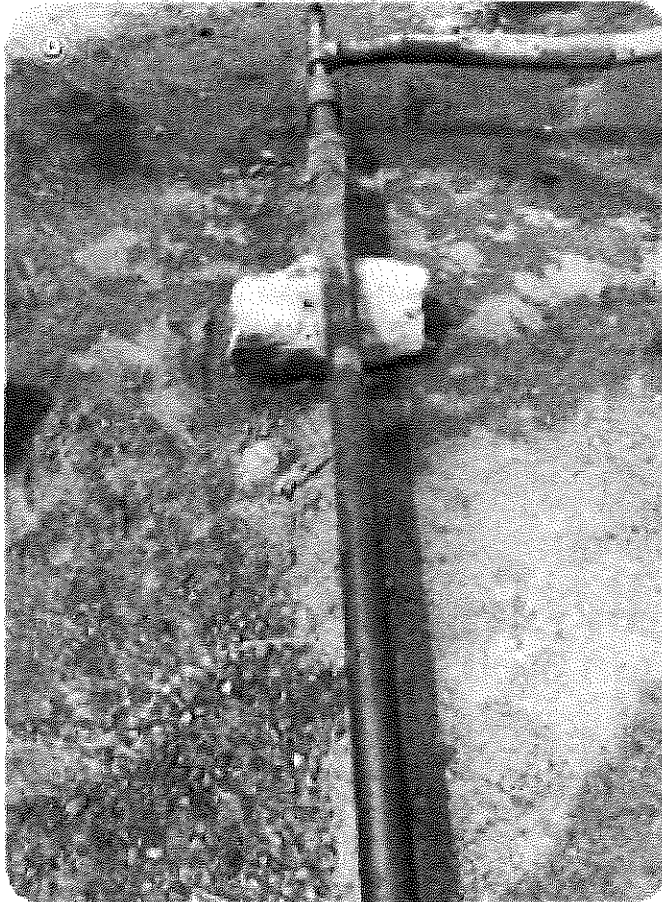


A

Cancel

Aaa Thor

Please confirm that a new
banjo screen was installed
on the whitmire yesterday.



On Appleby

I thought we replaced that
with poly yesterday



A

Cancel

Aaa Thor >



Good



Head to Morton. Morton
power off at the pole with
the meter



On sears shut off number 2.
Check 30 and 28. And
m-1. Drain all gas and some
oil on m-1



Hi. And also 14. Check
on don. I will be unavailable



**Ok. Morton is fixed. Loose
wire**



Ok

Text Message



**Ok. Morton is fixed. Loose
wire**

iMessage





Aaa Thor >



iMessage

Fri, Jun 23 at 10:02 PM

Seers 3 foot 10 oil coming in
tank two water coming in
pressure 100 pounds fixed
plunger on pump. All is
good.

Two was hitting half we shut
off anyway

Fri, Jun 23 at 11:39 PM

On m-1 pressure?

Text Message

Seers 3 foot 10 oil coming in
tank two water coming in
pressure 100 pounds fixed
plunger on pump. All is
good.

Two was hitting half we shut
off anyway



iMessage





Aaa Thor >



Text Message

Seers 3 foot 10 oil coming in
tank two water coming in
pressure 100 pounds fixed
plunger on pump. All is
good.

Two was hitting half we shut
off anyway

30 hitting half. M1 hitting
full. Bled gas. And bled gas
on 14

Fri Scott. 9:30 to 9:30

iMessage

120lbs

Sat, Jun 24 at 9:35 AM

Ok. What is todays plan ?

We can get 5 going.



iMessage



11:22



Aaa Thor

Where are the windows and
keys?

And where is the Lindell
hitch

Sun, Jul 9 at 7:56 PM

The packing on the culver,
McFarland and sears are all
leaking. And cannot be
tightened any more

I know the culver can be
tightened for sure. I'll bet
you that the sears can be
tightened and I told you the
situation on the McFarland.

High water on domes. I
come help but truck isn't
running good enough

Ok I will call you later

Mon, Jul 10 at 9:03 AM



iMessage



11:15



Aaa Thor

OK I'm at 99 and 10 Headed
Your Way

I'm at 99 and 166 do you
want me to drive on into
sedan

Yes meet me at the
downtown shop

Ok

Wall 6'6.5. Oil coming in.
Water coming in. Pump is
good

Ok

Well is hitting down. Left on
because of oil and water still
coming in. Headed to
Applebees

Ok

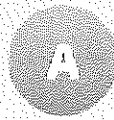
Thu, Aug 24 at 8:38 PM



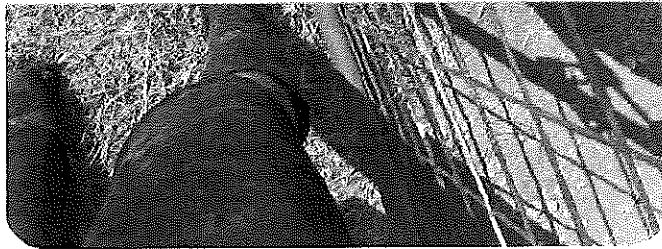
iMessage



11:09



Aaa Thor



We pulled valves on pump.
Pumping good now

Headed to equity

On Thursday at 1 o'clock.
You need to meet. At the
sears with Thad. To mit
test. Well 27 and also a-2.
Then on Friday. Dearmond
6 at 1 o'clock. All three of
these are nitrogen test

Mon, Aug 28 at 8:01PM

On aug 30. (wed) Culver
9. Mit test. With water
pressure. At 1 o'clock

What is status. Is Shane
felling better

Headline to then



iMessage



11:08



Aaa Thor



Thu, Aug 31 at 12:26 PM

I told him 232ft. He said
293lbs

Ok

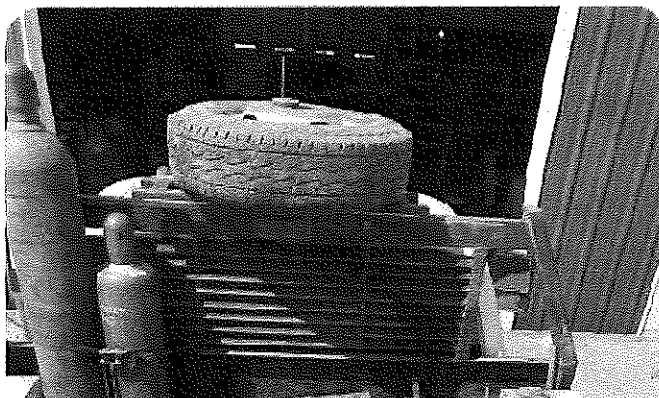


So far so good. Holding
perfect

Good is Thad there ?

Yes

Thu, Aug 31 at 3:47 PM



iMessage



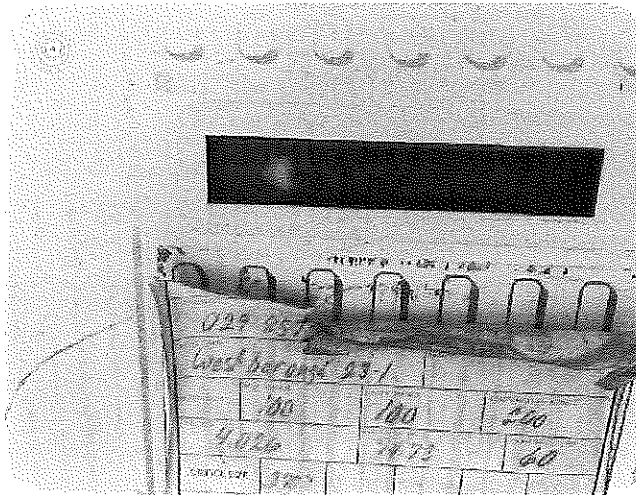
4:07

Phone



Aaa Thor >

Friday at 11:00 at sears. In the morning he's sending me api numbers and I'll then schedule it thru chanute. But we're going from sears then dearmond at 1:00



Mullin API

#15-019-21236-0002 and
Sears

15-019-24207-0001.

Please call before 9.

Thanks

From Thad



iMessage



CERTIFICATE OF SERVICE

24-CONS-3001-CSHO, 24-CONS-3072-CPEN, 24-CONS-3086-CMSC

I, the undersigned, certify that a true and correct copy of the attached Response to Motion of Thor Operating, LLC for Summary Judgment has been served to the following by means of electronic service on June 21, 2024.

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