NO. 55583

The Board of Disciplinary Appeals
Appointed by the Supreme Court of Texas

CHARLES CHANDLER DAVIS
Appellant,
v.
COMMISSION FOR LAWYER DISCIPLINE
Appelle

APPEAL FROM THE 14-1 EVIDENTIARY PANEL
STATE OF TEXAS
SBOT CASE NO. A0051113770

APPELLANT'S OPENING BRIEF

GAINES WEST
State Bar No. 21197500
gaines.west@westwebblaw.com
JENNIFER D. JASPER
State Bar No. 24027026
jennifer.jasper@westwebblaw.com
ROB GEORGE
State Bar No. 24067623
rob.george@westwebblaw.com

ATTORNEYS FOR APPELLANT
CHARLES CHANDLER DAVIS

ORAL ARGUMENT REQUESTED

NO. 55583
BEFORE THE BOARD OF DISCIPLINARY APPEALS

CHARLES CHANDLER DAVIS,	§	**APPEAL FROM THE**
Appellant	§	
	§	
v.	§	**14-1 EVIDENTIARY PANEL**
	§	**SBOT # A0051113770**
COMMISSION FOR LAWYER	§	
DISCIPLINE,	§	
Appellee	§	**STATE OF TEXAS**

APPELLANT'S OPENING BRIEF

PARTIES

Charles Chandler Davis, Appellant 6910 FM 1830 Argyle, Texas 76226	Counsel for Appellant: Gaines West Jennifer Jasper Rob George West, Webb, Allbritton & Gentry, PC 1515 Emerald Plaza College, Station, Texas 979-694-7000 phone 979-694-8000 fax gaines.west@westwebblaw.com jennifer.jasper@westwebblaw.com rob.george@westwebblaw.com
Commission for Lawyer Discipline, Appellee	Counsel for Appellee: Lisa Holt Assistant Disciplinary Counsel Office of the Chief Disciplinary Counsel State Bar of Texas The Princeton 146541 Dallas Parkway, Suite 925 Dallas, Texas 75254 Cynthia Canfield Hamilton Senior Appellate Counsel State Bar of Texas P. O. Box 12487 Austin, Texas 78711

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STATEMENT OF THE CASE

Nature of the Case:	This is a grievance matter arising from a complaint made against Appellant, Charles Chandler Davis, by two attorneys. The Commission for Lawyer Discipline ("CFLD"), through the Chief Disciplinary Counsel ("CDC") ultimately prosecuted the grievance before Evidentiary Panel 14-1. Evidentiary Panel 14-1 entered a "Judgment of Disbarment" against Appellant.	
Evidentiary Panel Case Number:	A0051113770	
Evidentiary Panel:	Evidentiary Panel 14-1	
Disposition by the Evidentiary Panel:	Judgment of Disbarment	
Parties before the Board of Disciplinary Appeals:	Appellant:	Charles Chandler Davis
	Appellee:	Commission for Lawyer Discipline

STATEMENT OF JURISDICTION

The Board of Disciplinary Appeals has jurisdiction over this appeal pursuant to Texas Rule of Disciplinary Procedure 2.24.

ISSUES PRESENTED

Issue One: Whether an evidentiary panel of improper venue commits reversible error when it enters a "Judgment of Disbarment"

Issue Two: Alternatively, whether an Evidentiary Panel's presiding member's refusal to recuse or refer a motion to recuse makes void the "Judgment of Disbarment" signed and entered by him

Issue Three: Alternatively, whether the Chief Disciplinary Counsel's failure to follow mandatory timelines for finding "just cause" makes the "Judgment of Disbarment" voidable

Issue Four: Alternatively, whether substantial evidence supports the ultimate sanction of disbarment, or whether that sanction is arbitrary and capricious

Issue Five: Alternatively, whether the ultimate sanction of disbarment is arbitrary and capricious or an abuse of discretion

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

STATEMENT OF FACTS

This grievance matter arises from a dispute regarding oil and gas leases covering 60,000 net mineral acres in South Texas. The grievance was filed during the course of litigation in various counties in Texas involving some of the leases.

I. The Padre Island Leases[1]

Appellant, Charles Chandler Davis, is an attorney and oil and gas operator based in Denton County, Texas. As part of his oil and gas operations, Mr. Davis and his partners (the "Lessees")[2] paid approximately $8 million to acquire oil and gas leases on more than 60,000 acres of mineral rights under Padre Island, Texas (the "Padre Island Leases").[3] *See* RR 176/9–11.

One of the Padre Island Leases' lessors was Abogado Minerals, LP, whose general partner, AM GENPAR, LLC is owned by Complainants Tom McCall and Britton Monts, among others. Abogado Minerals owned approximately 24,000 net mineral acres (the "Abogado Leases") out of the approximately 60,000 acres included in the Padre Island Leases. *See* RR 35/11–13. The Abogado Leases were dated effective March 1, 2007. RR 36/2. Abogado Minerals also entered into an option contract with Lessees conveying to Lessees the option to purchase a lease on an additional 7,000 net mineral acres owned by Abogado Minerals (the "Option Contract"). RR 36/9–17.

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[1] Throughout this brief, the Reporter's Record will be cited as "RR Page/Line" or "RR Exhibit _" and the Clerk's Record will be cited as "CR Page." Excerpts from the Clerk's Record are included in Appendix 1, and excerpts from the Reporter's Record are included in Appendix 2.

[2] The record reflects various names for the entities comprising "Lessees." For clarity's sake, Appellant will use "Lessees" as a general term and will specify which lessee as appropriate in this brief.

[3] The Padre Island Leases cover tracts of land lying in Kenedy, Kleberg, Nueces, Cameron, and Willacy Counties in Texas.

The Abogado Leases included a provision requiring Lessees to designate drilling blocks within a 120-day period. RR 37/1–6; RR EXHIBIT 1 at *8. According to Complainant McCall, Lessees failed to timely designate the drilling blocks, and in August of 2007, Abogado Minerals sent Lessees a letter demanding that Lessees cure the alleged default (the "Default Letter"). RR 37/17–22; RR EXHIBIT 1 at *8. Abogado Minerals also alleged that the Option Contract terminated. RR 38/1–3; RR EXHIBIT 1 at *9.

II. Litigation Begins in Travis County

Mr. Davis believed that, through the Default Letter, Abogado Minerals had wrongfully repudiated the leases, and in August of 2009, filed a lawsuit in Travis County naming as defendants Abogado Minerals, its general partner, and Complainants, among others (the "Travis County Lawsuit"). RR 177/4–8; RR EXHIBIT 1; RR 177/17–20. Importantly, the Travis County Lawsuit only involved the lessors of approximately 20,000 net mineral acres. RR EXHIBIT 1. It did not include the lessors of the other approximately 40,000 net mineral acres leased by Lessees. *See* RR 177/21–24.

On February 22, 2010, the Honorable Lora Livingston, by letter ruling, granted partial summary judgment in favor of Abogado Minerals and some of the other defendants in the Travis County Lawsuit.[4] RR EXHIBIT 2. On March 30, 2010, Judge Livingston signed an interlocutory order confirming her grant of partial summary judgment. RR EXHIBIT 6. Judge Livingston declared that the Abogado Leases had terminated in December 2007, and that the Option Contract had not been exercised. Significantly, her order did not address any mineral interest

[4] The order granting partial summary judgment named as partial summary judgment movants the following: "AM GENPAR, LLC, the General Partner of Defendant, Abogado Minerals, L.P., and some of the Defendants, ABOGADO MINERALS, LP, TOM C. McCALL, DAVID B. McCALL, HECTOR CARDENAS, JR., WESLEY G. RITCHIE, and BRITTON MONTS." RR EXHIBIT 6.

held by any lessors other than Abogado Minerals, its general partner, and those individual owners or partners of these two entities.[5] RR EXHIBIT 6.

III. The February 28, 2010 Letter

On February 28, 2010, after Judge Livingston's letter ruling and before she entered her interlocutory order, Mr. Davis, on behalf of Lessees, sent a letter to Mr. McCall, and to the attorney representing another lessor, Balli Minerals & Royalty, LLC. RR EXHIBIT 3. In the letter, Mr. Davis informed the recipients that he was going to continue to protect the Padre Island Leases, including both the portions covering mineral interests owned by the recipients or their clients, and the portions covering mineral interests owned by parties not involved in the Travis County Litigation. *Id.*

IV. Litigation Arises in Kleberg County

On April 22, 2010, on behalf of Lessees, Mr. Davis filed a petition in Kleberg County entitled *In re: McMurray* (the "Kleberg County Lawsuit") Cause No. 10-180-D, alleging that Thomas McMurray, a bankruptcy reorganization officer in the bankruptcy of Saddle Creek Energy Development, LP, claimed for Saddle Creek an interest in the Padre Island Leases. RR 149/11–17; RR EXHIBITS 4, 7. Lessees asserted that such claim created a cloud on their title and asked the Kleberg County district court to declare McMurray's claim to be void, and to clear title the Padre Island Leases. RR EXHIBIT 7, *2, ¶ 5.

On July 8, 2010, the Honorable Manuel Banales entered a Final Judgment in Cause No. 10-180-D, which declared that the Padre Island Leases were valid and held by "Arroyo

[5] The record below does not reflect at what point another lessor, Balli Minerals & Royalty, LLC (the "Ballis"), owners of at least some of the other approximately 40,000 net mineral acres, became parties to the Travis County Lawsuit, but all claims against them were dismissed by a Final Judgment entered may 4, 2012 in the Travis County Lawsuit. RR EXHIBIT 17. It is important to note that in 2009, Mr. Davis entered into an agreement with the Ballis in which the Ballis agreed to let the Lessees perform the option, extend the Padre Island Leases, and the Lessees would release the leases. RR 177/21–24; RR 184/15–185/12.

Colorado, a Texas General Partnership, EIN No. 20-5446006." *Id.* at *2–3, ¶ 6. The Final Judgment did not differentiate between the Abogado Leases and the leases acquired from other lessors. *See generally, id.* Judge Banales further declared, "All spurious claims, from any third party, which have threatened, infringed, impacted or clouded title are specifically denied." *Id.* at *3, ¶ 8.

Despite the fact that it was never a party to the Kleberg County Lawsuit, on October 7, 2010, Abogado Minerals filed a Bill of Review in Cause No. 10-439-D attacking Judge Banales's Final Judgment. RR EXHIBIT 11. Lessees, through Mr. Davis, immediately filed a plea to the jurisdiction challenging the Abogado Mineral's standing and special exceptions. However, the Honorable Angelica Hernandez (who replaced Judge Banales) overruled Lessees' plea and special exceptions, and entered an order vacating Judge Banales's Final Judgment. RR EXHIBIT 12. On March 30, 2011, Judge Hernandez adopted and entered Abodado Mineral's proposed Findings of Fact and Conclusions of Law (without review by Mr. Davis), in which she chastised both Mr. Davis *and* Mr. McMurray for collusion and dishonesty with Judge Banales, among other things. RR EXHIBIT 13; RR 194/2–14.

V. The Grievance

On May 11, 2011, Complainants Tom McCall and Britton Monts filed a grievance against Mr. Davis, asserting that Mr. Davis violated various provisions of the Texas Disciplinary Rules of Professional Conduct ("Disciplinary Rule" or "Disciplinary Rules"). Through a letter dated June 8, 2011, the Chief Disciplinary Counsel ("CDC") notified Mr. Davis that the grievance had been elevated to a complaint. EXHIBIT A. Mr. Davis responded to the complaint on August 15, 2011. EXHIBIT B. The CDC investigated the grievance, and on October 20, 2011,

ultimately found "just cause" to believe that Mr. Davis had committed acts of misconduct. CR 19–20. Mr. Davis elected to have an evidentiary panel hear the Complaint. CR 33.

Pursuant to the Texas Rules of Disciplinary Procedure ("TRDP"), the District 14 Grievance Committee Chair appointed Panel 14-2, the Denton County evidentiary panel ("Denton Panel"), to hear the Complaint. CR 46, 48. After several recusals of panel members and presiding members, nearly 18 months of dormancy, and continuances, on July 22, 2014, the District 14 Grievance Committee Chair appointed panel 14-1, the Wichita County evidentiary panel ("Wichita Panel"), to hear this matter in Denton County. CR 343. William Altman was the panel chair of the Wichita Panel. *See* CR 351.

Prior to the Evidentiary Panel's September 26, 2014 hearing, Mr. Davis filed motions challenging (1) venue, (2) the incomplete docket sheet and record, (3) the length of delay between the grievance and the finding of just cause, and (4) the length of delay between his election of an evidentiary hearing and the hearing, among other motions. *See, e.g.*, CR 407–411, 1012, 1109. He also filed a motion to recuse Chairman Altman. CR 1126. Chairman Altman denied all of the motions, refused to either recuse himself or to refer the recusal motion to the Grievance Committee Chair, [6] and commenced the hearing on September 26, 2014. RR 10/23–12/8

On October 2, 2014, the Wichita Panel filed a "Judgment of Disbarment" against Davis, signed by Chairman Altman as the presiding member. CR 1225. The Wichita Panel concluded that Mr. Davis had violated Disciplinary Rules 3.01, 3.02, 3.03(a)(1) and 8.04(a)(3). CR 1225. On November 3, 2014, Davis filed a Motion for New Trial, which the evidentiary panel has not ruled on. CR 1256–1267.

[6] Chairman Altman's refusal to refer or recuse was the subject of a mandamus proceeding before the Board of Disciplinary Appeals (the "Board"). *See In re Charles Chandler Davis,* Cause No. 55073, Texas Board of Disciplinary Appeals. The Board denied mandamus relief.

SUMMARY OF THE ARGUMENT

The Wichita Panel lacked venue over this matter, and its "Judgment of Disbarment" must be vacated and dismissed. Rule 2.11B of the TRDP declares that venue for evidentiary panel hearings "shall" be in the county of the responding attorney's principal place of practice. TRDP 2.11B. Davis's principal place of practice was in Denton County, Texas. The Wichita Panel was from Wichita County, Texas. The Wichita Panel was not the proper venue for the evidentiary hearing. A judgment rendered by a tribunal of improper venue is not harmless error and must be vacated. TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b). Thus, the "Judgment of Disbarment" entered by the Wichita Panel must be vacated and dismissed.

Alternatively, even if the Wichita Panel was the proper venue, the "Judgment of Disbarment" is void because it was signed by Chairman Altman following the filing of the Recusal Motion. Texas Rules of Civil Procedure ("TRCP") 18a and 18b declare the two options available when a recusal motion is filed: recuse or refer. TRCP 18a, 18b. TRDP 2.06 makes the members of evidentiary panels subject to the recusal rules in TRCP 18a and 18b. TRDP 2.06. By failing to either recuse or refer after Davis filed the Recusal Motion, Chairman Altman committed reversible error. In effect, once the Recusal Motion was filed, Chairman Altman lost authority to preside over the evidentiary panel, and any orders entered by him subsequent to the Recusal Motion are void, including the "Judgment of Disbarment." *See In re Norman*, 191 S.W.3d 858, 861 (Tex. App.—Houston [14th Dist.] 2006 orig. proceeding).

Alternatively, even if the Wichita Panel was the proper venue, and Chairman Altman's refusal to recuse or refer did not void the judgment, the judgment is voidable because the CDC failed to follow mandatory timelines for finding just cause. *See* TEX. R DISCIPLINARY P. 2.10, 2.12, 15.05.

Alternatively, even if the Wichita Panel was the proper panel, Chairman Altman's refusal to refer or recuse did not void the judgment, and the judgment is not voidable because the CDC failed to follow mandatory timelines for finding just cause, the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rules 3.01, 3.02, 3.03(a)(1) and 8.04(a)(3) is not supported by substantial evidence.

Alternatively, even if the Wichita Panel was the proper panel, Chairman Altman's refusal to refer or recuse did not void the judgment, the judgment is not voidable because the CDC failed to follow mandatory timelines for finding just cause, and the Wichita Panel's conclusion that Mr. Davis violated the Disciplinary Rules was supported by substantial evidence, the Wichita Panel's conclusion that disbarment was an appropriate sanction is arbitrary and capricious and an abuse of discretion. TRDP 2.18 sets out the factors that must be considered when determining a sanction, and the record is devoid of evidence to support such a consequential sanction.

ARGUMENT

Issue 1: The Wichita Panel was not the Proper Venue for this Evidentiary Hearing

When a court of improper venue renders judgment, that court commits harmful, reversible error. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b). The Wichita Panel that disbarred Davis did not have proper venue over this matter; therefore, its "Judgment of Disbarment" must be reversed.

TRDP 2.11 mandates venue in the county of the respondent's principal place of practice. TRDP. 2.11B. Davis's principal place of practice is Denton County. The Denton Panel meets in Denton County, and in fact, the Denton Panel was the original panel assigned to this matter. CR 45. Importantly, the TRDP anticipates that the respondent attorney will be "judged" by his local peers. Those are the lawyers and public members who can best adjudge the potential for harm to the community, if any, of the respondent attorney's alleged misconduct. Those are the people who can best adjudge whether sanctions are appropriate, and if so, in what severity. Those are the people who can best adjudge the rehabilitative effect of sanctions and the possible effect of sanctions on the respondent attorney, because they know him.

However, after a series of recusals, the presiding Grievance Committee chair for Grievance District 14 ultimately empaneled the Wichita Panel from Wichita County to preside over this case. CR 351. There was no compelling reason for the Grievance Committee chair to appoint the Wichita Panel, and no agreement by Mr. Davis that would allow him to do so. In fact, there was no authority for him to appoint any panel other than the Denton Panel, without the express agreement from Mr. Davis, which he never gave. The Grievance Committee chair, without Mr. Davis's approval, should have sought additional panel members to serve on the Denton Panel, not find a panel to do the bidding of the Chief Disciplinary Counsel.

The Grievance Committee chair's action is akin to a trial court judge unilaterally dismissing a seated jury, empanelling a jury of residents from outside the county, and then trying the defendant in front of that out-of-county jury. In that instance, there is no question that the trial was not held in the proper venue and that any judgment is void. As discussed below, the same result attends here.

Rule 2.11B provides that "[i]n an Evidentiary Panel proceeding, venue shall be in the county of Respondent's principal place of practice." TRDP 2.11B. "Shall" imposes a duty, and is treated as mandatory language, unless the legislative intent directs otherwise. *See* TEX. GOV'T CODE ANN. § 311.016(2); *Albertson's, Inc. v. Sinclair*, 984 S.W.2d 958, 961 (Tex. 1999). Regarding the mandatory nature of "shall" in Rule 2.11B, the legislative intent is clear: "shall" is mandatory.

Section 311.002 of the Code Construction Act (the "Act") applies the Act to codes enacted after 1960 and to rules enacted under a code. TEX. GOV'T CODE ANN. § 311.002. Section 81.024 of the government code empowers the Supreme Court of Texas to promulgate rules governing the state bar. *Id.* § 81.024. The Preamble to the Disciplinary Rules notes that the Disciplinary Rules are adopted and promulgated pursuant to that authority. TRDP PREAMBLE. Thus, the Act applies to the TRDP. Therefore, "shall" is mandatory, and venue is proper only in Denton County before the Denton Panel.

Because the Wichita Panel that disbarred Davis sits and exists in Wichita County and not in Denton County, it lacked venue over this matter, and its "Judgment of Disbarment" is reversible error. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.064(b). ("On appeal from the trial on the merits, if venue was improper it shall in no event be harmless error and shall be

reversible error."). The Board is duty-bound to reverse the "Judgment of Disbarment" and dismiss this action against Davis.

Issue 2: Alternatively, Chairman Altman Lost Jurisdiction over the Hearing, and all Orders Signed by Him are Void

In the alternative, even if the Wichita Panel was the proper venue, the "Judgment of Disbarment" should be vacated because all actions taken by Chairman Altman after the Recusal Motion was filed are void.

When faced with a motion to recuse, the chairman of an evidentiary panel must choose one of two options: recuse or refer. *See* TRCP 18a(f)(1)(A), (B) (requiring a district judge to either recuse or refer the motion to recuse to regional presiding judge); TRDP 2.06 (declaring that panel members are subject to disqualification or recusal if a district judge would be). Any actions taken by the chairman following the motion to recuse are void. *See In re Norman*, 191 S.W.3d 858, 861 (Tex. App.—Houston [14th Dist.] 2006 orig. proceeding).

Davis filed the Recusal Motion on September 25, 2014 seeking Chairman Altman's recusal. CR 1135. At the hearing on September 26, 2014, Davis argued to Chairman Altman that the Wichita Panel was not authorized to proceed with the evidentiary panel hearing until the Recusal Motion was ruled on by the Grievance Committee chair or until after Chairman Altman recused himself and a substitute chairman was appointed. RR 8/21–12/8. In error, Chairman Altman "denied" the Recusal Motion and proceeded with argument regarding the Complaint and, ultimately, with entering the void "Judgment of Disbarment." RR 10/23–11/1. Because Chairman Altman refused to recuse or refer after Davis filed the Recusal Motion, all actions taken by him subsequent to the filing of the Recusal Motion, including entering the "Judgment of Disbarment," are void. Consequently, the Board must reverse the "Judgment of Disbarment" and dismiss this action against Davis.

Issue 3: Alternatively, the "Judgment of Disbarment" is Voidable for Failure to Comply with Mandatory Timelines for Finding Just Cause

TRDP 2.12 provides, "No more than sixty days after the date by which the Respondent must file a written response to the Complaint . . . the Chief Disciplinary Counsel shall investigate the Complaint and determine whether there is Just Cause." TRDP 2.12. TRDP Rule 15.05 makes that deadline mandatory.

Here, the letter informing Mr. Davis that the grievance had been elevated to a complaint was dated June 8, 2011. EXHIBIT A. Mr. Davis filed his response on August 15, 2011.[7] EXHIBIT B. The CDC determined "on October 20, 2011, that there is Just Cause" to believe that Mr. Davis committed professional misconduct. CR 19. October 20, 2011 is more than sixty days after Mr. Davis's deadline to file his response. As such, the CDC's failure to comply with the mandatory timelines resulted in an invalid "Judgment of Disbarment," and said judgment should be reversed. *See* TRDP 15.05.

Issue 4: Alternatively, the Wichita Panel's Conclusion that Mr. Davis Violated the Disciplinary Rules Lacks Substantial Evidence

Appeals from evidentiary panels are conducted under the substantial evidence standard. TRDP 2.24; *see* §81.072(b)(7). The Board of Disciplinary Appeals ("BODA") shall reverse or remand if the evidentiary panel's decisions are "not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole." TEX. GOV'T CODE ANN. § 2001.174.

The Wichita Panel concluded that Mr. Davis violated the following Disciplinary Rules:

[7] Mr. Davis objected to the incomplete record at least twice, and received a ruling partially sustaining his objections. CR 400, 403, 1070–1071. The Panel Chair ordered the evidentiary record to include, in chronological order, all documents filed on or after October 20, 2011. CR 1070–1071. That ruling was in error because it failed to account for the documents filed prior to October 20, 2011. Mr. Davis has attached as Exhibits A and B the documents filed between June 8, 2011 and October 20, 2011 that are relevant to this Opening Brief.

Rule 3.01: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.

Rule 3.02: In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Rule 3.03(a)(1): A lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal . . . .

Rule 8.04(a)(3): A lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . .

Rule 3.01

There is no evidence to support a conclusion that Mr. Davis brought either the Travis County Lawsuit or the Kleberg County Lawsuit without a reasonable belief that he had a non-frivolous basis for doing so. Mr. Davis explained his bases for bringing these two lawsuits, and the CDC failed to meet its burden to demonstrate that Mr. Davis lacked a reasonable belief that these lawsuits were baseless or frivolous.

Mr. Davis stated that he brought the Travis County Lawsuit as a result of what he believed was Abogado Minerals' repudiation of the Padre Island Leases. RR 177/9–25. After buying the leases for approximately $8 million in March of 2007, Mr. Davis received letters six months later from Abogado Minerals notifying him that the leases would be or were terminated. *See* RR 176/11–16; *see also* RR EXHIBIT 1 at **8–9. As such, Mr. Davis had a reasonable belief that Abogado Minerals had attempted to terminate, or had repudiated, the Padre Island Leases, the reasonable belief that formed the basis of the Travis County Lawsuit. Furthermore, the CDC did not present any evidence demonstrating that Mr. Davis's belief was not reasonable.

Mr. Davis declared that the basis for the Kleberg County Lawsuit was that Mr. McMurray's actions in the bankruptcy proceeding had clouded the title to the Padre Island

Leases. *See, e.g.*, RR 181/7–11. He intended to use the Final Judgment in the bankruptcy proceeding to defend Lessees' title to the Padre Island Leases in the bankruptcy, and not to challenge Judge Livingston's partial summary judgment. RR 182/4–14; RR 184/1–4. The CDC did not present any evidence that Mr. Davis lacked a reasonable belief that the he had a non-frivolous basis for filing the Kleberg County Lawsuit. The record lacks substantial evidence to support the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rule 3.01.

Rule 3.02

The record is completely devoid of any testimony or other evidence that Mr. Davis took positions that unreasonably increased the costs or other burdens of the lawsuits or that unreasonably delayed their resolution. *See* DISCIPLINARY RULE 3.02. The CDC did not present any testimony from Complainants that (1) the costs or burdens of either lawsuit were increased or that the resolution of the lawsuits was delayed, (2) even if such occurred, that Mr. Davis was in any way responsible, or (3) even if such occurred and Mr. Davis was responsible, that the positions he took were unreasonable. *See id.* As stated above, Mr. Davis reasonably believed that he had a non-frivolous basis for each of the lawsuits. Mr. Davis prosecuted those lawsuits reasonably. The CDC did not present any evidence to support a conclusion that TRDP 3.02 had been violated. The record lacks substantial evidence to support the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rule 3.02.

Rule 3.03(a)(1)

The record lacks substantial evidence that Mr. Davis knowingly made false statements of fact or law to any of the tribunals involved in the Travis County Lawsuit or the Kleberg County Lawsuit. The primary bases for the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rule 3.03(a)(1) appear to be two sanctions orders entered in the Travis County

Lawsuit and the Findings of Fact and Conclusions of Law entered in the Kleberg County Lawsuit (collectively, the "Sanctions Orders"). RR EXHIBITS 5, 13, 16.

The record before the Wichita Panel is wholly devoid of the evidence underlying the Sanctions Orders. Without such underlying evidence, the Wichita Panel cannot perform an independent evaluation of whether Mr. Davis violated the Rules he is alleged to have violated. Because the record before the Wichita Panel lacks substantial evidence to support the Sanctions Orders—the bases for the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rule 3.03(a)(1)—the record lacks substantial evidence to support the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rule 3.03(a)(2).

Rule 8.04(a)(3)

The record lacks substantial evidence that Mr. Davis engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. The fact that there is an absence of evidence in the record to support the Sanctions Orders, as discussed above, also demonstrates the lack of substantial evidence in the record to support a conclusion that he violated Rule 8.04(a)(3). In other words a violation of Disciplinary Rule 8.04(a)(3) can no more be based on the Sanctions Orders than a violation of Disciplinary Rule 3.03(a)(1). Thus, to the extent that the Wichita Panel based its conclusion that Mr. Davis violated Disciplinary Rule 8.04(a)(3) on the Sanctions Orders, the record does not contain substantial evidence to support such a conclusion.

The remaining evidence before the Wichita Panel was testimony from Complainants, Mr. McMurray, and Mr. Davis. Mr. Davis's testimony provided the reasoned basis for the actions now alleged to violate Disciplinary Rule 8.04(a)(3). *See, e.g.*, 181/4–14. Mr. Davis's testimony thus controverted the testimony given by Complainants. Thus, the record lacks substantial

evidence to support the Wichita Panel's conclusion that Mr. Davis violated Disciplinary Rule 8.04(a)(3).

Issue 5: Alternatively, the Wichita Panel's "Judgment of Disbarment" is Arbitrary and Capricious or an Abuse of Discretion

A decision is arbitrary and capricious when the order fails to demonstrate a connection between the decision and the factors made relevant to the decision by statute or rule. *See Gen. Motors Corp. v. Bray*, 243 S.W.3d 678, 684 (Tex. App.—Austin 2007, no pet.) (citation omitted). A panel abuses its discretion when it acts without reference to guiding rules or principles. *Id.* (citation omitted).

Arbitrary and Capricious

When deciding sanctions for an attorney's misconduct, an evidentiary panel is required to consider:

- the nature and degree of the Professional Misconduct for which Respondent is being sanctioned;
- the seriousness of and circumstances surrounding the Professional Misconduct;
- the loss or damage to clients;
- the damage to the profession;
- the assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;
- the profit to the attorney;
- the avoidance of repetition;
- the deterrent effect on others;
- the maintenance of respect for the legal profession; and
- the conduct of the Respondent during the course of the Disciplinary Proceeding.

TRDP 2.18 ("In determining the appropriate Sanctions, the Evidentiary Panel shall consider . . . [enumerating factors above]").

In this proceeding, the Wichita Panel's "Judgment of Disbarment" states, "[a]fter hearing all evidence and argument and after having considered the factors in [TRDP] 2.18 of the Texas Rules of Disciplinary Procedure, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT." CR 1225. The "Judgment of Disbarment" fails to make any connections between its decision to disbar Mr. Davis and the above-listed and required factors. Not only does it not make the required connections, it omits any discussion about how any of the factors affected its decision to disbar Mr. Davis. Furthermore, the "Judgment of Disbarment" is devoid of any discussion of how the factors mandate disbarment as opposed to other sanctions. Therefore, the Wichita Panel's decision to disbar Mr. Davis is arbitrary and capricious and should be reversed for that reason alone.

Abuse of Discretion

Additionally, the Wichita Panel abused its discretion by basing its "Judgment of Disbarment" at least in part on the void Bill of Review from Kleberg County. Complainants and their various entities, the plaintiffs in the Bill of Review proceeding, were not parties to the Final Judgment that they attack through the Bill of Review proceeding. Furthermore, as discussed above, the Final Judgment resolved issues unrelated to the Travis County Lawsuit and unrelated to Complainants' interests. As such, Complainants and their various entities lacked standing to bring the Bill of Review, and it is a void or voidable judgment. *See Tarrant Restoration v. Texas Arlington Oaks Apts., Ltd.*, 225 S.W.3d 721, 725 n.1 (Tex. App.—Dallas 2007, pet. dismissed w.o.j.) ("To have standing, the party bringing the bill of review must have been a party to the

underlying judgment or have had a then-existing right or interest prejudiced by the judgment."). By basing its disbarment decision on the void Bill of Review, the Wichita Panel acted without reference to the rules and procedures of our civil justice system, and their "Judgment of Disbarment" should be reversed.

PRAYER

For the foregoing reasons, Appellant, Charles Chandler Davis, prays that the Board hold that the Wichita Panel was an improper venue for this matter, vacate the "Judgment of Disbarment," and dismiss this action against Davis. Alternatively, Davis prays that the Board hold that the "Judgment of Disbarment" is void, vacate the "Judgment of Disbarment," and dismiss this action against Davis. Alternatively, Davis prays that the Board reverse the Wichita Panel's "Judgment of Disbarment" for lack of substantial evidence, or because it is arbitrary and capricious or an abuse of discretion.

[*This space intentionally left blank*]

Davis prays for all further relief, in law and in equity, to which he has shown himself justly entitled.

Respectfully submitted,

WEST, WEBB, ALLBRITTON & GENTRY, P.C.
1515 Emerald Plaza
College Station, Texas 77845-1515
Telephone: (979) 694-7000
Facsimile: (979) 694-8000

By: _____
GAINES WEST
State Bar No. 21197500
gaines.west@westwebblaw.com
JENNIFER D. JASPER
State Bar No. 24027026
jennifer.jasper@westwebblaw.com
ROB GEORGE
State Bar No. 24067623
rob.george@westwebblaw.com

ATTORNEYS FOR APPELLANT
CHARLES CHANDLER DAVIS

CERTIFICATE OF COMPLIANCE

In compliance with Board of Disciplinary Appeal Internal Procedural Rules 4.05 (d), this brief contains 4,949 words, as determined by the word count feature by the program used to generate this brief, excluding the portions of the brief exempted by Rule 4.05 9(d).

_____
Gaines F. West

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent Charles Chandler Davis Notice of Appeal was served on the Commission for Lawyer Discipline through its counsel of record, Lisa Holt and Cynthia Canfield Hamilton, on the 13th day of March, 2015.

Lisa Holt
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
146541 Dallas Parkway, Suite 925
Dallas, Texas 75254

Via email:Lisa.Holt@Texasbar.com]
CM, RRR 7014-2120-0001-5725-1705

Cynthia Canfield Hamilton
Senior Appellate Counsel
State Bar of Texas
P. O. Box 12487
Austin, Texas 78711

Via CM, RRR 7014-2120-0001-5725-1712

Gaines West

BEFORE THE BOARD OF DISCIPLINARY APPEALS

CHARLES CHANDLER DAVIS,	§	**APPEAL FROM THE**
Appellant	§	
	§	
v.	§	**14-1 EVIDENTIARY PANEL**
	§	
COMMISSION FOR LAWYER	§	
DISCIPLINE,	§	
Appellee	§	**STATE OF TEXAS**

EXHIBITS
TO
APPELLANT'S OPENING BRIEF

	DOCUMENTS
EXHIBIT A	Letter from CDC dated June 8, 2011
EXHIBIT B	Response to Complaint August 15, 2011

STATE BAR OF TEXAS

AB 7/25/11
5C41237

Office of the Chief Disciplinary Counsel

June 8, 2011

CMRRR#: 70100290000032265429

Charles C. Davis
Law Office Of Charles Chandler Davis
6910 FM 1830
Argyle, Texas 76226-3024

Re: A0051113770 Tom McCall & Britton D. Monts - Charles C. Davis

Dear Mr. Davis:

The Office of Chief Disciplinary Counsel has received the above-referenced Grievance, a copy of which is enclosed with this notice. This office has examined the Grievance and determined that the information provided alleges Professional Misconduct. Pursuant to the Texas Rules of Disciplinary Procedure, this matter has been classified as a Complaint.

Please advise this office immediately if you are represented in this matter by an attorney.

You must furnish to this office a written response to the Complaint within thirty (30) days of receipt of this notice. The response should address specifically each allegation contained in the Complaint, and should further provide all information and documentation necessary for a determination of Just Cause as defined in the Texas Rules of Disciplinary Procedure. **Pursuant to Rule 2.10 of the Texas Rules of Disciplinary Procedure, you are required to provide a copy of your response directly to the Complainant.**

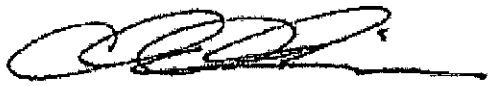
Pursuant to Rules 8.01(b) and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct, failure or refusal to timely furnish a response or other information requested by the Chief Disciplinary Counsel, without timely asserting legal grounds to do so, constitutes Professional Misconduct.

The Office of Chief Disciplinary Counsel maintains as confidential Disciplinary Proceedings, except that the pendency, subject matter, and status of a Disciplinary Proceeding may be disclosed by the Chief Disciplinary Counsel if the Respondent has waived confidentiality or the Disciplinary Proceeding is based upon conviction of a serious crime. The Chief Disciplinary Counsel may provide appropriate information, including the response, to law enforcement agencies, under Rule 6.08 of the Texas Rules of Disciplinary Procedure.

P. O. Box 12487, Austin, Texas 78711-2487, (512) 427-1350, (877) 953-5535, fax: (512) 427-4167

You will be notified in writing of further proceedings in this matter.

Sincerely,



Chad Childers
Administrative Attorney
Office of the Chief Disciplinary Counsel
State Bar of Texas

Enclosure(s): Grievance (Copy of Complaint)

CF2-3.

CHARLES CHANDLER DAVIS

6910 FM 1830
Argyle, Texas 76226
Phone 940.368.1205
Telecopy 940.241.1997
State Bar No. 05465900

charlie@arroyocoloradoenergy

August 15, 2011

Mr. Chad Childers, Esq.
Administrative Attorney
Office of Chief Disciplinary Counsel
State Bar of Texas
Box 12487
Austin, Texas 78711-2487

VIA US MAIL

***Re*: A005113770, McCall and Monts-Charles Chandler Davis**

Dear Mr. Childers :

Regarding the Complaint filed by Mr. McCall and Mr. Monts, please find the timely written response. Do not hesitate to contact me with either questions or comments.

I have elected to respond to the complaint individually. Therefore, I will speak or correspond with any investigator or representative of your offices, and will comply fully with your requests, without the necessity of an attorney, at this point.

I am attaching the Grievance Form which was furnished to me, all references contained herein to a grievance form will contain the numbered paragraphs as set out in the complaint form.

PRELIMINARY RESPONSE

I have never been an employee, agent or attorney, for either

individual, nor have I held any position of any kind, with any of their many shell companies. I represent clients who are interested in the return of property, purchased by my clients from these individuals and their commercial ventures, and damages as a proximate cause of the conduct of these two complainants.

1. Regarding II, (4) of the complaint, the requested information has not been furnished to the Office of Chief Disciplinary Counsel. As such the complaint form does not comply with the necessary data required to constitute a complaint. Request dismissal or reclassification as "inquiry".

2. Regarding III(4), of the complaint, the information is incomplete, or misleading. I have been hired to represent clients who are actively pursuing these defendants, regarding the conversion of funds and interference with the property rights, held by my clients.

3. Regarding, III(5), of the complaint, the information is incomplete or misleading. I have never been hired or appointed to do anything for these defendants, who I have sued on behalf of my clients.

I have no relationship with them, nor will I, I have no fiduciary relationship, no agency or employment relationship, I have given them no advice, I have not consulted for them, on any subject, at any time. I am not a relative, friend or associate, agent, employee or consultant.

4. Regarding, III(6), of the complaint, the information is incomplete and misleading. My clients sued them, I represent my clients. At no time have I represented anyone else. The filings are public record, the status of each civil action is public record.

5. Regarding, III,(7), of the complaint, Stacey V. Reese is listed as representing Mr. Monts. I have sent a copy to Ms. Reese as a professional courtesy, since she is listed in the "complaint" as counsel for Monts.

6. Regarding, the entirety of the remaining complaint, I think it may be appropriate to review the government code.

Each attorney admitted to practice in the State of Texas is subject to the disciplinary and disability rules of the State of Texas. *Government Code, Section 81.071.*

Further, each attorney is subject to the *Texas Rules of Professional*

Conduct and the Texas Rules of Disciplinary Procedure. Government Code, Section 81.072-12(d).

Complaints and inquiries are governed by a strict set of rules designed to prevent manipulation of the voluntary system of discipline. *Government Code, Section 81.072-12(d), et seq.*

The subject "complaint" is categorically not a client complaint, nor is it from any member of the general public. The subject "complaint" arises from civil defendant-adversaries, who are also attorneys. The filing itself appears to represent an awkward and inappropriate attempt to deny my clients access to the courts.

Under *Government Code, Section 81.075(b)(1),* I request that, as such, it be placed on the dismissal docket for disposition as allowed by law.

7. No contractual standing, complaint appears to be based on *8.03* of the rules, but fails to state a violation of the rules, all civil actions are public record and the judges may sanction, report violations or hold in contempt court officers. The partial filing of partial rulings, does not constitutute a complaint.

8. No privity, in essence these lawyers have nothing but an adversarial relationship and are trying to manipulate the outcome in these very complicated civil cases.

9. Material misrepresentation to a tribunal and to this body will be dealt with in the form of a complaint.

10. Manipulation of civil actions, and duly authorized judicial officials, will be dealt with in the form of a complaint.

11. The "complaint" form fails to identify what disciplinary rules were allegedly violated. This represents a denial of due process, I am unable to respond to vague, general, personal issues not supported by allegations of conduct which may, in the opinion of McCall and Monts, have constituted professional misconduct.

12. The State Bar of Texas has all records regarding the previous personal disciplinary history of SBN 05465900, I humbly submit that the summary regarding this point is filled with inaccuracy, is not factually correct and was not intended to edify or assist the Counsel.

Therefore, I request that a finding of no just cause is appropriate, and should be entered. Thank you.

Respectfully,

Charles Chandler Davis
6910 FM 1830
Argyle, Texas 76226
SBN 05465900
940.368.1205
charlie@arroyocoloradoenergy.com

CERTIFICATE

I, Charles Chandler Davis, SBN 05465900, have sent this day, by US MAIL, a response, as required by the rules, to the complainants and to Ms. Stacy Reese, as attorney for complainant, Monts.

_____

BEFORE THE BOARD OF DISCIPLINARY APPEALS

CHARLES CHANDLER DAVIS,	§	**APPEAL FROM THE**
Appellant	§	
	§	
v.	§	**14-1 EVIDENTIARY PANEL**
	§	
COMMISSION FOR LAWYER	§	
DISCIPLINE,	§	
Appellee	§	**STATE OF TEXAS**

APPENDIX
TO
APPELLANT'S OPENING BRIEF

	DOCUMENTS
APPENDIX 1	CR 19-20, 33, 46, 48, 343, 351, 400, 403, 407-411, 1012, 1070-1071, 1109, 1126, 1225, 1256-1267, 1135
APPENDIX 2	RR 8, 9, 10, 11, 12, 35, 36, 37, 149, 176, 177,179, 180, 181, 182, 184, 185, 194, Exhibits 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 16, 17

BEFORE THE BOARD OF DISCIPLINARY APPEALS

CHARLES CHANDLER DAVIS,	§	**APPEAL FROM THE**
Appellant	§	
	§	
v.	§	**14-1 EVIDENTIARY PANEL**
	§	
COMMISSION FOR LAWYER	§	
DISCIPLINE,	§	
Appellee	§	**STATE OF TEXAS**

APPENDIX 1

[Excerpts of Clerk's Record]

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

October 20, 2011

CMRRR#: 70111150000029276727

Charles C. Davis
Law Office Of Charles Chandler Davis
6910 FM 1830
Argyle, Texas 76226-3024

Re: A0051113770 Tom McCall & Britton D. Monts - Charles C. Davis

Dear Mr. Davis:

The Office of Chief Disciplinary Counsel has completed its investigation of the above referenced Complaint and determined on October 20, 2011, that there is Just Cause to believe that you have committed one or more acts of Professional Misconduct as defined by the Texas Rules of Disciplinary Procedure (TRDP).

In accordance with TRDP 2.14D, a statement of your acts and/or omissions and the Texas Disciplinary Rules of Professional Conduct that the Chief Disciplinary Counsel contends are violated by the alleged acts and/or omissions follows:

> Complainants, Tom McCall and Britton Monts, are opposing counsel in several cases to Respondent, Charles Davis. In August 2009, Respondent filed a lawsuit in Travis County, Texas against several parties, including Complainants, based upon a termination of mineral rights. In March 2010, the court granted partial summary judgment in favor of most of the defendants. In April 2010, the court sanctioned Respondent for knowingly filing pleadings that contained false allegations. The court referenced a previous January 2010 ruling where Respondent was sanctioned for his conduct and ordered to answer discovery and pay a monetary fine; by the April 2010 order, Respondent had not paid the sanction or responded to discovery as ordered.
>
> In April 2010, after the judge in the Travis County case ruled in favor of most of the defendants, Responded filed a lawsuit in Kleburg County, Texas, involving the same tracts of land as the Travis County case with the addition of 2 tracts of land. An agreed final judgment was entered in the case in July 2010 without the Complainants' knowledge or consent. In September 2010, Complainants filed a bill of review. In February 2011, the court vacated the July judgment and rendered findings of fact and conclusions of law. The court found that Respondent (and his clients) knowingly made false statements of material fact to the judge in the Kleburg County case, that in filing the Kleburg County suit Respondent engaged in conduct involving dishonesty, deceit, misrepresentation, and fraud upon the court, violated his duty of candor to the court, and intentionally and knowingly filed and presented a false judgment.

These alleged acts violate the following Texas Disciplinary Rules of Professional Conduct:

3.01, 3.02, 3.03(a)(1), 3.03(a)(5), 8.04(a)(1), 8.04(a)(3)

P. O. Box 12487, Austin, Texas 78711-2487, (512) 427-1350, (877) 953-5535, fax: (512) 427-4167

Pursuant to TRDP 2.15, you must notify this office whether you elect to have the Complaint heard by an Evidentiary Panel of the District Grievance Committee or in a district court of proper venue, with or without a jury. **The election must be in writing and served upon the Chief Disciplinary Counsel's office no later than twenty (20) days after your receipt of this notice.** Failure to file a timely election shall conclusively be deemed an affirmative election to proceed before an Evidentiary Panel in accordance with TRDP 2.17 and 2.18.

Enclosed is a form in which to indicate your election and principal place of practice. It should be mailed to the undersigned at the address shown at the bottom of this letter. In making your election, you should be aware that an Evidentiary Panel proceeding is confidential unless a public sanction is entered and that a **private reprimand is only available before an Evidentiary Panel.** District court proceedings are public and a private reprimand is not an available sanction.

If you would like to discuss a resolution of this matter prior to the filing of a disciplinary or evidentiary petition, please contact the undersigned at the phone number listed below.

Sincerely,

Judith Gres DeBerry
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

Enclosure: Respondent's Election and Principal Place of Practice Certification

JD/ama

CF8-1

COMPLAINT AGAINST

Charles C. Davis A005113770

Argyle, Texas

RESPONDENTS ELECTION

I, Charles C. Davis, hereby elect: ✓ Evidentiary Hearing-District Grievance Committee

CERTIFICATION OF PRACTICE

I, Charles C. Davis, hereby certify that:

Argyle Denton County, Texas, is my principal place of practice and that my physical address is 6910 FM 1830, Argyle, Texas 76226.

Signed on this the 14 day of December, 2011.

THIS FORM RETURNED WITHIN 20 days OF RECEIPT 11/2911

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

January 5, 2012

Charles C. Davis
6910 FM 1830
Argyle, Texas 76226

Re: A005113770 - Commission for Lawyer Discipline v. Charles C. Davis

Dear Mr. Davis:

The above-referenced Complaint shall proceed through the Evidentiary process under Rules 2.17, *et seq.*, of the Texas Rules of Disciplinary Procedure. Pursuant to Rule 2.17, the Chair of the District Grievance Committee has appointed an Evidentiary Panel to hear the Complaint. A list of the assigned panel members is attached to this notice. Any alleged grounds for disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within ten (10) days after receipt of this notice.

In accordance with Rule 2.17A, you will be served with an Evidentiary Petition containing a description of the acts and conduct that gave rise to the alleged Professional Misconduct and a listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by such acts or conduct, or other grounds for seeking Sanctions. Pursuant to Rule 2.17B, you must file a responsive pleading either admitting or denying each specific allegation of Professional Misconduct. Failure to timely file an answer constitutes a default.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Lisa M. Holt
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

LMH/kdw

Enclosure: Evidentiary Panel Appointment & Assigned Panel List

CF4-1.PRT

The Princeton, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254
Telephone: (972) 383-2900; Facsimile: (972) 383-2935

NO. A0051113770

COMMISSION FOR LAWYER DISCIPLINE	§	**EVIDENTIARY PANEL**
	§	
	§	
v.	§	**OF DISTRICT 14**
	§	
CHARLES C. DAVIS	§	**GRIEVANCE COMMITTEE**

ORDER ASSIGNING EVIDENTIARY PANEL

Pursuant to Rule 2.17 of the TEXAS RULES OF DISCIPLINARY PROCEDURE, this pending evidentiary proceeding shall be assigned to a panel of the District 14 Grievance Committee as follows:

IT IS ORDERED this Evidentiary proceeding shall be assigned to **Evidentiary Panel** 14-7 as indicated on the attached roster.

SIGNED this the 20 day of December, 2011.

Alex B. Eyssen
District 14 Grievance Committee Chair

NO. A0051113770

COMMISSION FOR LAWYER DISCIPLINE	§	**EVIDENTIARY PANEL**
	§	
	§	
v.	§	**OF DISTRICT 14**
	§	
	§	
CHARLES C. DAVIS	§	**GRIEVANCE COMMITTEE**

ORDER REASSIGNING EVIDENTIARY PANEL

This case is pending before District 14, Panel 14-2, but several members have recused themselves, making it necessary to reassign this case to a different panel.

IT IS ORDERED that this Evidentiary proceeding is hereby reassigned to Evidentiary Panel 14-1 as indicated on the attached roster. This order supersedes the previous Order Assigning Evidentiary Panel and the previous Order Assigning Acting Chair.

SIGNED this the 22 day of July, 2014.

Wayne C. Watson
District 14 Grievance Committee Chair

Lisa Holt

From: Lisa Holt
Sent: Wednesday, July 23, 2014 10:01 AM
To: bill@altmanlegal.com
Cc: charlie@arroyocoloradoenergy.com
Subject: CFLD v. Charles C. Davis
Attachments: DOC.PDF

Dear Mr. Altman:

Pursuant to the attached Order Reassigning Evidentiary Panel issued by District 14 Grievance Committee Chair Wayne C. Watson, your panel has been assigned to preside over the above-mentioned matter. Respondent Charlie Davis has filed several motions that I will forward to you w/in the next few days. I will be filing responses to several, if not all, of his motions, after which I would respectfully request that the motions be scheduled for a telephonic hearing on a date and time that is convenient for all involved.

Your time and attention dedicated to this matter is greatly appreciated.

Sincerely,

Lisa M. Holt
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel State Bar of Texas The Princeton
14651 Dallas Parkway, Suite 925
Dallas, Texas 75254
(972) 383-2900 (Telephone)
(972) 383-2935 (Facsimile)
lholt@texasbar.com

FILED

JUL 31 2014

EVIDENTIARY PANEL STATE BAR OF TEXAS
DALLAS/FORT WORTH

Cause No. A005113770

In re Davis

DISTRICT 14

GRIEVANCE COMMITTEE

OBJECTION TO EVIDENTIARY DOCKET

COMES NOW, Charles Chandler Davis, as respondent herein and files this his procedural objection to continuing violation of both the Disciplinary Rules of Procedure and the Texas Rules of Civil Procedure.

CASE SUMMARY

This disciplinary action was assigned to the District 14 Panel, the Honorable Curtis M. Loveless, Presiding on December 6, 2012. It was set once in 2013 and then passed by agreement to June 2014. Chairman Loveless felt that the special exceptions and no evidence summary judgment motions should be heard by a Chairman who could rule on them, and removed himself *sua sponte*.

A panel member recused himself voluntarily, and the new Chairman, Mr. Hinkley, recused. No *TRCP, 18(a)* recusal motion was ever filed, by either party. Multiple motions to dismiss the case on limitations and other grounds are pending, and have been pending since May of 2014. There has been no discovery, and no discovery schedule. An agreed deposition has been set for the 28th of August at 11:00AM.

Case No. A0051137770

FILED

AUG 0 1 2014

EVIDENTIARY CLERK-STATE BAR OF TEXAS
DALLAS/FORT WORTH

In *re* Davis

EVIDENTIARY PANEL

DISTRICT 14

GRIEVANCE COMMITTEE

MOTION TO DISMISS/MOTION TO STRIKE

COMES NOW, Charles Chandler Davis, Respondent herein, and after examination of the "*Evidentiary Docket*" furnished by the Commission for Lawyer Discipline on the 28th of July 2014, files this his motion to dismiss or to strike for cause the pleadings of the Commission, and in support thereof respectfully submits the following:

1. The Texas Rules of Disciplinary Procedure set out the mandatory procedures meant to ensure the viability and inherent power to maintain appropriate standards of professional conduct. Further, to ensure the fairness, maintenance of due process and civil rights of attorneys and the integrity of the disciplinary and disability system promulgated by the Supreme Court of the State of Texas.

2. Venue of respondent election to evidentiary hearings shall be in accordance with *2.11 of the Texas Rules of Disciplinary Procedure.*

   "B. Evidentiary Panel Proceedings. In an Evidentiary Panel proceeding, venue shall be in the county of the Respondent's principal place of practice; ... "(emphasis added by author). 2.11, TRDP(id).

3. TRDP, 2.15. Election governs election by respondent within a prescribed number of days, and upon such election then the evidentiary panel proceedings must subscribe to *TRDP, 2.17 and 2.18.*

4. TDRP, 2.17. **Evidentiary Hearings**

FILED

AUG - 4 2014

EVIDENTIARY CLERK-STATE BAR OF TEXAS
DALLAS/FORT WORTH

Cause No. A005113770

In re Davis

EVIDENTIARY PANEL

DISTRICT 14

GRIEVANCE COMMITTEE

TRCP, Rule 94 Affirmative Defenses
Challenge to Venue

COMES NOW, Charles Chandler Davis, as respondent herein and files this his objection to venue, objection to timeliness and objection to the record before the panel, including an entrance of affirmative defenses.

Affirmative Defenses

To the extent that affirmative defenses have not be raised by special exception, summary judgment or previous answers, as supplemented and amended, then the respondent, relying on *TRCP, 94* pleads the following;

1. The affirmative defense of fraud is pled. The complaint is disingenuous, fraudulent and materially misleading to a magistrate or administrative officer. The manipulations are intentional and part of an adversarial strategy in cases which are continuing. The complaint was filed in bad faith, as a litigation tactic.

2. The affirmative defense of limitations is pled, this action is time-barred by limitations. The pleadings and procedure do not conform to the time rules, contained within the *TRDP*.

3. Affirmative defenses are specifically pled items which defeat a cause of action or claim. See, ***Cook Composites, Inc. v. Westlake Styrene Corp.***, 15 S.W. 3rd 124 (Houston 14th 2000, pet. dismissed); *TRCP, Rule 94.*

Venue Challenge

4. Venue challenges are generally governed by the *Civil Practice and Remedies Code, Chapter 15.001, et seq.* Mandatory venue is a significant right in the State of Texas and pursuant to the *Texas Disciplinary Rules of Procedure, Rule 2.11(b)*, a Evidentiary Panel proceeding **shall** be in the *"county of respondents principal place of practice" TRDP, Rule 2.11(b).* There is no avenue for harmless error, it is always reversible to disregard mandatory venue, even if it previously was appropriate. See, ***KJ Eastwood Inves. V. Enlow***, 923 S.W. 2nd 255, 256 (Ft. Worth 1996, orig. proceeding.)

We respectfully object to venue subsequent to the *sua sponte* recusal of Randolph Scott, Esq.. This motion is in no way a comment on the credentials or abilities of Chairman William Altman, Esq., and is not a recusal motion under *TRCP 18a*, a point to which we will return. We respectfully request the dismissal of this action. We are prepared to participate in a telephonic hearing, with a record to dispose and obtain rulings on these issues, which have been pending for three years. Respondent has requested dismissal on multiple occasions, both orally and in writing and has never received a response re multiple matters.

Notice

There are numerous notice issues in this matter, the latest occurring on the 1st of August 2014, when partial motions were sent to the Chairman and the panel for review. The motions for judicial notice of defects in the Evidentiary Record and a Motion to Strike contained the evidentiary record and the defective pleadings of the commission, with specific comments. These exhibits were apparently deleted.

180 Day Rule

It is incumbent of the respondent to point out the number of days this case has been pending. Since the inception in May of 2011 of the specious complaint, the election and appointment of an evidentiary panel in 2012, till the present, the case has been extracting valuable time and resources for approximately **1520** days. This violates every principal of the *Texas Rules of Disciplinary Procedure,* and the stated goals and objectives of the State Bar of Texas.

The most egregious indifference to the rights of an accused is the failure to conform the Commissions' conduct regarding the grievance procedures as promulgated by the Supreme Court of Texas. *Texas Rules of Disciplinary Procedure 2.17 (o)"* **Evidentiary Hearings**.....

O. *Setting: Evidentiary panel proceedings must be set for hearing with a minimum of 45 days' notice to all parties unless waived by all parties. Evidentiary Panel proceedings* ***shall*** *be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown."*

The original and timely answer was filed in March of 2012. We respectfully request dismissal on this basis alone.

Recusal

Recusal under *18(a)(b)* of the *TRCP* has a vast amount of case law which voids actions taken subsequent to a motion to recuse. A party may challenge the administrative actions taken in the wake of a verified and timely motion to recuse. After researching this point we find no cases directly in point, we were notified of the recusal and had to cancel discovery, then without notice or conference on this point, the Commission chose to remove the case from the appropriate venue and send notices after their actions. It is unclear if this actions violate the recusal procedures and we respectfully request a ruling on the validity of the actions, prior to the evidentiary proceeding.

Record

We respectfully request a record of the telephonic motions hearing. We respectfully want to certify a record from inception until August of 2014.

Respectfully submitted,

/s/ *Charles Chandler Davis*
Charles Chandler Davis
SBN 05465900
6910 FM 1830
Argyle, Texas 76226
05465900
940.368.1865
charlie@arroyocoloradoenergy.com

CERTIFICATE

I, Charles Chandler Davis, as respondent herein have sent written notice as required by the *Texas Rules of Civil Procedure* to the following on August 4, 2014. We have been unable to conference on this matter.

Lisa Holt, Esq.
State Bar of Texas
The Princeton
14651 Dallas Parkway Suite 925
Dallas, Texas 75206

/s/ *Charles Chandler Davis*

Charles Chandler Davis

FILED

SEP 18 2014

EVIDEN HART-CLERK STATE BAR OF TEXAS
DALLAS/FORT WORTH

Cause No.A0051113770

In *re* Davis

IN THE GRIEVANCE
COMMITTEE 14th DISTRICT
OF TEXAS

BILL OF EXCEPTION

TO THE HONORABLE WILLIAM ALTMAN, PRESIDING

COMES NOW, Charles Chandler Davis, as Respondent herein and for cause, respectfully requests recognition of the flawed, defective and invalid record furnished by the Chief Disciplinary Counsels Office and would show the following in support thereof:

Bills of Exception

Pursuant to the *Texas Rules of Disciplinary Procedure* an official record is to be maintained by the Chief Disciplinary Counsel, and such record is to appropriately reflect the activities taken by both parties to the grievance process. Preservation of error must occur by motion raising an error and then obtaining a ruling thereon. The only record we have at this time is the clerks record maintained by the Chief Disciplinary Counsel. The record is incomplete.

A formal bill of exception is an offer of proof regarding evidence or record errors which have been either excluded from the record by ruling, or to correct and supplement the record by objection and the obtaining of a ruling. See, *McDonald and Carlson*, Texas Appellate Practice, 17:1, et seq., *Texas Rules of Appellate Procedure*, Rule 33.2.

A party may complain on appeal regarding excluded evidence only if the appellate record reflects the substance of the excluded evidence. *Guynn v. Corpus Christi Bank and*

NO. A0051113770

COMMISSION FOR LAWYER DISCIPLINE	:	**EVIDENTIARY PANEL**
	:	
VS.	:	**OF DISTRICT 14**
	:	
CHARLES C. DAVIS	:	**GRIEVANCE COMMITTEE**

ORDERS ON PENDING MOTIONS FILED BY RESPONDENT AND OMNIBUS ORDER REGARDING FUTURE MOTIONS

The following are Orders on the Motions and Special Exceptions filed by the Respondent. The Motions and Special Exceptions are listed below with the Ruling(s) on each following each listed Motion or Special Exception. The date preceding each Motion or Special Exception is the date the Motion or Special Exception was file marked.

20140508 Motion to Quash, Special Exceptions and Amended Answer TRCP 91a Motion
RULING: The Motion to Quash, Special Exceptions, and TRCP 91a Motion is denied.

20140508 No Evidence Summary Judgment TRCP 166a(I)
RULING: This Motion is denied.

20140509 Motion to Quash
RULING: This Motion was replaced by Respondent's 1st Amended Motion to Quash and no Ruling is appropriate..

20140730 1st Amended Motion to Quash
RULING: The Motion concerning Jurisdiction is denied. The Respondent's request for a "threshold hearing" and has been granted and occurred. By these Orders on Pending Motions Respondent's request for Rulings has been granted.

20140730 Procedural Objection and Plea to Jurisdiction
RULING: Respondent's multiple Objections, Motions, and Challenge to Jurisdiction contained in this instrument are denied.

20140731 Respondent's Special Exceptions Filed with Supplemental Answer
RULING: Respondent's Special Exceptions are denied.

20140731 Objection to Evidentiary Docket
RULING: The Objection to Evidentiary Docket is granted, in part, and Petitioner is Ordered to file every Document filed on or after October 20, 2011, by either Petitioner, Respondent, or the Panel Chair in the "Evidentiary Docket" in

chronological order. The balance of the Objections under "Formal Objection" are Overruled and Denied.

20140801 Motion to Dismiss - Motion to Strike
RULING: As stated in the preceding Ruling Petitioner is Ordered to file every Document filed on or after October 20, 2011, by either Petitioner, Respondent, or the Panel Chair in the "Evidentiary Docket" in chronological order. The balance of the Motion(s) is denied

20140804 TRCP, Rule 94 Affirmative Defenses, Challenge to Venue
RULING: The Challenge to Venue is moot as an Evidentiary Hearing has not been scheduled outside of Respondent's county of residence and Petitioner Agrees that an Evidentiary Hearing in the county of Respondent's residence is mandatory. Affirmative Defenses are a matter of Pleading and proof by the Respondent at an Evidentiary Hearing. Respondent's Motion and Objections concerning "Notice" and "180 Day Rule" are Denied and Overruled. Respondent's The Panel Chair finds no error related to the recusals. Respondent has not shown how recusals could or did cause him to "cancel discovery." Respondent was given the opportunity to have a record made on the Hearing had on Respondent's Motions and expressly waived such request at the beginning of the telephonic hearing on Respondent's Motions.

20140909 Motion to Assign to Summary Disposition Panel
RULING: This Motion is denied.

20140916 TRCE, 201(d) MOTION
This Motion is denied. Respondent's Motion does not comply with Rule TRCE (sic) 201(d).

20140916 OBJECTION TO NOTICE OF EVIDENTIARY HEARING
Respondent's Objection is Overruled. The Notice of Evidentiary Hearing states the Date and Time for the Hearing. Respondent has acknowledged receiving copies of emails stating the address of the changed location, The Hearing is Friday, September 26th at 10:00 a.m. at the Law Offices of Sawko and Burroughs P.C., 1172 Bent Oaks Drive, Denton, Texas 76210. Respondent has not shown how the change of location, less than two (2) miles, within the city of Denton will cause him any harm.

20140918 BILL OF EXCEPTION
RULING: The "Bill of Exception" is Overruled and Denied. No documents were attached to the "Bill." The Panel Chair received some documents from the Respondent. However, the documents were not made a part of the "Bill" and there was no reference in or on the documents sent to the Panel Chair that they were a part of any Motion or Pleading. However, The Chair has considered the

Respondent gives notice of filing this plea with the Texas Board of Disciplinary Appeals, prior to having an Evidentiary Hearing. Respondent has not waived such challenge to jurisdiction.

Specific Defects

VIOLATION of Texas Rules of Disciplinary Procedure , Rules 2.10 "Classification of Inquiries and Complaints" and 2.12," Investigation and Determination of Just Cause"

The Chairman and Petitioner are furnished with the requisite copies of the current *Rules of Disciplinary Procedure*, with changes to February 2014. Respectfully the Petitioner is required have requisite knowledge and understanding of these rules, and in several hearings have opined that she resents the Respondent filing objections to the petitioner failure to adhere their conduct to the rules.. *Texas Rules of Disciplinary Procedure, Rule 15.05* makes such time lines mandatory and requires the Petitioner under Texas Rules of Civil Procedure, Rule 13 to file pleadings in good faith. mandatory for loss of jurisdiction.

Mandatory Judicial Notice

Judicial Notice under **Texas Rules of Civil Evidence, Rule 201(d)** of the entire file is requested, from inception of the complaint, on May 11, 2011 until September 25, 2014.

VIOLATION of Texas Rules of Disciplinary Procedure, Rule 2.09 "Notice to Parties"

The Petitioner has not been served in accordance with this rule and submits respectfully that 2.09(A, B,C) have not been observed. That notice was delivered by certified mail on two different occasions and that the second notice is not timely and does not comport with the rules. Respectfully respondent does not waive these jurisdictional and notice defects.

FILED

SEP 25 2014

EVIDENTIARY CLERK-STATE BAR OF TEXAS

Cause No. A0051113770

Commission on Lawyer Discipline

v.

Charles Chandler Davis

EVIDENTIARY PANEL

DISTRICT 14

GRIEVANCE COMMITTEE

TRCP, RULE 18 and 18a,18b MOTION

TO THE HONORABLE WILLIAM ALTMAN, PRESIDING

COMES NOW, Charles Chandler Davis, as respondent herein, and files this timely TRCP 18 and 18a,18b Recusal Motion and in support thereof submit the following:

Summary and Time Line

In May of 2011, an inquiry was commenced based upon complaints filed by two Attorneys. Over the course of the next five months the Chief Disciplinary Counsel "considered" such complaints. This was in violation of *2.10 and 2.12 of the Texas Rules of Disciplinary Procedure.* Please see attached partial time line filed as Evidentiary Index, by Petitioner. You will see a beginning date of 10/10/11 for number 1. This is not correct and is not a complete evidentiary index. Please see letter dated June 8, 2011, and letter dated September 2, 2011, also attached. There are other documents, not in the index, not copied and not noticed, as of September 25, 2014. Multiple attempts have been made to the current Chairman to recognize the loss of jurisdiction or at least to conduct an inquiry into jurisdiction.

In the last forty months you will see various committee and committee chairs which have voluntarily removed themselves from this matter without an 18a motion to recuse. You will also note an unexplained gap in the so called Evidentiary Index from

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains his principal place of practice in Denton County, Texas.
3. Respondent brought a proceeding, asserted an issue or controverted an issue affecting Complainants that was frivolous.
4. Respondent took positions that unreasonably increased the costs or other burdens of the case or that unreasonably delayed resolution of the matter.
5. Respondent knowingly made a false statement of material fact or law to a tribunal.
6. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 3.01, 3.02, 3.03(a)(1) and 8.04(a)(3).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.

Disbarment

It is therefore ORDERED, ADJUDGED and DECREED that effective October 1, 2014, Respondent, Charles Chandler Davis, State Bar Number, 05465900, is hereby DISBARRED from the practice of law in the State of Texas.

NO. A0051113770

COMMISSION FOR LAWYER DISCIPLINE	§	**EVIDENTIARY PANEL**
	§	
	§	
	§	
vs.	§	**OF DISTRICT 14-1**
	§	
CHARLES C. DAVIS	§	**GRIEVANCE COMMITTEE**
	§	

RESPONDENT'S MOTION FOR NEW TRIAL

Respondent Charles Chandler Davis ("Davis") files this Motion for New Trial, pursuant to Rules 320 et seq. of the Texas Rules of Civil Procedure and Texas Rule of Disciplinary Procedure 2.22. In support of this motion, Davis shows the panel as follows.

I. INTRODUCTION

This proceeding originated with the filing of a grievance against Davis in June 2011 by two other attorneys. After an initial period of some activity, there was a fourteen (14) month period of silence (September 2012 through January 2014), in which no action was taken on the matter whatsoever.

Once activity resumed in 2014, in an effort to clarify the allegations against him and the issues involved, Davis filed several discovery and pre-trial motions with the evidentiary panel. However, he was unable to obtain any rulings at all from the panel, at least in part due to delays and problems getting a panel in place. Moreover, the evidentiary panel could not seem to retain a permanent Chair, as there were five (5) different chairpersons assigned before the sixth, William Altman, was designated.

On June 13, 2014, the Commission for Lawyer Discipline ("Commission") filed its First Amended Evidentiary Petition against Davis, at which time there was still no evidentiary panel assigned to hear this matter. A panel was finally Ordered on July 2, 2014 with Chairman Randolph West Stout, who subsequently recused himself and was replaced by William Altman.

Despite Davis's repeated requests to be heard on his pending motions, not a single request for relief was considered until just prior to the evidentiary hearing. In an Order dated September 22, 2014 (just four days prior to the hearing), Chairman Altman denied each and every request for relief Davis had made.

On September 25, 2014, Davis filed a verified Texas Rule of Civil Procedure 18 motion to recuse Chairman Altman. Chairman Altman neither recused himself nor referred the motion, but instead summarily denied it at the outset of the hearing on September 26, 2014.

At the hearing there were just two witnesses for the Bar, one of whom gave erroneous if not perjurious testimony. After the hearing, the evidentiary panel entered a Judgment disbarring Davis, which is attached hereto as Exhibit A.

A new trial should be granted because: (1) the evidentiary panel's rulings, including the Judgment, entered after Davis's motion for recusal was filed, are void; (2) the evidence is factually and legally insufficient to support the evidentiary panel's "Findings of Fact" and conclusions; and (3) the panel abused its discretion in finding disbarment was an appropriate sanction because the evidence fails to support such an extreme sanction.

This Motion for New Trial is timely filed in accordance with Texas Rules of Civil Procedure 329b and Texas Rule of Disciplinary Procedure 2.22. TEX. R. CIV. P. 329b; TEX. R. DISC. P. 2.22.

II.
ARGUMENTS AND AUTHORITIES

A. The evidentiary panel's rulings are void.

Once Davis filed his Texas Rule of Civil Procedure 18 motion to recuse the panel chairman prior to the introduction of any evidence, Chairman Altman was required to take one of two steps: either recuse himself, or refer the motion for consideration by another individual. TEX. R. CIV. P. 18a(f)(1); *McLeod v. Harris*, 582 S.W.2d 772, 775 (Tex. 1979); *Mann v. Denton County*, No. 02-13-00217-CV, 2014 WL 5089189, *1 (Tex. App.—Forth Worth Oct. 9, 2014, no pet. hist.) (per curium); *In re Norman*, 191 S.W.3d 858, 860 (Tex. App.—Houston [14th Dist. 2006, orig. proceeding); *Lamberti v. Tschoepe*, 776 S.W.2d. 651, 652 (Tex. App.—Dallas 1989, writ denied); *see also* TEX. R. DISC. P. 2.06 ("A member is disqualified or subject to recusal as a panel member for an evidentiary hearing if a district judge would be, under similar circumstances, be disqualified or recused."). Texas law for the last three decades has required challenged judges to either recuse or refer upon the filing of a verified motion to recuse. *See, e.g., McLeod*, 582 S.W.2d at 775. There is no option for the challenged jurist to rule himself on the motion. *See Lamberti*, 776 S.W.2d at 652 (finding judge who denied recusal motion had "pursu[ed] an option unavailable through any rule or statute" and thus abused his discretion).

Moreover, after a motion to recuse has been filed, any actions the challenged judge may take on the case (subject to narrow exceptions not relevant here) are void. TEX. R. CIV. P. 18a(f)(2)(a); *Lamberti*, 776 S.W.2d at 652 (finding "any orders made subsequent to the denial of the motion to recuse are void"); *Brosseau v. Ranzau*, 911 S.W.2d 890, 893 (Tex. App.—Beaumont 1995, no writ) (same).

In the proceeding in this case, Davis filed a verified recusal motion, which then required Chairman Altman to either recuse himself, or refer the motion. *See Mann*, 2014 WL 5089189 at *1; *In re Norman*, 191 S.W.3d at 860; *Lamberti*, 776 S.W.2d. at 652. The Chairman did neither, and instead "pursu[ed] an option unavailable through any rule or statute" and denied it. *Lamberti*, 776 S.W.2d at 652. This was an abuse of discretion, and the result of which is that the evidentiary panel's subsequent Judgment is void. *See id.*; *Brosseau*, 911 S.W.2d at 893.

In addition to and without waiving the foregoing, new evidence has arisen that speaks directly to the misconduct of the Chairman in the proceedings below with respect to the recusal motion.

B. The evidence is factually and legally insufficient to support the "Findings of Facts" and conclusions contained in the evidentiary panel's Judgment.

The following "Findings of Fact"[1] from the Judgment are not supported by either legally or factually sufficient evidence:

- "Finding 3: Respondent brought a proceeding, asserted an issue or controverted an issue affecting Complainants that was frivolous."
- "Finding 4: Respondent took positions that unreasonably increased the costs or other burdens of the case or that unreasonably delayed resolution of the matter."
- "Finding 5: Respondent knowingly made a false statement of material fact or law to a tribunal."
- "Finding 6: Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation."

For each of the above referenced "facts," there was not sufficient evidence introduced at the evidentiary hearing to meet the required "preponderance of the evidence" standard.

[1] The Judgment contains a section titled "Findings of Fact" (Judgment at 2) but the "facts" listed therein are conclusions, and contain no reference whatsoever to any specific fact findings. Davis reserves his rights to raise this argument in a separate motion, without waiving the request for relief in this Motion for New Trial.

TEX. R. DISC. P. 2.17(M). In addition, Tom McCall's testimony with respect to his relationship to Arroyo Colorado, LLC, and Mr. Davis's alleged relationship to Arroyo Colorado, LLC, can be proven erroneous, if not perjurious.

C. The panel abused its discretion in finding that disbarment was an appropriate sanction.

When deciding sanctions for an attorney's misconduct, an evidentiary panel is required to consider:

- the nature and degree of the Professional Misconduct for which Respondent is being sanctioned;
- the seriousness of and circumstances surrounding the Professional Misconduct,
- the loss or damage to clients;
- the damage to the profession;
- the assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;
- the profit to the attorney;
- the avoidance of repetition;
- the deterrent effect on others;
- the maintenance of respect for the legal profession; and
- the conduct of the Respondent during the course of the Disciplinary Proceeding.

TEX. R. DISC. P. 2.18 ("In determining the appropriate Sanctions, the Evidentiary Panel shall consider . . .[enumerating factors above]").

In this proceeding, the evidentiary panel's Judgment states, "[a]fter hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rules of Disciplinary Procedure, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT." Judgment at 2. The panel, however, did not consider all of the 2.18 factors, and there was no evidence offered to each of

the factors at the hearing, and/or the evidence presented would not support the severe sanction of disbarment.

PRAYER

WHEREFORE PREMISES CONSIDERED, Charles Chandler Davis prays that the panel hold a hearing on this Motion, and after the hearing, grant the Motion and order this case be relitigated in a new trial; and for any other further relief to which he may be entitled.

Respectfully submitted,

WEST, WEBB, ALLBRITTON & GENTRY, P.C.

By: _____

Gaines West
State Bar No. 21197500
gaines.west@westwebblaw.com
Jennifer D. Jasper
State Bar No. 24027026
jennifer.jasper@westwebblaw.com
1515 Emerald Plaza
College Station, Texas 77845
(979) 694-7000 Telephone
(979) 694-8000 Fax

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Respondent's Motion for New Trial, is being served on the Commission for Lawyer Discipline through its counsel of record, as indicated below on the 31st day of October 2014:

Lisa Holt
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
The Princeton
146541 Dallas Parkway, Suite 925
Dallas, Texas 75254

VIA FACSIMILE 1-972-383-2935

William K. Altman
Evidentiary Panel Chair
Altman Legal Group
2525 Kell Blvd, Suite 500
Wichita Falls, Texas 76308-1061
[COURTESY COPY]

VIA FACSIMILE: 1-800-772-0828

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF Denton §

BEFORE ME, the undersigned authority, on this day personally appeared **CHARLES CHANDLER DAVIS**, known to me, and stated under oath that the statements in the foregoing Motion for New Trial are true and correct.

By: _____
CHARLES CHANDLER DAVIS

SWORN AND SUBSCRIBED BEFORE ME by the said **CHARLES CHANDLER DAVIS** on this the 31st day of October, 2014 to certify which witness my hand and seal of office.

SEAN GOMEZ NOTARY PUBLIC STATE OF TEXAS EXPIRES OCT. 30, 2015

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

BEFORE THE DISTRICT 14 GRIEVANCE COMMITTEE
EVIDENTIARY PANEL 14-1
STATE BAR OF TEXAS

FILED
OCT - 3 2014
EVIDENTIARY CLERK-STATE BAR OF TEXAS
DALLAS/FORT WORTH

COMMISSION FOR LAWYER DISCIPLINE, **Petitioner**	§	
V.	§	**A0051113770**
CHARLES CHANDLER DAVIS, **Respondent**	§	

JUDGMENT OF DISBARMENT

Parties and Appearance

On September 26, 2014, came to be heard the above styled and numbered cause. Petitioner, Commission for Lawyer Discipline, appeared by and through its attorney of record and announced ready. Respondent, Charles Chandler Davis, Texas Bar Number, 05465900, appeared in person and announced ready.

Jurisdiction and Venue

The Evidentiary Panel 14-1, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District14, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Professional Misconduct

The Evidentiary Panel, having considered all of the pleadings, evidence, stipulations and argument, finds Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure.

EXHIBIT
A

Findings of Fact

The Evidentiary Panel, having considered the pleadings, evidence and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent resides in and maintains his principal place of practice in Denton County, Texas.
3. Respondent brought a proceeding, asserted an issue or controverted an issue affecting Complainants that was frivolous.
4. Respondent took positions that unreasonably increased the costs or other burdens of the case or that unreasonably delayed resolution of the matter.
5. Respondent knowingly made a false statement of material fact or law to a tribunal.
6. Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Conclusions of Law

The Evidentiary Panel concludes that, based on foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: 3.01, 3.02, 3.03(a)(1) and 8.04(a)(3).

Sanction

The Evidentiary Panel, having found Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing all evidence and argument and after having considered the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that proper discipline of the Respondent for each act of Professional Misconduct is DISBARMENT.

Disbarment

It is therefore ORDERED, ADJUDGED and DECREED that effective October 1, 2014, Respondent, Charles Chandler Davis, State Bar Number, 05465900, is hereby DISBARRED from the practice of law in the State of Texas.

It is further ORDERED Respondent is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

Notification

It is further ORDERED Respondent shall immediately notify each of his current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein.

It is further ORDERED Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further ORDERED to file with the State Bar of Texas, Chief

Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice has received written notice of the terms of this judgment.

Surrender of License

It is further ORDERED Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, surrender his law license and permanent State Bar Card to the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of the State of Texas.

Publication

It is further ORDERED this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 25th day of December, 2014.

EVIDENTIARY PANEL
DISTRICT NO. 14
STATE BAR OF TEXAS

William K. Altman
William K. Altman
District 14-1 Presiding Member

FILED

SEP 25 2014

EVIDENTIARY CLERK-STATE BAR OF TEXAS

Cause No. A0051113770

Commission on Lawyer Discipline

v.

Charles Chandler Davis

EVIDENTIARY PANEL

DISTRICT 14

GRIEVANCE COMMITEE

TRCP, RULE 18 and 18a,18b MOTION

TO THE HONORABLE WILLIAM ALTMAN, PRESIDING

COMES NOW, Charles Chandler Davis, as respondent herein, and files this timely **TRCP 18 and 18a,18b** Recusal Motion and in support thereof submit the following:

Summary and Time Line

In May of 2011, an inquiry was commenced based upon complaints filed by two Attorneys. Over the course of the next five months the Chief Disciplinary Counsel "considered" such complaints. This was in violation of *2.10 and 2.12 of the Texas Rules of Disciplinary Procedure*. Please see attached partial time line filed as Evidentiary Index, by Petitioner. You will see a beginning date of 10/10/11 for number 1. This is not correct and is not a complete evidentiary index. Please see letter dated June 8, 2011, and letter dated September 2, 2011, also attached. There are other documents, not in the index, not copied and not noticed, as of September 25, 2014. Multiple attempts have been made to the current Chairman to recognize the loss of jurisdiction or at least to conduct an inquiry into jurisdiction.

In the last forty months you will see various committee and committee chairs which have voluntarily removed themselves from this matter without an 18a motion to recuse. You will also note an unexplained gap in the so called Evidentiary Index from

BEFORE THE BOARD OF DISCIPLINARY APPEALS

CHARLES CHANDLER DAVIS,	§	**APPEAL FROM THE**
Appellant	§	
	§	
v.	§	**14-1 EVIDENTIARY PANEL**
	§	
COMMISSION FOR LAWYER	§	
DISCIPLINE,	§	
Appellee	§	**STATE OF TEXAS**

APPENDIX 2

[EXCERPTS OF COURT REPORTER'S RECORD]

NO. A0051113770
VOLUME 1 OF 2 VOLUMES

THE STATE BAR OF TEXAS	)	DISTRICT 14-1
	)	
VS.	)	
	)	
CHARLES C. DAVIS	)	GRIEVANCE COMMITTEE

****

EVIDENTIARY PANEL HEARING

****

On the 26th day of September, 2014, the following proceedings came on to be held in the above-titled and numbered cause before the District 14-1 Grievance Committee, Presiding Panel Chair William K. Altman, held in Denton, Denton County, Texas:

Proceedings reported by machine shorthand.

MS. HOLT: We are.

CHAIRMAN ALTMAN: Is Respondent ready to proceed?

MR. DAVIS: Well, Your Honor, I think that -- do you mind if I remain seated or would you prefer me to stand?

CHAIRMAN ALTMAN: Please be seated.

MR. DAVIS: I think there's threshold matters that we need to --

CHAIRMAN ALTMAN: I will certainly give you that opportunity. Are you ready to proceed? I just need to know that you're ready to proceed, and I'll be ready to discuss the threshold manners with you.

MR. DAVIS: Well, without waiving the motions that I filed and have not been considered, we are not ready to proceed on an evidentiary hearing at this time.

Now, I think it is appropriate to address the threshold issues, however, and that's what I came to do.

CHAIRMAN ALTMAN: All right. Now, let me first say, yesterday afternoon I received a pleading that was entitled, TRCP Rule 18 and 18.1, 18(b) Motion.

Do you wish to be heard on that motion?

MR. DAVIS: Well, it's difficult for me to

answer that. Except for that 18(a) -- the 18(a) portion of that motion sets out a procedure. And it is not my intent to go around that rule. I mean, the duty has passed from me by me making the motion. It is now part of your charge to respond to it.

And with all due respect, I think there has been already some responses that do not comport with the requirements of 18(a). And that is an issue that I've raised with BODA -- with the Board of Disciplinary Appeals. And I filed a motion with them. And, in fact, there's an amended motion on its way there now.

So I do think that -- when I say "threshold," I do believe that regardless of how anyone feels about the motion -- whether it's a proper motion, improper motion, poorly timed or excellently timed -- the motion requires a procedure to commence upon notice.

Now, I have some specific complaints about the notice. But -- and we can visit about that. But I'm trying to -- my understanding would be is that 18(a) shifts the burden. In other words, it makes -- it is incumbent upon the chairman, then, to do certain things once a motion like that has been filed.

Now, what that means to me is that you have to either recuse or refuse to recuse. And you then send your notice to the regional presiding chairman. And

then he either sets it to be heard on your refusal to recuse or he accepts your recusal, and either appoints someone else or BODA transfers it to another jurisdiction.

And I've requested that they transfer it to another jurisdiction, simply because I believe the events over the last 40 months have shown that it's going to be very difficult for me to obtain a fair hearing because of certain things in my past which make me kind of an easy target. And I'm sensitive to those issues. Maybe too sensitive. But the way this has been handled well prior -- Mr. Chairman, with all due respect -- well prior to your getting involved in it.

There was an awful lot of issues in this case. And we had to hear a bunch of motions that I filed back in May and that counsel had not responded to. And we had to wait until September the 14th or 15th to get the responses so we could set a hearing, or we wouldn't be here kind of in a train wreck today.

And there's been, as I count them -- and I'm not sure I'm right about this -- but I count five separate chairmen before you got into the deal.

CHAIRMAN ALTMAN: Mr. Davis and Ms. Holt, for the record, the pleading that was filed yesterday -- which I understand to be a motion entitled TRCP Rule 18

and 18(a), 18(b) Motion -- is denied.

Are there any other motions that I have not ruled upon other than the motion to transfer, which you filed with the Board of Disciplinary Appeals and I don't have jurisdiction?

MR. DAVIS: No. You don't have jurisdiction over that.

CHAIRMAN ALTMAN: And I'm not aware of any other pending motion that I have not ruled on.

MR. DAVIS: No. And I think that it's absolutely proper for you to make your ruling. And I would suggest that now that you under the Rule -- under 18(a), you have to contact them. And they will schedule -- now that you've denied recusal, there will be a hearing on that. And so, with all due respect --

CHAIRMAN ALTMAN: Mr. Davis, with all due respect, I have denied the motion. We're going to proceed with the evidentiary hearing.

MR. DAVIS: Okay.

CHAIRMAN ALTMAN: Any appellate issues that you might have --

MR. DAVIS: There's not going to be any appellate issues.

CHAIRMAN ALTMAN: -- can be taken up with the Board of Disciplinary Appeals.

MR. DAVIS: Your case -- I mean, your ruling -- if you go forward, everything from this point forward will be void, if you don't do what is required by 18(a). And it will cause a huge difficulty.

CHAIRMAN ALTMAN: Mr. Davis, I respectfully listened to your viewpoint. However, I've overruled your motion and I disagree with your statements, period. They're not correct.

Ms. Holt, would you like to proceed with the evidentiary hearing?

MS. HOLT: Yes. I'm ready to proceed.

MR. DAVIS: Can I make my record, then, now? I actually have other issues that I'm concerned with.

CHAIRMAN ALTMAN: You can make them. But please do so and do so --

MR. DAVIS: I can do it, I think, fairly rapidly. And I'd like to make a formal bill of exception to the proceeding on the record.

I'd like to state that my name is Charles Chandler Davis. My Bar Card No. is 05465900. I am present and attending at Cause No. A0051113770, which is being held in Denton County, Texas.

Prior to this hearing I filed a 18(a) recusal motion. I have notified the Board of

lawyer out of New York named Gilbert Kerlin. We represented the Ballí family.

This case went on -- we tried it. Won it. Went to the court of appeals. Went to the Supreme Court. We settled before the Supreme Court reversed and rendered. So that's how we became involved in part of the mineral estate. We were working on a contingent fee. And our fee was part of the minerals we recovered.

Q. Okay. So that's how you gained mineral interests in these -- in these --

A. Yeah. There were five lawyers, I think, in the group. And collectively, I think, we recovered about 24,000 mineral acres was our fee in addition to cash.

Q. Okay. I think you mentioned that you knew the Respondent because of some negotiations you did with regard to leases -- oil and gas leases?

A. Yeah. Sure. Charles came and approached us. I think Alan Osenbaugh was a friend of Britton Monts. And I'm not sure exactly how they got together. But that's how I met Mr. Davis. He was interested in acquiring some leases on Padre Island.

Q. Okay. Do you remember -- you said 2007.

Do you remember about what month it would have been?

A. Well, the leases, I think, were actually

effective -- trying to think when they were signed. But they were effective March 1st, 2007. So the negotiations for the leases would have been prior to that.

Q. Okay. So you did enter into a lease agreement with the Respondent --

A. Covering several different tracts, yes. There was more than one lease.

Q. Okay. Were there any other agreements you entered into with the Respondent? Were there any other --

A. There was an option agreement sometime during that timeframe about -- on a tract that we called the gap acreage.

Q. Okay.

A. And that was approximately 7,000 acres, give or take, on the island.

Q. Okay. So after you entered into these lease agreements, what happened, if anything?

A. The -- we negotiated these leases over a period of time. We spent a lot of time in our office working on these leases. These were difficult leases. The terms were onerous.

There were certain obligations that Arroyo had -- Colorado -- had to undertake under the lease.

They -- basically, they were to designate drilling blocks in the acreage within a 120-day period. Most of the obligations under the drilling blocks -- it was complex. But, you know, it related to everything to drilling obligations, to payment of bonus, et cetera, extensions.

Mr. Davis failed to designate the drilling blocks. We requested Mr. Davis to designate the drilling blocks, and he failed to do so. Ultimately, we sent a letter. And, I believe, maybe Ballí Minerals & Royalty -- also, another entity which were our clients in the case --

MR. DAVIS: Mr. Chairman, I'd like to object that at least it be listed with question and answer rather than narrative.

A. I'll try to hold it down.

But, in any event, a letter was sent out. A demand was made to cure the default under the leases. Mr. Davis -- his group was given 90 days. Actually, we gave him a little longer than 90 days. I think it was 91 or 92 days to cure the defect. The lease required 90. Mr. --

Q. (BY MS. HOLT) Okay. Let me stop you there, because you've mentioned Mr. Davis and you've mentioned Arroyo Colorado.

What's the connection, if any, between the Respondent -- and when I say Mr. Davis, I refer to him as the Respondent -- between the Respondent and Arroyo Colorado?

A. You know, when we leased to Arroyo Colorado -- as it turns out, you know, there was -- if you check the Secretary of State, there is no entity, I think, called Arroyo Colorado. In our Travis County case, though, I think the -- based on an affidavit that was filed in Willacy County, Arroyo Colorado was really the assumed name --

MR. DAVIS: I'm going to object to the narrative.

CHAIRMAN ALTMAN: Overruled.

A. -- assumed name for Arroyo Colorado Energy, which is Mr. Davis.

Q. (BY MS. HOLT) Okay. So you mentioned the lease -- the terms of the lease were not complied with by the Respondent?

A. That's correct.

Q. Okay. So what happened -- what happened with regard to the option agreement?

Was there anything that happened with regard to that?

A. Well, the terms of the lease were not complied

Q. (BY MR. DAVIS) All right. Well, Mr. McMurray, do you --

THE WITNESS: Who is Arroyo Colorado?

MS. HOLT: No. I believe the question needs to be asked by Mr. Davis, not Mr. McMurray.

THE WITNESS: I don't know. I'm just here.

MS. HOLT: I understand.

CHAIRMAN ALTMAN: Mr. McMurray, just let Mr. Davis ask the question before you answer, please.

THE WITNESS: Sure.

Q. (BY MR. DAVIS) Have you ever served in the capacity of a bankruptcy reorganization officer?

A. I have.

Q. And could you tell us where that was?

A. The Eastern District. A case called Saddle Creek Energy Development, LP. Judge -- the Honorable Judge Brenda Rhoades presiding.

Q. All right.

A. She's out of the Sherman District, but she hangs out in the Wells Fargo building in Plano.

What? I'm answering --

Q. Just let me ask the question and you answer it.

A. I did.

Q. All right. Now, in your capacity or in your activities that you did as a bankruptcy trustee, was it

1986; private, February 4th, 1985.

A. That sounds right.

MS. HOLT: I pass the witness.

MR. ANDERSON: I have some questions.

When you filed the original Kleberg County case, what was your basis for asserting that the plaintiffs in that case owned a leasehold interest in those subject leases?

THE WITNESS: Well, I represented clients who had purchased those for $8 million. And they had purchased them in -- on March the 1st of 2007. And then the -- Mr. McCall and Mr. Monts notified us that they were terminating the leases approximately six months after we bought them.

So I claimed from that point forward that they had repudiated those leases. And in the State of Texas, as you're aware, an oil and gas leases that is repudiated means you don't have to do anything to protect and defend your title. You can -- you know, there's a number of avenues. You could file a trespass to try title and various things. But you don't have to do anything.

And self-help, under several of the recent Supreme Court decisions, is encouraged. I mean, they -- you can lock people out. You can be in possession of

your leases, open and notorious. And that's an adverse case under the property code and under the natural resources act.

So when I said -- when I made these statements that we owned them -- we bought the leases. They were still in the primary term. They wrongfully repudiated them, in my opinion. And I did say I would utilize self-help in order to defend that.

MR. ANDERSON: Did you raise the repudiation legal theory in Travis County?

THE WITNESS: I attempted to. I probably did it very poorly. You know, I -- I did -- the reason it was in Travis County -- let me speak to that, because it would not have been appropriate to file a lawsuit in Travis County with regard to those leases because of venue.

But, in the contract, Mr. McCall and Mr. Monts had put in a provision that the venue on their contracts were in Travis County, Texas. So I sued them in 2009 during the primary term in Travis County, Texas. I also in 2009 made an agreement with the Ballí family, the majority owners of 60 percent of the minerals. And for a very good, long period of time they were out of the lawsuit. And the only ones that were fighting were my clients and the clients associated with Mr. McCall.

THE WITNESS: Well, I was aware -- the names of the owners did keep changing. I was aware that they owned approximately 20-something thousand acres through one of their companies. Okay. And I was not in a dispute with all the other landowners.

One of the arguments that I made at the bill of review hearing -- which the judge, in my opinion, didn't follow the law on -- was I said, look, you know, all of the owners or claimants need to be here. This is within the primary term. There's been a repudiation. Only a portion of the impact of Thomas M. McMurray was to the Saddle Creek bankruptcy. That's why --

MR. ANDERSON: Well, if they're all necessary parties to the bill of the review, why aren't they also necessary parties to the original action?

THE WITNESS: Well, I -- I would agree with you, except I filed an action not against any of them but against Mr. McMurray for his actions taken as the reorganization officer in the bankruptcy.

MR. ANDERSON: Well, how do you get from an action just against Mr. McMurray to a blanket grain of authority and agreed judgment vesting the right to develop -- the exclusive right to develop the property for leases, pipelines, and like, as to the world?

THE WITNESS: I concede to you. That was an overreach.

MR. ANDERSON: Who drafted the judgment?

THE WITNESS: I drafted most of it.

MR. ANDERSON: Was any evidence presented --

THE WITNESS: No.

MR. ANDERSON: -- during that proceeding at any time?

THE WITNESS: No.

MR. ANDERSON: Was there any evidence taken by the Kleberg County court in that original proceeding at all?

THE WITNESS: None.

MR. ANDERSON: Just so we're clear. I want to understand your position. You believe that the Kleberg County original proceeding -- I don't care about the bill of review.

But you believe that the basis -- you had a basis for presenting that case or filing that case based on repudiation by the royalty owners? We call them lessors.

THE WITNESS: No. I don't think that that was filed -- that case was filed. In fact, I -- again, I viewed it -- my perception was that there was three

claimants to the 60,000 acres. There was the bankruptcy, of which McMurray was involved in. And McCall and them had nothing to do with that.

I represented the people that had bought all these leases. I represented the $8 million that was spent on this project. I went after them one by one. The reason I went against Mr. McMurray in Kleberg County is that was not only the appropriate venue, but he was not -- he was the one who did the deed that messed up the title to the leases and put them into bankruptcy. And that's why he was sued in Kleberg County.

And so the other two lawsuits -- the Travis County suit was against the -- the attorneys and their interest based on the contractual venue deal.

MR. ANDERSON: Well, let me ask you this: I think you called it an overreach earlier in the judgment where you grant your clients the right --

THE WITNESS: Yeah.

MR. ANDERSON: -- the right to do all this stuff.

THE WITNESS: Yeah. That was clearly -- and Mr. McMurray was absolutely right. Now, his lawyer -- you know, they reviewed it. But I will say that I believe it was an overreach. And looking back -- I even said this to Ms. Holt the other day. I do think

it was an error in judgment. It was an overreach. And I should have been more specific about the limits of that judgment.

MR. ANDERSON: Well, did you intend to use that language as a basis to continue your claim upon the leases?

THE WITNESS: No. I intended to use that language as a claim in the bankruptcy court. And the fight is still going on there. And I intended to take that -- it didn't have anything to do with that partial summary judgment. Had no relation to it whatsoever, or I would have sued them. But I felt like I was already suing them under the terms of the contract in Travis County.

And so -- you know, I know that the Arroyo Colorado mess is -- adds to the confusion. But there were other parties which -- what happened is that Mr. Monts and Mr. McCall went out and they got a judge to sign this partial deal against Arroyo Colorado, LLC. I was called to the stand. I said, I don't own that. I don't represent those people. I don't know who does.

And they said, yes, it's just you, Mr. Davis. And we want the whole world to come down on you. They never even sued me individually in Travis County. I wasn't a party to that lawsuit.

idea. Anyway, I thought, well, I've disposed of the McMurray deal. And I can take and register this over in bankruptcy court to show, hey, we got claims out here, you know. Well, you know, there is no universe but your universe. And I think when Mr. McCall and Mr. Monts looked at it they said, well, he's got us in mind. That's who he's going after.

MR. ANDERSON: Well, did you ever take any actions to amend the judgment or enter into some sort of agreement releasing that portion of the judgment --

THE WITNESS: I did.

MR. ANDERSON: -- as it may affect their leasehold?

THE WITNESS: I did. And they were certainly not interested in that. Now, I did --

MR. ANDERSON: What did --

THE WITNESS: -- enter into -- in 2009 I entered into an agreement with the Ballis.

MR. ANDERSON: Well, I'm talking about subsequent to entry of the judgment.

THE WITNESS: Right.

MR. ANDERSON: What did you propose to Mr. McCall to mitigate the effect the Kleberg County agreed judgment would have on their title?

THE WITNESS: Well, by the time we got to

the hearing on the bill of review, we weren't communicating very well. But I was communicating with this Horacio Barrera and a lawyer by the name of Mark Paisley who represented the Ballís.

And I proposed and the Ballís agreed to let us go ahead and perform on the option, extend the leases, and give us credit for the money paid. And then we would release everything and everybody go on about their business. They would join with us, go to the bankruptcy, and say, hey, no. It's not an asset in this bankruptcy. And we'd all walk out with the 60,000 acres. Did not happen that way.

MR. ANDERSON: That's all the questions I have.

MR. SUTHERLAND: Now, Mr. Davis --

THE WITNESS: Yes.

MR. SUTHERLAND: -- you said in response to Mr. Anderson's questions something about Arroyo Colorado, LLC. That you didn't know who that was.

THE WITNESS: Right.

MR. SUTHERLAND: Would you look at plaintiff's -- or Commission's Exhibit No. 1, please.

THE WITNESS: Uh-huh. Commission Exhibit No. 1.

MR. SUTHERLAND: Yes, sir. And turn first,

battle over a lot of different issues at that time.

MR. SUTHERLAND: When the findings of fact and conclusions of law --

THE WITNESS: Yes.

MR. SUTHERLAND: -- were made in the Kleberg case --

THE WITNESS: Yes, sir.

MR. SUTHERLAND: -- was the draft of those findings sent to you?

THE WITNESS: No.

MR. SUTHERLAND: And how did you find out about them?

THE WITNESS: They mailed me a certified copy after.

MR. SUTHERLAND: And what did you do upon receipt of a certified copy?

THE WITNESS: I went and filed a couple appeals and started briefing the case.

MR. SUTHERLAND: Well, that's not, actually, the case, is it?

Because according to the appellate court, your notice of appeal was not filed until June 2nd of 2011; is that correct.

THE WITNESS: That may be exactly correct. Yes, sir.

Filed
09 August 31 P3:18
Amalia Rodriguez-Mendoza
District Clerk
Travis District

D-1-GN-09-002882

Cause No. _____

ARROYO COLORADO,
ARROYO COLORADO,LLC
And
SANTIAGO MINERALS,

Plaintiffs

v.

TOM McCall, DAVID McCall
BRITTON MONTS, HECTOR CARDENAS,
WES RITCHIE and ALLEN CUMMINGS,
INDIVIDUALLY
and
AM GENPAR,LLC,
ABOGADO MINERALS,LP
SUCESSORS OR ASSIGNS

IN THE DISTRICT COURT

53RD

____ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT :

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. Motion with request for hearing will be placed on file separately fro the Original Petition.

PARTIES

2. Plaintiffs are Arroyo Colorado, LLC and Arroyo Colorado, a Texas General Partnership, 1887 E. Hickory Hill Road Argyle, Denton County, Texas 76226. Santiago Minerals of PO Box 698 Argyle, Texas 76226

3. Defendants are Tom McCall, David McCall, Britton Monts, Wes Ritchie and Hector Cardenas, Allen Cummings, Individually and AM GEN PAR,LLC and ABOGADO MINERALS,LP and successors or assigns. The address of all individuals and entities with the exclusion of Allen Cummings is 2600 Via Fortuna Suite 200-300 Austin, Texas 78746-7983. Allen Cummings operates the Law Office of Allen Cummings with offices in the State of Texas, he may be served by serving his attorney Kathryn A. Stephens, Clemens and Spencer, P.C., 112 East

EXHIBIT
P- 1

DISTRICT COURT OF TRAVIS COUNTY, TEXAS

Pecan Street Suite 1300, San Antonio, Texas 78205-1512

JURISDICTION AND VENUE

4. The subject matter and amount in controversy is in excess of the minimum jurisdictional limits of this Court.

5. Venue is proper in Travis County, Texas because all or a substantial portion of the causes of action alleged herein occurred in Travis County, Texas, the closing and contracts were performable in Travis County, Texas. All Defendants either have a residence or business residence in Travis County, Texas and mandatory venue is Travis County, Texas when the State of Texas or its Departments is a real party in interest in the outcome of this civil matter.

APPLICABLE FACT SUMMARY

6. Subject to Texas Rules of Civil Procedure, 47, 45, and 50 please find the following to wit :

6.1 The Plaintiffs, Arroyo Colorado, Arroyo Colorado, LLC are the owners and Lessee's of mineral acreage, and a real property estate obtained for adequate and consequential consideration from the Defendants herein and others not the subject of this civil action at this time. These real property interests and mineral properties include the right to contractual rights, and the right to explore for oil, gas and other hydrocarbons and are in fact fee simple assignments of all mineral interests in the subject properties, subject only to production of oil, gas or other hydrocarbons, such estate is set out and described in multiple mineral leases. These mineral interests and contracts and acres were acquired on or after March 7, 2007, a relevant copy is attached as Exhibit "A". Santiago Minerals is a privately held company which is consulting with Arroyo Colorado and on the "Arroyo Colorado Project".

6.2 The Plaintiffs in conducting *due diligence* regarding title, boundaries and anomalies regarding the leases, and prior to initial master closing on approximately 43,000 acres,(FORTY THREE THOUSAND) hired a title attorney, Allen Cummings, to conduct an extensive and sensitive title review of all lease tracts described, see attached Exhibit "B". Plaintiffs hired a licensed surveyor and the surveyor contractually provided a composite satellite overview of the leases. At that point he superimposed the metes and bounds description, including judgment title calls, upon the composite study of the mineral lease or leases. This action produced a clear picture of the lease boundaries as they would lay out "*on the ground*". It included a large "*gap*" or discrepancy between

the metes and bounds as described in the lease documents and the way the composite "*real time*" GPS images of the subject leases appeared. This conflict in the closing instruments was disclosed to the Defendants in writing. As a result, new agreements and contracts were entered into which described this "*gap*" acreage, including, but not limited to, contracts to acquire all such net mineral acres, owned by the Defendants, that were not as yet part of the lease package already under contract. All such agreements were made and executed with the Defendants and consideration was paid for such contracts. Plaintiff's began to conduct further "*due diligence*" regarding the leases and their relationship to the General Land Office of the State of Texas. The General Land Office clearly appeared to have an ownership position regarding the "*gap*" acreage. The general land office advised that they held *fee simple* title to the "*gap*" acreage. The Defendants were advised in writing of such claim. Defendants do not now, and have not ever had clear title to the lands, minerals or estates, which they have fraudulently represented both now and in the past they own or control. See, attached litigation. The Plaintiffs seek a declaratory judgment, declaring ownership of the disputed acres.

6.3 Relations with the defendants deteriorated after Plaintiffs and their agents and representatives, delivered all such title data, and explained the consequences of same, to represenatives of the primary Lessor, from whom all of the defendants title was derived. The Defendants continued to erroneously and falsely claim that they held title to land they did not and could not own, and they continue to do so to this day. They have slandered the title of other mineral owners and of the Lessee. This includes the entirety of the leases held by Plaintiffs, including the disputed "*gap*" acreage. The Defendants jointly and severally have consistently and intentionally sought to wrongfully repudiate valid leases owned and paid for by the Plaintiff. See, Exhibit C. Under Texas law a wrongful repudiation expands the primary term of the subject leases "*day for day*". Plaintiffs seek a declaratory judgment to ensure the appropriate extension of the primary term. This civil action was required in order to protect, defend both the contractual rights and the developmental rights to contracts and leases owned by the Plaintiff and to obtain a declaratory judgment defining the ownership and boundaries of the "*gap*" acreage. The Defendants committed tortuous interference with the contractual rights of the Plaintiffs and that they have attempted and continue to maliciously attempt to repudiate valid existing leases. This is in furtherance of an effort to defraud the Plaintiffs and prevent the peacable possession and mineral development of the mineral estate owned by the Plaintiffs. A timely declaration of contractual rights and duties by this Honorable Court is required.

BREACH OF CONTRACT

6.4 The Defendants entered into and were paid for several contracts, including irrevocable option agreements to lease all properties upon which they could deliver clear title to the Plaintiffs. The subject properties were the subject of valid and enforceable agreements of which the Plaintiffs are the exclusive and proper party to sue for breach of the contracts, the plaintiffs have performed, tendered performance and continue to call for the performance of the contractual obligations of the Defendants. The Defendants have jointly and severally breached the agreements and such actions on the part of defendants is the cause of damages to the Plaintiffs. They have attempted to repudiate valid subsisting agreements during the primary term of the contracts. They have breached and continue to breach their equitable duties and the duties imposed by law.

TORTIOUS INTERFERENCE

6.5 Tortious Interference with existing contracts, the Plaintiffs have pled and can prove that Plaintiffs hold valid and existing contracts which the defendants have willfully and intentionally violated and continue to violate and they continue to interfere with the Plaintiffs property and rights under the existing contracts, such conduct has caused and continues to cause damage and injured the plaintiffs interest. The Defendants have sought to destroy the viability and benefit of the contracts to the detriment of Plaintiffs. The Defendants must be restrained from further malicious action, including, but not limited to, restraint of actions which inhibit, block or prevent development of the leases.

MALPRACTICE

6.6 Plaintiffs allege and can prove legal malpractice with regard to Allen Cummings, wherein Mr. Cummings was hired and at the request of Plaintiffs did create and review voluminous title materials which were the proprietary work product of Plaintiffs and Cummings did prepare a title opinion which Plaintiffs used to close on the leasehold estates offered by the Defendants, and identified the title issues and ownership problems presented by the "gap" acreage. Then with explicit instructions from Plaintiffs not to divulge sensitive title material to any third party, proceeded in combination with Defendants to disseminate, convert and utilize the property of Plaintiffs in a manner which damaged Plaintiffs in an amount far in excess of the minimum jurisdictional limits of this Honorable Court. As a proximate result of the betrayal of client confidences, breach of fiduciary duty, disloyalty, fraud and conversion and through the use of Deceptive Trade Practices, Cummings has committed and continues to commit legal malpractice. Plaintiffs at all times relevant to this action had an express attorney client relationship with Allen Cummings, were in privity with Allen Cummings and had an adversarial relationship with his co-defendants. Cummings failed to adequately represent the client failed to perform his fiduciary duty, failed to inform his client of actions in violation of his attorney-client relationship, failed to

live up and perform the duties required by his attorney-client relationship, obtained improper benefits, fees and advantage to the detriment of his client, colluded to convert and did convert property of his client, engaged in false, misleading and deceptive acts and practices, expressly misrepresented facts, failed to disclose relevant facts engaged in unconscionable acts, breached express warranties and engaged in unprofessional conduct by entering into a conspiracy with non-client co-Defendants to enrich himself and damage his client, such conduct has caused damages far in excess of the minimum jurisdictional limits of this Honorable Court.

VIOLATION OF DUTIES

6.7 The Defendants, Jointly and Severally have breached duties owed to the Plaintiff, either contractually or as imposed by law and equity. Plaintiffs plead for both exemplary damages and attorney fees as allowed by law. Such duties include not only the breach of contract but go to the intentional, negligent and grossly negligent conduct of the Defendants which has independently injured the Plaintiffs over and above the mere breach of the contracts. Defendants have embarked upon a systematic, grossly negligent and fraudulent course of conduct which seeks not only to destroy the value of the leases but to destroy the Plaintiffs entire consideration and value ,and the ability of the Plaintiffs to do business, the Defendants have fraudulently kept the consideration paid by the Plaintiffs and yet seek to prevent the development of the Leases in violation of both law and equity.

SLANDER OF TITLE

6.8 The Plaintiffs purchased and are possessed of estate and interests in real property, including contractual interests and a leasehold estate. The Plaintiffs own a deed, subject to production, in and to, several thousand acres, which the Defendants, exclusive of Cummings, hold a minority royalty interest in. It is conceivable that royalty considerations have been given to Cummings, over and above the cash and contractual benefits offered and accepted by Cummings. The Defendants have published disparaging statements and untruths regarding title to the property and have claimed interests and ownership which they do not have. The actions taken and the false and fraudulent claims of the Defendants were published with legal malice with the intent to destroy or damage the estate owned by Plaintiffs. Such actions and published falsitites have caused special damages to the interest held by the Plaintiffs.

DECLARATORY JUDGMENT

6.9 Plaintiffs require relief in the form of a Declaratory Judgment, as allowed by Chapter 37 of the Texas Civil Practice and Remedies Code, specifically 37.004 which gives exclusive ability to this Honorable Court to declare the rights, status,

construction, validity and enforce any deed, written contract, mineral lease or judgment title, and to enforce its rulings by judgment thereon. Such relief is pled by the Plaintiffs to afford relief from the uncertainty and insecurity caused by the Defendants wrongful, negligent and fraudulent conduct.

EXEMPLARY DAMAGES

7.0 Plaintiffs request exemplary damages to penalize the Defendnats, jointly and severally for outrageous and malicious conduct for which they are morally culpable and we will plead and prove such damages in excess of the actual damages done to Plaintiffs by Defendants.

ATTORNEY FEES

7.1 Plaintiffs claim and ask for an award of attorney fees against the Defendants which is allowed by statute and equity in this matter. The Plaintiffs plead for and will prove that the attorney fees are statutorily authorized by Texas Civil Practice and Remedies Code Sec. 38, *et seq* and demand is made for payment by Defendants of reasonable and necessary attorney fees. The defendants fraudulent conduct and breach of contract require recovery of attorney fees and the entrance of declaratory judgments to protect, preserve and defend the contractual rights of the Plaintiffs. Such a recovery is allowed under Texas Civil Practice and Remedies Code Sec. 37.009.

DEMAND FOR JURY

7.2 Plaintiffs ask for a jury trial in this matter and have paid a jury fee and separately requested that a jury hear this matter, as allowed by law.

PIERCING THE CORPORATE VEIL

7.3 Plaintiffs further allege and alternatively that the Defendants are jointly and severally liable and that the corporate veil of certain Defendants should be disregarded on the ground that such Defendant entities were used by their members, officers, directors or managers, including Defendants McCall, McCall, Monts, Ritchie and Cardenas, more specifically, Tom McCall and Britton Monts and their agents, partners and servants have embarked upon repeated formation and creation of successive corporations, limited liability companies and limited partnerships, with the same or similar assets, purposes and objectives, duplicate members and in furtherance of a common scheme to use the entities as a sham to perpetuate a fraud upon Plaintiffs. The Defendants, jointly and severally, used such vehicles to slander title, cause confusion, perpetuate a fraud, and were organized and operated as the tool and business conduit of the Defendant individuals, and to cause, create and manipulate such sham entities

to be used for the purpose of committing actual fraud and such actual fraud on the Plaintiff was used primarily for the Defendants direct personal benefit.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that upon final hearing Plaintiffs recover damages for actual losses and exemplary damages for outrageous conduct. Declaratory relief, together with attorney fees as allowed by statute and other remedies as set out and described above, together with all and further relief, whether at law or in equity, to which the Plaintiffs may be shown to be justly entitled.

RESPECTFULLY SUBMITTED,

The Law Office of Charles Chandler Davis
6910 FM 1830
PO Box 698
Argyle, Texas 76226-0698
940.368.1205

By: _____

Charles Chandler Davis
State Bar No. 05465900

Attorney for Plaintiffs

ABOGADO MINERALS, LP

2600 Via Fortuna, Suite 300, Austin, TX 78746-7983
Telephone: 512-477-4242 Facsimile: 512-477-2271

August 31, 2007

Via Facsimile: (940) 243-5601
Via Email: charles@ventanaminerals.com
Via Certified Mail: 7003 1680 0004 2601 9566
Charles Chandler Davis
ARROYO COLORADO, LLC
1887 East Hickory Hill Road, Suite 101
Argyle, Texas 76226

Dear Mr. Davis:

Arroyo Colorado, LLC has entered into the following Oil and Gas Leases with Abogado Minerals, L.P. as follows:

(1) Oil and Gas Lease dated March 1, 2007 covering Tract 1, Parcels A and B;
(2) Oil and Gas Lease dated March 1, 2007 covering Tract 3, Parcel A;
(3) Oil and Gas Lease dated March 1, 2007, covering Tract 3, Parcels B and C
(4) Oil and Gas Lease dated March 1, 2007 covering Tract 4, Parcel A
(5) Oil and Gas Lease dated March 1, 2007, covering Tracts 5 and 6

Paragraph 6.1 of each of the leases require that drilling blocks be designated within 120 days from the effective date of the leases. Arroyo Colorado, LLC has not complied with the requirements of Paragraph 6.1 of each lease and is in default. Demand is hereby made that the default under each lease be cured.

Respectfully,

Tom C. McCall
Vice President and Secretary of
AM GENPAR, LLC
General Partner of
Abogado Minerals, LP

TCM/kam

ABOGADO MINERALS, LP

2600 Via Fortuna, Suite 300, Austin, TX 78746-7083
Telephone: 512-477-4242 Facsimile: 512-477-2271

August 31, 2007

Via Facsimile: (940) 243-5601
Via Email: charles@ventanaminerals.com
Via Certified Mail: 7003 1680 0004 2601 9559
Charles Chandler Davis
ARROYO COLORADO, LLC
1887 East Hickory Hill Road, Suite 101
Argyle, Texas 76226

Dear Mr. Davis:

Arroyo Colorado, LLC did not exercise its option in accordance with the terms of the Letter of Intent and Option for Oil and Gas Lease concerning certain lands in Willacy County, Texas. Accordingly, the Option has expired.

It has come to our attention that you have filed an Affidavit and Declaration of Interest in Volume 524, page 305 of the Deed Records of Willacy County, Texas.

We believe the Affidavit and Declaration of Interest to be fraudulent and demand that it be immediately released of record. If the cloud on our title is not released of record by September 4 at 5:00 p.m., a lawsuit will be filed against Arroyo Colorado, LLC.

Respectfully,

Tom C. McCall
Vice President and Secretary of
AM GENPAR, LLC
General Partner of
Abogado Minerals, LP

TCM/kam

$ 23,000

888-832-1115

Allen D. Cummings
Attorney at Law
Board Certified Oil, Gas and Mineral Law

Houston Office: Two Allen Center, 1200 Smith Street, Suite 1600, Houston, Texas 77002
San Antonio Office: 1777 NE Loop 410, Suite 600, San Antonio, Texas 78217
Phone/Fax: 1-888-832-1115 Email: acummings@allencummings-law.com www.allencummings-law.com

CONFIDENTIAL – ATTORNEY-CLIENT PRIVILGEGE –ATTORNEY WORK PRODUCT

April 30, 2007

Arroyo Colorado LLC
2220 San Jacinto Blvd., Suite 305
Denton, TX 76205

Original Leasehold Acquisition Title Opinion Re: The oil and gas, and other minerals produced therewith, in and under those certain two (2) tracts of land situated in the Counties of CAMERON, WILLACY, and KENEDY, TEXAS out of what is now commonly known as Padre Island, and more particularly described as **Tract Three** and **Tract Four** in the attached **Exhibit A.**

Gentlemen:

At your request, and for the purpose of rendering an Original Leasehold Acquisition Title Opinion on the referenced lands, we have examined the following:

MATERIALS EXAMINED

The materials described on the attached **Schedule One.**

PATENT INFORMATION

What is commonly known as "Padre Island, Texas," being that certain tract of land situated in the Counties of Cameron, Willacy, Kenedy, Kleberg, and Nueces, Texas formerly situated in the Republic of Mexico, was originally granted by the State of Tamaulipas, Mexico to the Padre Nicolas Balli and his nephew, Juan Jose Balli, in 1829 and confirmed to said grantees, and their heirs and assigns, by the State of Texas by Act of its Legislature, approved February 10, 1852, entitled "An Act to relinquish the right of the State to certain lands named therein", and bounded on the West by Laguna Madre, on the North by Corpus Christi Pass, on the South by Santiago Pass, and on the East by the Gulf of Mexico.

JUDGMENTS ADJUDICATING TITLE

In determining title to the referenced lands we have relied upon the following judgments adjudicating title contained in the materials examined:

EXHIBIT A
ORIGINAL LEASE ACQUISITION TITLE OPINION
TRACTS ONE AND TWO
PADRE ISLAND, TEXAS

TRACT ONE

1,000.00 undivided mineral acres on the Northmost portion of Padre Island in Nueces County, Texas, plus all accretions thereto, if any, more particularly described as follows:

PARCEL A – A tract of land containing 500.00 undivided acres, as described in mineral conveyance dated January 25, 1943 from Burton Dunn and Edward R. Kleberg to Gilbert Kerlin, recorded in Volume 69, Page 275 of the Oil and Gas Records of Nueces County, Texas.

PARCEL B – A tract of land containing 500.00 undivided mineral acres, as described in mineral conveyance dated March 20, 1943 from Albert R. Jones to Gilbert Kerlin, recorded in Volume 69, Page 276 of the Oil and Gas Records of Nueces County, Texas.

TRACT TWO

Lots 2, 3, 4, 5, 7, 14, 15, 19 and 20 of the Subdivision on Padre Island, Texas, made for the sale of lands in the Estate of Jose Maria Tovar, deceased, as set forth in the survey thereof prepared by C. F. H. von Blucher as recorded in Volume 2, Pages 82 and 83 of the Map Records of Kleberg County, Texas, plus all accretions thereto, if any.

TRACT THREE

37,160.57 acres on Padre Island, plus all accretions thereto, if any, in Willacy and Kenedy Counties, Texas, more fully described as follows:

PARCEL A – Being 20,000.00 acres, more or less, in Willacy and Kenedy Counties, Texas, as described in the Deed dated December 14, 1942 from Albert R. Jones, et al., to Gilbert Kerlin, recorded in Volume 27, Page 362 of the Deed Records of Willacy County, Texas, and in that certain Correction Deed dated September 17, 1982 from Albert R. Jones, et al., to Gilbert Kerlin, Individually and as Trustee, recorded in Volume 39, Page 211 of the Deed Records of Kennedy County, Texas and Volume 143, Page 464 of the Deed Records of Willacy County, Texas.

PARCEL B – Being 11,925.60 acres, more or less, in Willacy County, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin,*

Individually and as Trustee v. The State of Texas, et al., Cause No. 78-154-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 244 of the District Court Records of Cameron County, Texas and in Volume 138, Page 270 of the Deed Records of Willacy County, Texas.

PARCEL C – Being 5,234.97 acres, more or less, situated in Willacy and Kenedy Counties, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-155C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 254 of the District Court Records of Cameron County, Texas; in Volume 17, Page 364 of the Deed Records of Kenedy County, Texas; and in Volume 138, Page 281 of the Deed Records of Willacy County, Texas.

TRACT FOUR

16,823.42 acres being a part of Padre Island in Cameron County, Texas, plus all accretions thereto, if any, and more fully described as follows:

PARCEL A – 6,600.22 acres being part of the lands described in the judgment of title adjudication entered December 6, 1948 in the District Court of the United States Southern District of Texas, Brownsville Division, Cause No. C. A. 142 styled *United States of America v. 34,884 acres of land, et al.* as the North 1,729.81 acres of Tract PI-3 (being all of said Tract PI-3 except the South 2,943.19 acres thereof) and all of Tract PI-4, as more particularly described in Plaintiffs Second Amended Original Petition in Condemnation and Second Amendment to the Declaration of Taking.

PARCEL B – 10,223.20 acres being a part of Padre Island as described in that certain final judgment styled *South Padre Island Land Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-155C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 254 of the District Court Records of Cameron County, Texas; in Volume 17, Page 364 of the Deed Records of Kenedy County, Texas; and in Volume 138, Page 281 of the Deed Records of Willacy County, Texas.

TRACT FIVE

3,750.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as the Northerly 3,750.00 acres out of a 6,000.00 acre tract adjudicated and set apart to Mrs. H. M. King by Judgment and Decree

rendered November 16, 1905 styled *Maria Romula Salinas de Grisanti, et al. v. The American Trust Company of New Jersey, et al.*, Cause No. C. L. 18, United States Circuit Court at Laredo, Texas and pursuant to the terms of the Agreement dated June 9, 1943 between Gilbert Kerlin, Individually and Trustee, and the King Ranch, recorded in Volume 331, Page 3 of the Deed Records of Cameron County, Texas.

TRACT SIX

250.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as all of that certain 2,250.00 acres described in the Confirmation Deed dated January 4, 1951, from Elizabeth A. Baldwin, et vir, James P. Baldwin to Gilbert Kerlin, recorded in Volume 1403, Page 664 of the Deed Records of Cameron County, Texas, LESS AND EXCEPT that certain 2,000.00 acres described in the Agreement and Conveyance dated September 3, 1980, from Gilbert Kerlin, Individually and as Trustee, to Helen F. Pinnell, as Trustee, et al., recorded in Volume 1210, Page 265 of the Deed Records of Cameron County, Texas.

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 6/23/2014

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK
By Deputy:

261ST DISTRICT COURT

LORA J. LIVINGSTON
Judge
(512) 854-9309

DELAINE J. FOSS
Staff Attorney
(512) 854-9625

MARY JANE LAWSON
Court Operations Officer
(512) 854-9337

TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767
FAX (512) 854-9332

RICK KITTITOW
Court Clerk
(512) 854-9457

LA SONYA THOMAS
Official Court Reporter
(512) 854-9331

February 22, 2010

Tom C. McCall
The McCall Firm
2600 Via Fortuna, Suite 200
Austin, Texas 78746-7991

Travis C. Barton
McGinnis, Lochridge & Kilgore, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701-2986

Kathryn A. Stephens
Clemens & Spencer, PC
112 East Pecan, Suite 1300
San Antonio, Texas 78205-1512

Charles Chandler Davis
Law Office of Charles Chandler Davis
P.O. Box 698
Argyle, Texas 76226-0698

Re: Cause No. D-1-GN-09-002882, *Arroyo Colorado, et al v. Tom C. McCall, et al*, in the 53rd Judicial District Court of Travis County, Texas

Dear Counsel:

I have considered the pleadings, the evidence and the arguments of counsel, and hereby grant Defendants' and Counter-Plaintiff's First Amended Motion for Partial Summary Judgment.

Please prepare an order, circulate it for approval as to form, and submit it for signature at your earliest convenience. If you have any questions, please contact my Staff Attorney, Delaine J. Foss.

Sincerely,

Lora J. Livingston
Judge, 261st District Court

cc: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk

001386509

EXHIBIT
P-2

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 6/25/2014

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK
By Deputy:

6910 FM 1830
BOX 598
Argyle, Texas 76226
Phone 940.368.1205

February 28th, 2010

Mr. Tom C. McCall, Esq.
The McCall Firm
2600 Via Fortuna
Austin, Texas 78746

Mr. Mark Paisley, Esq.
Adami, Paisley and Appell
601 E. Main 4th Box 331
Alice, Texas 78333-0331

VIA TELECOPY/US MAIL/ELECTRONIC SERVICE

Re: Attempted Lease Termination,/ Attempted Repudiation of Arroyo Colorado Leases

---

Mr. McCall and Mr. Paisley,

Please be advised that pursuant to the subject mineral leases held by Arroyo Colorado as Lessee and Abogado Minerals, and Balli Minerals and Royalty, LLC, as Lessors concentrated in five counties in the State of Texas, including Cameron, Kleberg, Kenedy, Willacy and Nueces, and described in recorded instruments of lease in those counties, the primary term of the leases has been extended, by action of law, and equity.

As you both are aware, and your clients are aware, Texas has long recognized that an oil and gas lease is not a "lease" in the traditional sense. Your clients as Lessors are Grantors and Arroyo Colorado is a Grantee. Your clients have granted a fee simple determinable to the Lessee/Grantee, subject to the possibility of reverter held by your clients. This grant may not be "terminated" or "repudiated", by the Lessors, nor can it be interfered with. Your clients have attempted to do both and have damaged the Lessee. Your clients violated the terms of the Grant/Lease, under your advice, on August 31st, 2007, and continuing to this date. Every effort has been made to subvert the contracts and their provisions.

EXHIBIT
P-3

Arroyo Colorado, attempted to ameliorate your actions and attempted to mitigate the damage your clients actions, under your advice, has proximately caused. We continue to act under the terms of the "Leases", with your clients. Since your clients were minority owners, the Grantee/Lessee made leases with other owners, with the same or similar terms, you and your clients are aware of this. We continue to pursue and perform and exercise our grant, with all royalty holders. Your attempts to thwart the contracts have failed.

We have given no notice of repudiation and on August 31, 2009, a suit was joined against your clients, and in some cases, against yourselves. This was to insure that none of the many attempted breaches of the contract by your clients would fall under any statute of limitations, including "contort" implied duties. The Lessee neither will release any lease position, nor are we required to give any notice of same; we will not release any other Lessor, who may have been damaged by your clients conduct.

We assert all rights and privileges we own. Including, possessory rights, developmental rights and inherent real property rights under our grant. We have filed, in appropriate counties, all required notices, and continue to possess, own and operate 100%(ONE HUNDRED PERCENT of the working interest held by grant. We have recognized the loans, investments and the equitable interests of all Parties. The minerals held hereunder are not part of the surface estate, and have been severed from ownership of the surface for many years.

We have continued to act, to self help, and to protect, preserve and defend our rights. We do not intend to stop. We are hostile to any spurious manipulation which has been tried by your clients. Your clients have no rights to explore for oil, gas and other hydrocarbons, you have granted that right in Toto to my clients.

We do not recognize your claims, and we have advised other stakeholders that your actions are damaging the development prospects of the mineral estate. We advise the many mineral owners, other than your clients, that you have chosen to act in an inequitable manner. Your bad faith does not equal a termination of interest. You have received millions of dollars and many thousands have been expended trying to resolve matters in a reasonable manner, your behavior has been enlightening, as well as your clients behavior. It has not been disregarded.

Regarding the ineffective, attempted wrongful repudiation by the Balli group, it is humorous how many mistakes were made. Certainly, this sad attempt at fraud, was not and is not effective. I commend to your attention, Instrument No. 2008-00003022, in the Real Property records of Cameron County. This instrument , which was sworn, purports to terminate a lease prior to it existing, we ignored it. We did not allow this absurdity to color our negotiations, and in fact entered into a Rule 11 Agreement with the Balli group, and

wasted a year thinking we were visiting with honest people who wanted to do the right thing. We denied then and we deny now that this poorly conceived and executed attempt had any force and effect. It is but one more piece of a strategy designed by lawyers, who should know better.

The Abogado notices were facially more correct, but filed with intentional malice. In closing, we have heard from many of your fellow mineral owners lately, we submit that our lease and determinable fee grant of minerals, has survived your clients attempt to steal our money and our minerals. Your "CERTIFICATION OF TERMINATION OF OIL AND GAS LEASES" is void now, and was void when it was attempted. Your arguments delete the fact that your clients took the money and then tried to keep the assigned rights.

We make no bad faith claims and assert only the right to peaceably enjoy and develop our property. We are prosecuting the wrongful violation of the *Rule 11* by Balli. However, this notice does not concern the litigation or any claims, merely, it is written affirmation of property rights as allowed by law. We are confident that our position is both morally and legally correct.

Regarding the Irrevocable Option agreements, bought and paid for, Abogado had no title and intentionally defrauded Arroyo, Balli had no title and properly extended same, both those options are in full force and effect, under after-acquired title we will own those acres also. I remain,

Charles Chandler Davis
Attorney for Grantees
Arroyo Colorado
EIN No. 20-5446008
and for Lien Holders
Isla Santiago Master Trust
EIN No. 27-6204936

No. 10-180-D

In Re:

McMurray

In the 105th

Judicial District Court

of Kleberg County, Texas

Plaintiffs Original Petition

FILED
2010 APR 22 AM 11:30

TO THE HONORABLE PRESIDING JUDGE:

Comes Now, Plaintiffs and would show the following to wit:

1. Plaintiffs complain of Thomas M. McMurray, Individually and acting in his capacity as Chief Reorganization Officer of Saddle Creek Energy Development

EXHIBIT P-4

2. Plaintiffs own mineral interests and real property interests in Kleberg County, Texas. Defendant/Respondent McMurray may be served at 201 Woodrow in Dewton, Texas.
3. On or about March 1st, 2007, Plaintiffs purchased oil, gas and mineral interests from various

Mineral owners regarding mineral leaseholds and estates in five counties in the State of Texas, including Kleberg, Nueces, Willacy Kewedy ad Cameron Counties.

5. Respondent McMurray acted negligently in filing certain title affidavits which set out incorrect ownership of various interests including Plaintiffs, which created a cloud or clouds on title which require correction. A declaratory judging clearing title is requested.

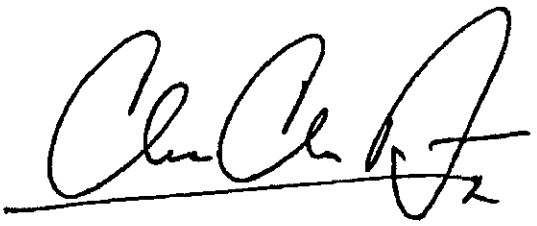
6. Respondent McMurray, acted negligently in failing to clarify and correct the erroneous affidavits.

7. Plaintiffs, as a direct and proximate result have suffered damages in excess of $8,000,000.00 (EIGHT MILLION Dollars).

8. As a direct and proximate result of respondents actions Plaintiffs have been unable to develop the property.

9. As a direct and proximate result of Respondents action and failure to mitigate and remediate some Plaintiffs request injunctive relief.

Respectfully submitted,



Charles Chandler Dennis
Attorney for Plaintiffs
6910 FM 1830
Drawer 698
Argyle, Texas 76226

940. 368. 1205
Bar Card No. 05465900
charlie@arroyocolorado.energy.com

NOTICE SENT: FINAL INTERLOCUTORY NONE DC BK10120 PG208
DISP PARTIES:
DISP CODE: CVD / CLS
REDACT PGS:
JUDGE GTD CLERK HC CAUSE NO. D-1-GN-09-002882

ARROYO COLORADO, et al., *Plaintiffs,*	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TOM C. McCALL, et al., *Defendants.*	§	53RD JUDICIAL DISTRICT

Filed in the District Court of Travis County, Texas
APR 29 2010
At 7:45 P.M.
Amalia Rodriguez-Mendoza, Clerk
JL

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS AGAINST PLAINTIFFS

On April 29, 2010, the Court heard the Motion of Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy and Britton D. Monts, for Sanctions against Plaintiffs for knowingly filing pleadings containing false allegations against Defendants. The Court, having considered the Motion, evidence and arguments of counsel, finds that the Motion should be GRANTED. The Court makes the following findings establishing good cause for the entry of sanctions in this cause:

(1) On February 10, 2010, Plaintiffs filed their Third Amended Petition in this Court.

(2) Paragraph 7.7 of Plaintiffs' Third Amended Petition contained a claim against Defendants for allegedly violating State Bar Rules concerning commingling and separation of personal funds from client funds (the IOLTA account claim).

(3) On February 11, 2010, the Court heard Defendants' Special Exceptions to Plaintiffs' IOLTA account claim, where it was established that Plaintiffs never had an attorney-client relationship with Defendants and lacked privity and standing to bring an IOLTA account claim against Defendants.

(4) On February 11, 2010, the Court signed its Order Granting Defendants' Special Exceptions and striking Plaintiffs' IOLTA account claim against Defendants. In

EXHIBIT P-5

the special exception order, the Court found that the pleading defect concerning the IOLTA account claim could not be cured by a pleading amendment.

(5) On February 15, 2010, and in defiance of this Court's February 11, 2010 order striking the IOLTA account claim, Plaintiffs' filed their Fourth Amended Petition again asserting Trust Fund Claims. In Paragraph 7.8 of their Fourth Amended Petition, Plaintiffs' allege in part that Defendant, "Kara L. O'Shaughnessy, an agent and employee of Tom C. McCall, in the course and scope of her duties and with conscious intent to deceive collected funds from Plaintiffs and deposited same in the Graves, Dougherty, Hearon and Moody Trust Fund."

(6) The Trust Fund Claims in Paragraph 7.8 of Plaintiffs' Fourth Amended Petition were false, and were made by Plaintiffs and their counsel, Charles Chandler Davis, in an attempt to create privity and standing to pursue an IOLTA account claim against Defendants, when no privity or standing existed as a matter of law. The Court finds that the pleading was an attempt by Plaintiffs and their counsel, Charles Chandler Davis, to circumvent this Court's February 11, 2010 special exception order.

(7) At the time the Fourth Amended Petition was filed, Plaintiffs and their counsel, Charles Chandler Davis, knew that Defendant, Kara L. O'Shaughnessy had never collected funds from Plaintiffs for deposit into the Graves, Dougherty, Hearon and Moody trust fund account. Plaintiffs and their counsel, Charles Chandler Davis, also knew, at the time of filing, that the Trust Fund Claims in Paragraph 7.8 of Plaintiffs' Fourth Amended Petition were false.

(8) By email dated February 19, 2010, Defendants' counsel, Tom C. McCall, advised Plaintiffs' counsel, Charles Chandler Davis, that the allegations in Paragraph 7.8 of Plaintiffs' Fourth Amended Petition were knowingly false, and requested that the Trust Fund Claims be removed from the pleadings.

(9) Plaintiffs and their counsel, Charles Chandler Davis, refused to remove their knowingly false allegations in Paragraph 7.8 of Plaintiffs' Fourth Amended Petition.

(10) On February 28, 2010, Plaintiffs' filed their Fifth Amended Petition, which also carried forward in Paragraph 7.8 the same knowingly false pleading allegation that Defendant, "Kara L. O'Shaughnessy, an agent and employee of Tom C. McCall, in the course and scope of her duties and with conscious intent to deceive collected funds from Plaintiffs and deposited same in the Graves, Dougherty, Hearon and Moody Trust Fund."

(11) Plaintiffs and their counsel, Charles Chandler Davis, did not respond to Defendants' motion for sanctions or otherwise deny that the trust fund

allegations in Paragraphs 7.8 of Plaintiffs' Fourth and Fifth Amended Petitions were knowingly false at the time the pleadings were filed.

(12) The allegations in Paragraphs 7.8 of Plaintiffs' Fourth and Fifth Amended Petitions violated Rule 13 of the Texas Rules of Civil Procedure. Plaintiffs' allegations in Paragraphs 7.8 of Plaintiffs' Fourth and Fifth Amended Petitions were knowingly false at the time they were filed, groundless and brought in bad faith and for the purpose of harassment.

(13) In addition to violating Rule 13 of the Texas Rules of Civil Procedure, the acts of Plaintiffs and their counsel, Charles Chandler Davis, described above, constituted an abuse of the judicial process itself and of the traditional core functions of this Court.

(14) The acts of Plaintiffs and their counsel, Charles Chandler Davis, in knowingly filing pleadings containing false allegations in Paragraphs 7.8 of Plaintiffs' Fourth and Fifth Amended Petitions, strike at and interfere with this Court's core functions.

(15) Sanctioning Plaintiffs and their counsel, Charles Chandler Davis, will aid in the exercise by this Court of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity.

(16) The Court has the inherent authority over the attorneys appearing before it, and to sanction for bad faith abuses of the judicial process.

(17) The actions of Plaintiffs and their counsel, Charles Chandler Davis, in knowingly filing false allegations in Paragraphs 7.8 of Plaintiffs' Fourth and Fifth Amended Petitions significantly interfered with the legitimate exercise by this Court of its core functions of deciding issues of fact raised by the pleadings.

(18) On January 20, 2010, the Court sanctioned Plaintiffs for refusing to answer requests for disclosure, requests for production and interrogatories, and ordered Plaintiffs to comply with the discovery requests no later than January 30, 2010. The Court also awarded a monetary sanction against Defendants which was to be paid to Defendants no later than January 30, 2010. The Court finds that Plaintiffs and their counsel, Charles Chandler Davis failed and refused to comply with this Court's order requiring responses by Plaintiffs to the discovery requests by January 30, 2010. The Court also finds that Plaintiffs failed and refused to pay Defendants the monetary sanctions imposed on Plaintiffs by the Court.

(19) The Court has carefully considered the conduct in this case of Plaintiffs and their counsel, Charles Chandler Davis, that is known to the Court. The Court has considered lesser sanctions, including awarding only monetary sanctions. The Court finds that based upon the refusal of Plaintiffs and their counsel, Charles

Chandler Davis, to comply with the Court's January 20, 2010 order, and the conduct described herein, and their refusal to abide by this Court's February 11, 2010 special exception order, that the imposition of monetary sanctions alone would be futile and would not be sufficient to deter the conduct of Plaintiffs and their counsel, Charles Chandler Davis.

(20) The Court finds that there is a direct relationship between the conduct of Plaintiffs and their counsel, Charles Chandler Davis, and the sanctions imposed herein.

(21) The Court finds that for the reasons stated herein, monetary sanctions are appropriate, together with an order striking the causes of action asserted by Plaintiffs in Paragraph 6.8 (Negligence and Gross Negligence), Paragraph 7.3 (Texas Theft Liability Act) and Paragraph 7.6 (Deceptive Trade Practice) of Plaintiffs' Fifth Amended Petition, and ordering that Plaintiffs take nothing on the stricken claims.

(22) The Court finds that it was necessary for Defendants to secure the services of their attorneys of record to enforce and protect their rights.

(23) The Court finds from the evidence and from a review of the file, that the attorneys' fees requested by Defendants in the amount of ~~$5,000.00~~ are reasonable and necessary, and were incurred as a result of the conduct by Plaintiffs and their counsel, Charles Chandler Davis.

(24) The monetary sanction of ~~$5,000.00~~ assessed herein is to be assessed against Plaintiffs and their counsel, Charles Chandler Davis, both jointly and severally.

It is therefore ORDERED that Paragraph 6.8 (Negligence and Gross Negligence), Paragraph 7.3 (Texas Theft Liability Act) and Paragraph 7.6 (Deceptive Trade Practice) are stricken from Plaintiffs' Fifth Amended Petition, with Plaintiffs taking nothing on such claims against Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley C. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy and Britton D. Monts.

It is further ORDERED that monetary sanctions in the amount of ~~$5,000.00~~ is awarded to Defendants against Plaintiffs, Arroyo Colorado, LLC, Arroyo Colorado

Energy, LLC d/b/a Arroyo Colorado, LLC, Arroyo Colorado, a Texas General Partnership, Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Saddle Creek Joint Venture, Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, and Plaintiffs' counsel, Charles Chandler Davis, both jointly and severally.

$2500 MS

It is further ORDERED that the ~~$5,000.00~~ sanction award against Plaintiffs and their counsel, Charles Chandler Davis, both jointly and severally, shall be paid by Plaintiffs and their counsel, Charles Chandler Davis to Defendants within 10 days of the date that a final judgment is signed in this cause.

SIGNED this 29 day of April, 2010.

Gisela D Triana-Doyle
JUDGE PRESIDING

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 6/30/2014
AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK
By Deputy:

CAUSE NO. D-1-GN-09-002882

ARROYO COLORADO, et al.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	TRAVIS COUNTY, TEXAS
TOM C. McCALL, et al.,	§	
Defendants.	§	53RD JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS' AND COUNTER-PLAINTIFF'S FIRST AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT

On this day came on to be considered the first amended motion for partial summary judgment filed by Defendant and Counter-Plaintiff, AM GENPAR, LLC, the General Partner of Defendant, Abogado Minerals, L.P., and some of the Defendants, ABOGADO MINERALS, LP, TOM C. McCALL, DAVID B. McCALL, HECTOR H. CARDENAS, JR., WESLEY G. RITCHIE, and BRITTON D. MONTS (collectively "Movants"). The Court finds that Movants have complied with the hearing notice requirements of Rule 21a of the Texas Rules of Civil Procedure and that all parties and counsel were duly notified of the hearing.

The Court, having examined the pleadings, evidence (including the affidavits and exhibits attached to the motion and supplements) and the argument of counsel, finds that Movants' first amended motion for partial summary judgment should be granted.

It is therefore ORDERED that Movants' first amended motion for partial summary judgment is hereby GRANTED, with Plaintiffs, Arroyo Colorado, LLC, Arroyo Colorado Energy, LLC d/b/a Arroyo Colorado, LLC, Arroyo Colorado, a Texas General Partnership,

EXHIBIT 9

Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Playa Arroyo, Playa Arena, Playa Laguna, Alan and Debra Osenbaugh Family Limited Partnership, Craig Place Partners, FABDA, Inc., Saddle Creek Joint Venture, Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, taking nothing on their claims for breach of contract against Defendants with respect to the five (5) oil and gas leases dated March 1, 2007 from Abogado Minerals, LP to Arroyo Colorado, LLC, and covering various tracts on Padre Island, Texas (collectively the "Leases"), and being more particularly described herein in the following paragraph.

It is further ORDERED and the Court declares that the following described Leases from Abogado Minerals, LP to Arroyo Colorado, LLC were each properly terminated by Abogado Minerals, LP in accordance with their terms on December 6, 2007, and that said Leases are terminated and no longer in force and effect, to-wit:

1) **Oil and Gas Lease dated March 1, 2007 covering Tract 1, Parcels A and B, and being further described as follows:**

1,000.00 undivided mineral acres on the Northmost portion of Padre Island in Nueces County, Texas, more particularly described as follows:

PARCEL A – A tract of land containing 500.00 undivided acres, as described in mineral conveyance dated January 25, 1943 from Burton Dunn and Edward R. Kleberg to Gilbert Kerlin, recorded in Volume 69, Page 275 of the Oil and Gas Records of Nueces County, Texas.

PARCEL B – A tract of land containing 500.00 undivided mineral acres, as described in mineral conveyance dated March 20, 1943 from Albert R. Jones to Gilbert Kerlin, recorded in Volume 69, Page 276 of the Oil and Gas Records of Nueces County, Texas.

2) **Oil and Gas Lease dated March 1, 2007 covering Tract 3, Parcel A, and being further described as follows:**

PARCEL A - Being 20,000.00 acres, more or less, in Willacy and Kenedy Counties, Texas, as described in the Deed dated December 14, 1942 from Albert R. Jones, et al., to Gilbert Kerlin, recorded in Volume 27, Page 362 of the Deed Records of Willacy County, Texas, and in that certain Correction Deed dated September 17, 1982 from Albert R. Jones, et al., to Gilbert Kerlin, Individually and as Trustee, recorded in Volume 39, Page 211 of the Deed Records of Kennedy County, Texas and Volume 143, Page 464 of the Deed Records of Willacy County, Texas.

3) **Oil and Gas Lease dated March 1, 2007 covering Tract 3, Parcels B and C, and being further described as follows:**

PARCEL B - Being 11,925.60 acres, more or less, in Willacy County, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-154-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 244 of the District Court Records of Cameron County, Texas and in Volume 138, Page 270 of the Deed Records of Willacy County, Texas.

PARCEL C - Being 5,234.97 acres, more or less, situated in Willacy and Kenedy Counties, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-155-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 254 of the District Court Records of Cameron County, Texas; in Volume 17, Page 364 of the Deed Records of Kenedy County, Texas; and in Volume 138, Page 281 of the Deed Records of Willacy County, Texas.

4) **Oil and Gas Lease dated March 1, 2007 covering Tract 4, Parcel A, and being further described as follows:**

PARCEL A - 6,600.22 acres in Cameron County, Texas being part of the lands described in the judgment of title adjudication entered December 6, 1948 in the District Court of the United States Southern District of Texas, Brownsville Division, Cause No. C. A. 142 styled *United States of America v. 34,884 acres of land, et al.* as the North 1,729.81 acres of Tract PI-3 (being all of said Tract PI-3 except the South 2,943.19 acres thereof) and all of Tract PI-4, as more particularly described in Plaintiff's Second Amended Original Petition in Condemnation and Second Amendment to the Declaration of Taking.

5) **Oil and Gas Lease dated March 1, 2007 covering Tracts 5 and 6, and tract being further described as follows:**

TRACT 5 – 3,750.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as the Northerly 3,750.00 acres out of a 6,000.00 acre tract adjudicated and set apart to Mrs. H. M. King by Judgment and Decree rendered November 16, 1905 styled *Maria Romula Salinas de Grisanti, et al. v. The American Trust Company of New Jersey, et al.*, Cause No. C. L. 18, United States Circuit Court at Laredo, Texas and pursuant to the terms of the Agreement dated June 9, 1943 between Gilbert Kerlin, Individually and Trustee, and the King Ranch, recorded in Volume 331, Page 3 of the Deed Records of Cameron County, Texas.

TRACT 6 – 250.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as all of that certain 2,250.00 acres described in the Confirmation Deed dated January 4, 1951, from Elizabeth A. Baldwin, et vir, James P. Baldwin to Gilbert Kerlin, recorded in Volume 1403, Page 664 of the Deed Records of Cameron County, Texas, LESS AND EXCEPT that certain 2,000.00 acres described in the Agreement and Conveyance dated September 3, 1980, from Gilbert Kerlin, Individually and as Trustee, to Helen F. Pinnell, as Trustee, et al., recorded in Volume 1210, Page 265 of the Deed Records of Cameron County, Texas.

It is further ORDERED that Plaintiffs, Arroyo Colorado, LLC, Arroyo Colorado Energy, LLC d/b/a Arroyo Colorado, LLC, Arroyo Colorado, a Texas General Partnership, Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Playa Arroyo, Playa Arena, Playa Laguna, Alan and Debra Osenbaugh Family Limited Partnership, Craig Place Partners, FABDA, Inc., Saddle Creek Joint Venture, Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, take nothing on their claims against the Defendants for breach of contract with respect to the March 1, 2007 Letter of Intent and Option for Oil and Gas Lease covering a tract of land in Willacy County, Texas ("Option Agreement").

It is further ORDERED and the Court declares that the March 1, 2007 Option Agreement between Abogado Minerals, LP and Arroyo Colorado, LLC terminated and expired in accordance with its terms at 12:01 a.m. on August 31, 2007 and is of no force and effect as to the following described tract of land in Willacy County, Texas:

> Bounded on the North by the South Boundary Line of Tract 2, containing 11,925.6 acres, described in the Final Judgment in Cause No. 78-154-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;
>
> Bounded on the South by the North Boundary Line of Tract 1, containing 10,223.20 acres, described in the Final Judgment in Cause No. 78-153-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;
>
> Bounded on the West by the line surveyed by M.L. Claunch in 1973 as the line of mean higher high water between the Laguna Madre and Padre Island, said survey being of record in the survey records of the Texas General Land Office; having also been filed as an Exhibit to the judgment in Cause No. 78-154-C, in suit styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, in the 197th Judicial District Court of Cameron County, Texas; and
>
> Bounded on the East by the western boundary of Padre Island as shown in the 1941 survey prepared by J. Stuart Boyles for the Office of the Attorney General for the State of Texas, and now on file in the General Land Office of The State of Texas.

This partial summary judgment is interlocutory and not a final judgment.

SIGNED this 30th day of March, 2010.

JUDGE PRESIDING

No. 10-180-D

IN Re:

THOMAS M. McMURRAY,
RESPONDENT

In Any Capacity

IN THE 105th JUDICIAL

DISTRICT COURT OF

KLEBERG COUNTY, TEXAS

FIRST AMENDED PETITION OF PLAINTIFFS

TO THE HONORABLE PRESIDING JUDGE:

COMES NOW, Plaintiffs, herein and would show the following:

JURISDICTION CITATION AND VENUE

1. Plaintiffs complain of Thomas M. McMurray, Individually and acting in his capacity as former Chief Reorganization Officer of Saddle Creek Energy Development, LP a/k/a Saddle Creek Energy Development, LP, a bankrupt estate in Case No. 07-41365, United States Bankruptcy Court, Eastern District of Texas. Defendant stipulates that he is the former Chief Reorganization Officer of the bankrupt estate.

2. Plaintiffs own real property interests in Kleberg County, Texas, similarly situated Master Lease, the subject of this proceeding, encompasses acreage in FIVE(5) counties in the State of Texas, including, Nueces, Kleberg, Willacy, Kenedy and Cameron County. There is uncertainty and insecurity with respect to rights, status and contractual relations which are the subject of *Texas Civil Practice and Remedies Code, 37.002(b),* this creates confusion regarding lease rights and remedies.

3. Defendant, in all capacities, was served by citation and by and through his attorney of record, subsequent to the service Defendant has filed an answer in this case. This Court has the required jurisdiction and venue is appropriate in Kleberg County, Texas.

FACTUAL BACKGROUND

4. On or about March 1, 2007, Plaintiff, Arroyo Colorado, a Texas General Partnership, EIN No. 20-5446006 , purchased oil, gas and mineral leases from various mineral owners regarding mineral leaseholds located in five counties in the State of Texas, including Kleberg County. The Leases are attached as Exhibits and Judicial Notice pursuant to *Texas Rules of Civil Evidence, Rule 201(d)* is requested of all contracts, leases and instruments filed in the Real Property Records.

5. Respondent, McMurray, acted hastily in filing certain title affidavits which set out ownership of various interests in an incorrect manner, which created a cloud or clouds on title which require correction. A declaratory judgment clearing title is requested. Lien holders and Trust Plaintiffs request a comprehensive order which will terminate the controversy and establish the ownership and development prospects of the oil and gas leases.

Plaintiff, Isla Santiago Master Trust, EIN 27-6204936 perfected a lien and secured a deed of trust to protect the viability of the master lease and deed of trust attached as Exhibits, attached hereto and incorporated herewith. Such interest may be specifically subjected to the provisions of the *Texas Civil Practice and Remedies Code, Chapter 37.003-37.005*, and pursuant to *Texas Civil Practice and Remedies Code Chapter 37.008*, such requested declaratory judgment will terminate the controversy. All Property Descriptions are attached as Exhibits.

6. Respondent McMurray actions were taken in various capacities and this civil title suit pertains to all activities regarding Plainitffs property interests, contractual interests and development prospects, which the Respondents actions affected or cloud or disparage in any manner. Plaintiffs seek to vacate, void, quash and remove all title filings currently on file in Instrument No. , vol. pg. in the Real Property records of Kleberg County, Texas.

PROXIMATE CAUSE

7. Respondent McMurray's conduct was in error in the following manners known to Plaintiffs :

1. In failing to adequately set out the actual interests ownership in said properties

2. In failing to adequately research title, to exercise discretion regarding such property interests and to file no instrument pleading or affidavit which incorrectly, erroneously or ineffectively set out the true and proper ownership relations of the Plaintiffs.

3. In failing to correct such erroneous, incorrect and harmful title information, and failing to amend, mitigate and remediate the title of the Plaintiffs.

4. In failing to correctly identify and set out the secured parties, liens and amounts of security instruments.

8. As a direct and proximate result of Respondents actions, Plaintiffs have suffered damages in excess of $ 8,000,000.00 (EIGHT MILLION DOLLARS).

9. As a direct and proximate result of Respondents actions and omissions Plaintiffs are unable to develop their property. Plaintiffs request relief regarding the development of such property while this action is continuing.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiffs prays for relief, both at law and in equity, to which they may be entitled, and for such other and further relief, as allowed by law, including, but not limited to, a restraining order allowing development of the property and the removal of all title affidavits in any county, filed by the Defendant herein.

Respectfully submitted,

Charles Chandler Davis
Attorney for Plaintiffs
6910 FM 1830
DRAWER 698
Argyle, Texas 76226
940.368.1205
Bar Card No. 054650900
charlie@arroyocoloradoenergy.com

ATTEST

I, Charles Chandler Davis, attorney for Plaintiffs herein, affirm and attest that notice has been sent to all Parties of record, this the 14th day of May, 2010.

Charles Chandler Davis
SBN 05465900

CAUSE NO. 10-439-D

ABOGADO MINERALS, LP, SANTIAGO RESOURCES, LP, 1519 PARTNERS, LP and VIA FORTUNA MINERALS, LLC, *Plaintiffs,*	§	IN THE DISTRICT COURT
v.	§	OF KLEBERG COUNTY, TEXAS
ARROYO COLORADO, and THOMAS M. McMURRAY, *Defendants.*	§	105TH JUDICIAL DISTRICT

FILED
2010 OCT -7 AM 11:24
MARIANA I. SOLIZ
DIST. CLERK, KLEBERG CTY.
BY _____ DEPUTY

ORIGINAL PETITION FOR BILL OF REVIEW

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, ABOGADO MINERALS, LP, acting through its general partner, AM Genpar, LLC; SANTIAGO RESOURCES, LP, acting through its general partner, Padre Island Minerals, LLC; 1519 PARTNERS, LP, acting through its general partner, Sendero Minerals, LLC; and VIA FORTUNA MINERALS, LLC, ("Movants") and file this their Original Petition for Bill of Review and request for injunctive relief, and for same state:

PARTIES

1.

Plaintiff, ABOGADO MINERALS, LP, acting through its general partner, AM Genpar, LLC, is a Texas Limited Partnership with its address at 2600 Via Fortuna, Suite 200, Austin, Texas 78746-7991 ("Abogado").

EXHIBIT P-11

2.

Plaintiffs, SANTIAGO RESOURCES, LP, acting through its general partner, Padre Island Minerals, LLC; 1519 PARTNERS, LP, acting through its general partner, Sendero Minerals, LLC; and VIA FORTUNA MINERALS, LLC are some of the mineral owners affected by the July 8, 2010 Final Judgment in Kleberg County Cause No. 10-180-D.

3.

Defendant, ARROYO COLORADO, an alleged Texas General Partnership, may be served with process by serving Charles Chandler Davis, an alleged partner, at 6910 FM 1830, Argyle, Texas 76226-3024.

4.

Defendant, THOMAS M. MCMURRAY may be served with process at 109 S. Woodrow Lane, Suite 700, Denton, Texas 76205.

DISCOVERY CONTROL PLAN

5.

Movants intend to conduct discovery in this case under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

STANDING

6.

Movants, although not named as parties to the judgment attacked in this bill of review proceeding, have standing to bring this bill of review because the July 8, 2010 *Final Judgment* entered in Cause No. 10-180-D in the 105th Judicial District Court of

Kleberg County, Texas is prejudicial and adverse to Movants and constitutes an improper collateral attack by Defendants on a March 30, 2010 partial summary judgment order granted to Abogado in Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas. Movants also have standing to bring the bill of review because the July 8, 2010 *Final Judgment* adversely affects and prejudices the real property interests of some of the Movants and other mineral owners under various tracts of land in Padre Island, Texas. *See Frost Nat. Bank v. Fernandez*, 315 S.W.3d 494 (Tex. 2010). A true and correct copy of the July 8, 2010 *Final Judgment* complained of in this bill of review proceeding is attached as **Exhibit 1.**

PRIOR PENDING JUDICIAL PROCEEDINGS

7.

On August 31, 2009, Arroyo Colorado, et al. filed suit against Abogado, et al. in Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas. A true and correct copy of the Travis County original petition is attached as **Exhibit 2.** Over time, other Plaintiffs joined the suit, with other parties also being named as Defendants.

8.

On February 22, 2010, the Honorable Lora J. Livingston issued a letter ruling granting a partial summary judgment to Abogado, et al. in Cause No. D-1-GN-09-002882. A true and correct copy of the letter ruling is attached as **Exhibit 3.** On March 30, 2010, Judge Livingston signed an order granting partial summary judgment. A true and correct copy of the partial summary judgment order is attached as **Exhibit 4.** Judge

Livingston's partial summary judgment order decreed that Arroyo Colorado, a Texas General Partnership, Isla Santiago Master Trust, et al. take nothing on their breach of contract claims with respect to five oil and gas leases dated March 1, 2007 and the March 1, 2007 letter of intent and option for oil and gas lease covering a tract of land in Willacy County, Texas. The Court further declared that Abogado had properly terminated the March 1, 2007 leases on December 6, 2007, with the option agreement being terminated as of August 31, 2007.

9.

In a desperate, collusive and fraudulent attempt to avoid the adverse March 30, 2010 partial summary judgment ruling in Travis County, Texas, unnamed Plaintiffs represented by Charles Chandler Davis filed a handwritten petition in this Court on April 22, 2010, being Cause No. 10-180-D. A true and correct copy of the Kleberg County original petition is attached as **Exhibit 5.** In the suit, the unnamed Plaintiffs and Charles Chandler Davis failed to advise this Court of the prior pending Travis County suit and, in defiance and disregard of Judge Livingston's March 30, 2010 partial summary judgment order, knowingly made false allegations alleging ownership of mineral interests and real property interests in Kleberg County, Texas including ownership of the March 1, 2007 oil and gas leases. The First Amended Petition filed by Plaintiffs and Charles Chandler Davis also falsely alleged that Plaintiffs owned real property interests in Kleberg County, Texas and that the Plaintiff, Isla Santiago Master Trust had perfected a lien and secured a deed of trust to protect the viability of the master lease. The referenced lien is believed to be an affidavit and declaration filed on

February 25, 2010 by Charles Chandler Davis in defiance to Judge Livingston's February 22, 2010 letter ruling granting Abogado, et al.'s motion for partial summary judgment.

10.

The unnamed plaintiffs' original petition filed in this Court on April 22, 2010 also failed to inform this Court that Saddle Creek Energy Development, L.P. was in a bankruptcy proceeding pending in the United States Bankruptcy Court for the Eastern District of Texas, being Case No. 07-14365.

The unnamed plaintiffs also fraudulently concealed from Abogado, et al. the fact that it had filed the Kleberg County proceeding. Abogado was not joined as a party to the Kleberg County proceeding and only recently became aware of the July 8, 2010 judgment.

COLLUSION

11.

Thomas M. McMurray, an attorney who was named as a Defendant by Charles Chandler Davis in Cause No. 10-180-D, previously appeared for deposition in the Travis County proceeding as a representative for some of the Plaintiffs in that case, being Playa Arroyo, Playa Arena and Playa Laguna. In the Travis County suit, Mr. McMurray testified by deposition that he owned a limited partnership interest in the Playa entities. The Playa entities were represented by Charles Chandler Davis in the Travis County suit and were named in Judge Livingston's March 30, 2010 partial summary judgment order as taking nothing on their claims against Abogado, et al. with respect to the March 1, 2007 leases and option agreement. Charles Chandler Davis non-

suited the Playa entities in the Travis County proceeding after Judge Livingston's February 22, 2010 letter ruling granting summary judgment. This act resulted in the dismissal with prejudice as to the Playa entities with respect to the issues decided in the partial summary judgment.

12.

When suit was filed in this Court in Cause No. 10-180-D on April 22, 2010, Charles Chandler Davis, acting collusively and in concert with Thomas M. McMurray, both knew that Saddle Creek Energy Development, LP was in a bankruptcy proceeding in Case No. 07-41365, in the United States Bankruptcy Court for the Eastern District of Texas. Although Charles Chandler Davis knew on April 22, 2010 that Thomas M. McMurray was not the Chief Reorganization officer of Saddle Creek Energy Development, L.P., he nevertheless falsely represented to the Court that Mr. McMurray was an officer of Saddle Creek Energy Development, L.P. Thomas M. McMurray also knew that he had no authority to act in any capacity on behalf of Saddle Creek Energy Development, L.P. Mr. McMurray, in an individual capacity, also knew that he had no interest in the March 1, 2007 leases or option agreement, or owned any undivided mineral interests under Padre Island, Texas.

13.

On July 8, 2010, Charles Chandler Davis, Thomas M. McMurray and Arroyo Colorado, acting collusively together and in an act of extrinsic fraud, presented an agreed *Final Judgment* to this Court. A true and correct copy of the Reporter's Record of the July 8, 2010 hearing is attached as **Exhibit 6.** In the stipulated *Final Judgment,*

Arroyo Colorado, et al. and Mr. McMurray stipulated, among other things, that Arroyo Colorado was in possession of all real property interests, including oil, gas and mineral interests in and to all described leaseholds on the exhibit A to the judgment; that the Plaintiff(s) to the Kleberg County proceeding had the exclusive right to develop the leases and mineral interests; that there were no necessary third parties to the Court's order; and that all leases and options were completely valid, subsisting and complete. These stipulated judgment findings between Arroyo Colorado and Mr. McMurray were false, fraudulent and knowingly done in an attempt to collaterally attack and impair Judge Livingston's March 30, 2010 partial summary judgment order in Travis County Cause No. D-1-GN-09-002882, and to wrongfully cloud title to the mineral estate under Padre Island, Texas. Although the July 8, 2010 judgment is somewhat ambiguous with respect to the capacity in which Mr. McMurray was acting when he agreed to both the form and substance of the judgment terms, it does state the he "surrenders any delusive hope of holding, exercising, claiming or representing in any capacity..." The problem with this stipulated agreement on "any capacity" is that Mr. McMurray had no capacity to act for Saddle Creek Energy Development, L.P. Also, Mr. McMurray had no standing, capacity or authority to enter into a stipulated judgment affecting Movants or the undivided mineral estate under Padre Island, Texas.

14.

The fraudulent and collusive *Final Judgment* presented to this Court by Charles Chandler Davis, and agreed to by Thomas M. McMurray, also declared that there were no third parties necessary to the judgment, with the judgment at the same time denying

all "spurious" claims from any third party not a party to the proceeding. The *Final Judgment* presented to this Court also found that Arroyo Colorado had spent $8,000,000.00 to acquire the real property interests and that any unidentified lien was valid, with the judgment being ordered enforceable against the mineral properties identified in Exhibit A attached to the *Final Judgment*. Neither Mr. McMurray, in an individual capacity, or Arroyo Colorado owned any interests in mineral estates identified as the "subject properties" in the *Final Judgment*. The agreed and stipulated judgment also found that the judgment was enforceable against the "subject properties" and authorized execution on thousands of mineral acres in five counties encompassing Padre Island, even though no mineral owner was made a party to the Kleberg County proceeding or judgment. The subject properties referenced in the July 8, 2010 judgment are the same properties described in Judge Livingston's March 30, 2010 partial summary judgment order, with the exception of tracts 2 and 4b. No Arroyo entity ever leased tracts 2 or 4b.

15.

The allegation that Arroyo Colorado, et al. possessed leases on tracts 2 or 4b was knowingly false. At the time the judgment was signed on July 8, 2010, it does not appear that an exhibit A was attached to the judgment, but was added to the judgment in September of 2010.

16.

The suit against Mr. McMurray in his capacity as an officer, or former officer of Saddle Creek Energy Development L.P. was a suit against the bankrupt entity. The

caption of the July 8, 2010 *Final Judgment* recites that Thomas M. McMurray was joined in an individual capacity and in his capacity as chief reorganization officer of Saddle Creek Energy Development. Although Mr. McMurray denied in his answer that he was liable in the capacity in which he had been sued, this did not prevent him from agreeing, in all capacities, that all of his previous filings concerning the subject properties were void and a nullity. Mr. McMurray also agreed to contents of the July 8, 2010 *Final Judgment* as to both form and substance. Although Mr. McMurray was a former reorganization officer for Saddle Creek Energy Development, he had absolutely no authority to agree to any judgment affecting Saddle Creek Energy Development. Both Mr. McMurray and Charles Chandler Davis knew this fact at the time they agreed to the July 8, 2010 *Final Judgment*.

A VOID JUDGMENT

17.

The July 8, 2010 agreed *Final Judgment* is clearly void because it affects Saddle Creek Energy Development, L.P. in violation of the automatic stay provisions of U.S.C.A. § 362. A judgment obtained in violation of the automatic stay is void. *Continental Casing Corp. v. Samedan Oil Corp.*, 751 S.W.2d 499 (Tex. 1988). The judgment is further void as to Movants because they were not joined as parties to the suit.

18.

On September 8, 2010, the clerk of this court issued an Abstract of Judgment in Cause No. 10-180-D. A true and correct copy of the *Abstract of Judgment* is attached as

Exhibit 7. The abstract is recorded as Instrument No. 284502 in Volume 438, Page 658 of the Official Records of Kleberg County, Texas.

THE JULY 8, 2010 FINAL JUDGMENT SHOULD BE SET ASIDE

19.

Arroyo Colorado, Charles Chandler Davis and Thomas M. McMurray, acting collusively together, have perpetrated an extrinsic fraud on this Court, and have shown complete disdain and disregard for the rule of law and of the judicial process. Movant requests that this Court's July 8, 2010 *Final Judgment* be set aside because the judgment is void and was procured by fraud, and the case then be dismissed because of the pendency of the prior judicial proceedings in Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas, and the pending bankruptcy proceeding in Cause No. 07-14365 in the United States Bankruptcy Court for the Eastern District of Texas.

20.

Movants also request that the September 8, 2010 *Abstract of Judgment* recorded as Instrument No. 284502 in Volume 438, Page 658 of the Official Records of Kleberg County, Texas be declared null and void, and ordered removed from the Official Records as a lien on the undivided mineral interests in the tracts of land described in Exhibit A to the July 8, 2010 *Final Judgment*.

REQUEST FOR INJUNCTIVE RELIEF

21.

Movants incorporate by reference Paragraphs 1 thru 20.

22.

Movants request temporary injunctive relief, including a temporary restraining order without notice or hearing, because if not granted, Movants fear that execution will in all probability issue on the July 8, 2010 *Final Judgment* against the mineral interests described on Exhibit A to the judgment. Movants further request injunctive relief to prevent Charles Chandler Davis, Arroyo Colorado, Thomas M. McMurray and all others acting in concert or privity with them from further recording any abstract of judgment, issuing execution or any other writ in enforcement of the July 8, 2010 *Final Judgment.*

REQUEST FOR SANCTIONS

23.

The conduct of Charles Chandler Davis, Thomas M. McMurray, Arroyo Colorado, and all those acting in concert with them is deserving of severe sanctions by this Court. Movants allege that severe sanctions are necessary and appropriate to protect the orderly administration of justice and to protect the inherent jurisdiction of this Court. Attorneys who knowingly file false pleadings show disregard for the rule of law. The actions of Charles Chandler Davis and his clients, together with the collusion of Thomas M. McMurray, violated Rule 13 of the Texas Rules of Civil Procedure and Chapters 9 and 10 of the Texas Civil Practice and Remedies Code. Movants request the imposition of sanctions against Charles Chandler Davis, Thomas M. McMurray, Arroyo Colorado, and all those acting in concert with them, as deemed appropriate by the Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Movants pray that the Court, after notice and hearing, grant a restraining order and injunctive relief as prayed for; set aside and vacate the July 8, 2010 *Final Judgment*; dismiss this cause because of the prior pendency of Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas, and Case No. 07-41365 pending in the United States Bankruptcy Court in the Eastern District of Texas; declare that the September 8, 2010 *Abstract of Judgment* recorded as Instrument No. 284502 in Volume 438, Page 658 of the Official Records of Kleberg County, Texas is null and void, and ordered removed from the Official Records, together with appropriate and severe sanctions. Movants pray for general relief.

Respectfully submitted,

Tom C. McCall
State Bar No. 13350300
David B. McCall
State Bar No. 13344500
THE McCALL FIRM
2600 Via Fortuna, Suite 200
Austin, Texas 78746-7991
Telephone: (512) 477-4242
Facsimile: (512) 477-2271

and

Hector H. Cardenas, Jr.
State Bar No. 00790422
THE CARDENAS LAW FIRM
2600 Via Fortuna, Suite 200
Austin, Texas 78746-7991
Telephone: (512) 477-4242
Facsimile: (512) 477-2271

Counsel for Abogado Minerals, LP, Santiago Resources, LP, 1519 Partners, LP and Via Fortuna Minerals, LLC

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared BRITTON D. MONTS, a person whose identity is known to me, and after being duly sworn and upon oath stated as follows:

(1) "My name is Britton D. Monts. I am above the age of twenty-one (21) years and I am fully competent to testify to the matters stated herein. I am a Member of Abogado Minerals, LP; and a Manager of AM Genpar, LLC, who is the General Partner of Abogado Minerals, LP.

(2) I have read the forgoing *Original Petition for Bill of Review*. All of the factual statements in the *Petition* are within my personal knowledge and are true and correct.

(3) **Exhibit 1** is a true and correct copy of the *Final Judgment* signed by the Honorable Judge J. Manuel Banales on July 8, 2010 in Kleberg County Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas.

(4) **Exhibit 2** is a true and correct copy of the *Plaintiffs' Original Petition* filed by Charles Chandler Davis on August 31, 2009 in Travis County Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas.

(5) **Exhibit 3** is a true and correct copy of the letter ruling of the Honorable Judge Lora J. Livingston dated February 22, 2010 in Travis County Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas.

(6) **Exhibit 4** is a true and correct copy of the *Order Granting Defendants' and Counter-Plaintiff's First Amended Motion for Partial Summary Judgment* signed by the Honorable Judge Lora J. Livingston on March 30, 2010 in Travis County Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas.

(7) **Exhibit 5** is a true and correct copy of the *Plaintiffs' Original Petition* filed by Charles Chandler Davis on April 22, 2010 in Kleberg County Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas.

(8) **Exhibit 6** is a true and correct copy of the certified *Reporter's Record* of the July 8, 2010 hearing before the Honorable Judge J. Manuel Banales in Kleberg County Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas.

(9) **Exhibit 7** is a true and correct copy of the *Abstract of Judgment* issued on September 8, 2010 in Kleberg County Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas."

Further Affiant Sayeth Not.

Britton D. Monts

SUBSCRIBED AND SWORN TO BEFORE ME by Britton D. Monts on this the 6th day of October 2010, to certify which witness my hand and seal of office.

NOTARY PUBLIC, State of Texas

KATHRYN MCCALL NOTARY PUBLIC STATE OF TEXAS EXPIRES 3-31-2014

CAUSE NO. 10-439-D

ABOGADO MINERALS, LP,	§	IN THE DISTRICT COURT
SANTIAGO RESOURCES, LP,	§	
1519 PARTNERS, LP and	§	
VIA FORTUNA MINERALS, LLC,	§	
Plaintiffs,	§	OF KLEBERG COUNTY, TEXAS
v.	§	
ARROYO COLORADO,	§	
and THOMAS M. McMURRAY,	§	
Defendants.	§	105TH JUDICIAL DISTRICT

ORDER GRANTING BILL OF REVIEW AND VACATING JUDGMENT

On this day came on to be heard the *Original Petition for Bill of Review* filed by Plaintiffs, ABOGADO MINERALS, LP, acting through its general partner, AM Genpar, LLC; SANTIAGO RESOURCES, LP, acting through its general partner, Padre Island Minerals, LLC; 1519 PARTNERS, LP, acting through its general partner, Sendero Minerals, LLC; and VIA FORTUNA MINERALS, LLC ("Movants"). The Defendants, Arroyo Colorado, a Texas General Partnership ("Arroyo") and Thomas M. McMurray ("McMurray") appeared by and through their counsel of record. After hearing the argument of counsel and considering the evidence, the Court finds that Defendants' plea to the jurisdiction and special exceptions challenging Movants' standing to file the petition for bill of review should be DENIED. The Court further finds that Movants' petition for bill of

review should be GRANTED and that the July 8, 2010 final judgment in Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas should be set aside and vacated, with Cause No. 10-180-D being dismissed without prejudice.

IT IS THEREFORE ORDERED that Defendants' plea to the jurisdiction and special exceptions to Movants' standing to bring the petition for bill of review proceeding are DENIED.

IT IS FURTHER ORDERED that the Movants' petition for bill of review is GRANTED with the July 8, 2010 final judgment in Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas, in suit styled *"Arroyo Colorado EIN No. 20-5446006 v. Thomas M. McMurray, Individually and as Chief Reorganization Officer of Saddle Creek Energy Development,"* being hereby vacated and set aside in its entirety.

IT IS FURTHER ORDERED that the suit filed by Defendant Arroyo Colorado EIN No. 20-5446006 in Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas, be and it is hereby dismissed without prejudice.

IT IS FURTHER ORDERED that the following described *Abstracts of Judgment* filed of record by Defendant Arroyo Colorado EIN No. 20-5446006 are declared null and void and of no force and effect, to wit:

(1) Instrument No. 2010-00039441 in Volume 17232, Pages 59-61 of the Official Records of Cameron County, Texas;

(2) Document No. 9998 in Volume 4, Pages 307-308 of the Abstract of Judgment Records of Kenedy County, Texas;

(3) File No. 284502 in Volume 438, Pages 658-659 of the Official Records of Kleberg County, Texas; and

(4) Document No. 2010038403 of the Official Records of Nueces County, Texas;

(5) Document No. 20100316449 in Volume 619, Page 8792 of the Official Records of Willacy County, Texas.

All costs of court are taxed against the party incurring same. All other relief not granted is DENIED. This judgment disposes of all parties and is an appealable judgment.

SIGNED this 24th day of February, 2011.

The Honorable Angelica Hernandez
Presiding Judge

STATE OF TEXAS
COUNTY OF KLEBERG

I certify that the foregoing is a true and correct copy of the original record on file in my office. Given under my hand and seal of the court at my office in Kingsville, Texas, this _____

MELISSA A. SALINAS, DISTRICT CLERK

By _____ Deputy

STATE OF TEXAS
COUNTY OF KLEBERG

I certify that the foregoing is a true and correct copy of the original record on file in my office. Given under my hand and seal of the court at my office in Kingsville, Texas, this Feb. 25, 2014

MELISSA A. SALINAS, DISTRICT CLERK

By Alicia Lorca Deputy

CAUSE NO. 10-439-D

ABOGADO MINERALS, LP,	§	IN THE DISTRICT COURT
SANTIAGO RESOURCES, LP,	§	
1519 PARTNERS, LP and	§	
VIA FORTUNA MINERALS, LLC,	§	
Plaintiffs,	§	OF KLEBERG COUNTY, TEXAS
v.	§	
ARROYO COLORADO,	§	
and THOMAS M. McMURRAY,	§	
Defendants.	§	105TH JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Rule 297 of the Texas Rules of Civil Procedure, the Court, after hearing the evidence, hereby renders its written Findings of Fact and Conclusions of Law in support of its February 24, 2011 judgment.

FINDINGS OF FACT

1. On August 31, 2009, Arroyo Colorado, a Texas General Partnership, whose attorney is Charles Chandler Davis, filed suit against Abogado Minerals, LP, et al. in Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas (the "Travis County suit").

2. On February 22, 2010, the Honorable Lora J. Livingston, a Travis County District Judge, issued a letter ruling granting partial summary judgment to Abogado Minerals, LP, et al. against Arroyo Colorado, a Texas General Partnership, Playa Arroyo, Playa Arena, Playa Laguna, Isla Santiago Master Trust, et al. in the Travis County suit.

3. On February 25, 2010, Isla Santiago Master Trust, acting through Charles Chandler Davis, filed a lien in the Official Records of Willacy County, Texas,

and being recorded as Document No. 20100314841 in Volume 619, Pages 1704-1706.

4. After the Honorable Judge Lora J. Livingston issued her February 22, 2010 letter ruling, Charles Chandler Davis, individually and on behalf of his clients in the Travis County suit, sent out two letters indicating his defiance of the Travis County District Court ruling, and his intent to disregard the judgment by engaging in "self-help."

5. On March 30, 2010, the Honorable Judge Lora J. Livingston signed an order granting partial summary judgment to Abogado Minerals, LP, et al. against Arroyo Colorado, a Texas General Partnership, Playa Arroyo, Playa Arena, Playa Laguna, Isla Santiago Master Trust, et al. in the Travis County suit.

6. The March 30, 2010 partial summary judgment order in the Travis County suit declared that the following five oil and gas leases from Abogado Minerals, LP to Arroyo Colorado, LLC (the "Leases") were each properly terminated by Abogado Minerals, LP in accordance with their terms on December 6, 2007, and that the leases are terminated and of no force and effect, to-wit:

(1) Oil and Gas Lease dated March 1, 2007 covering Tract 1, Parcels A and B, and being further described as follows:

1,000.00 undivided mineral acres on the Northmost portion of Padre Island in Nueces County, Texas, more particularly described as follows:

PARCEL A – A tract of land containing 500.00 undivided acres, as described in mineral conveyance dated January 25, 1943 from Burton Dunn and Edward R. Kleberg to Gilbert Kerlin, recorded in Volume 69, Page 275 of the Oil and Gas Records of Nueces County, Texas.

PARCEL B – A tract of land containing 500.00 undivided mineral acres, as described in mineral conveyance dated March 20, 1943 from Albert R. Jones to Gilbert Kerlin, recorded in Volume 69, Page 276 of the Oil and Gas Records of Nueces County, Texas.

(2) Oil and Gas Lease dated March 1, 2007 covering Tract 3, Parcel A, and being further described as follows:

PARCEL A – Being 20,000.00 acres, more or less, in Willacy and Kenedy Counties, Texas, as described in the Deed dated December 14, 1942 from Albert R. Jones, et al., to Gilbert Kerlin, recorded in Volume 27, Page 362 of the Deed Records of Willacy County, Texas, and in that certain Correction Deed dated September 17, 1982 from Albert R. Jones, et al., to Gilbert Kerlin, Individually and as Trustee, recorded in Volume 39, Page 211 of the Deed Records of Kennedy County, Texas and Volume 143, Page 464 of the Deed Records of Willacy County, Texas.

(3) Oil and Gas Lease dated March 1, 2007 covering Tract 3, Parcels B and C, and being further described as follows:

PARCEL B – Being 11,925.60 acres, more or less, in Willacy County, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-154-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 244 of the District Court Records of Cameron County, Texas and in Volume 138, Page 270 of the Deed Records of Willacy County, Texas.

PARCEL C – Being 5,234.97 acres, more or less, situated in Willacy and Kenedy Counties, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-155-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 254 of the District Court Records of Cameron County, Texas; in Volume 17, Page 364 of the Deed Records of Kenedy County, Texas; and in Volume 138, Page 281 of the Deed Records of Willacy County, Texas.

(4) Oil and Gas Lease dated March 1, 2007 covering Tract 4, Parcel A, and being further described as follows:

PARCEL A – 6,600.22 acres in Cameron County, Texas being part of the lands described in the judgment of title adjudication entered December 6, 1948 in the District Court of the United States Southern District of Texas, Brownsville Division, Cause

No. C. A. 142 styled *United States of America v. 34,884 acres of land, et al.* as the North 1,729.81 acres of Tract PI-3 (being all of said Tract PI-3 except the South 2,943.19 acres thereof) and all of Tract PI-4, as more particularly described in Plaintiff's Second Amended Original Petition in Condemnation and Second Amendment to the Declaration of Taking.

(5) Oil and Gas Lease dated March 1, 2007 covering Tracts 5 and 6, and tract being further described as follows:

TRACT 5 – 3,750.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as the Northerly 3,750.00 acres out of a 6,000.00 acre tract adjudicated and set apart to Mrs. H. M. King by Judgment and Decree rendered November 16, 1905 styled *Maria Romula Salinas de Grisanti, et al. v. The American Trust Company of New Jersey, et al.*, Cause No. C. L. 18, United States Circuit Court at Laredo, Texas and pursuant to the terms of the Agreement dated June 9, 1943 between Gilbert Kerlin, Individually and Trustee, and the King Ranch, recorded in Volume 331, Page 3 of the Deed Records of Cameron County, Texas.

TRACT 6 – 250.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as all of that certain 2,250.00 acres described in the Confirmation Deed dated January 4, 1951, from Elizabeth A. Baldwin, et vir, James P. Baldwin to Gilbert Kerlin, recorded in Volume 1403, Page 664 of the Deed Records of Cameron County, Texas, LESS AND EXCEPT that certain 2,000.00 acres described in the Agreement and Conveyance dated September 3, 1980, from Gilbert Kerlin, Individually and as Trustee, to Helen F. Pinnell, as Trustee, et al., recorded in Volume 1210, Page 265 of the Deed Records of Cameron County, Texas.

7. The March 30, 2010 partial summary judgment order in the Travis County suit also declared that Arroyo Colorado, a Texas General Partnership, Playa Arroyo, Playa Laguna, Playa Arena, Isla Santiago Master Trust, et al. take nothing on their breach of contract claims against Abogado Minerals, I.P, et al. with respect to the March 1, 2007 letter of intent and option for oil and gas lease (the "Option Agreement"), which terminated and expired at 12:01 a.m.

on August 31, 2007, as to the following described tract of land in Willacy County, Texas, to-wit:

> Bounded on the North by the South Boundary Line of Tract 2, containing 11,925.6 acres, described in the Final Judgment in Cause No. 78-154-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;
>
> Bounded on the South by the North Boundary Line of Tract 1, containing 10,223.20 acres, described in the Final Judgment in Cause No. 78-153-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;
>
> Bounded on the West by the line surveyed by M.L. Launch in 1973 as the line of mean higher high water between the Laguna Madre and Padre Island, said survey being of record in the survey records of the Texas General Land Office; having also been filed as an Exhibit to the judgment in Cause No. 78-154-C, in suit styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, in the 197th Judicial District Court of Cameron County, Texas; and
>
> Bounded on the East by the western boundary of Padre Island as shown in the 1941 survey prepared by J. Stuart Boyles for the Office of the Attorney General for the State of Texas, and now on file in the General Land Office of The State of Texas.

8. In the March 30, 2010 partial summary judgment order in the Travis County suit, the Court decreed that Arroyo Colorado, a Texas General Partnership, Playa Arroyo, Playa Arena, Playa Laguna, and Isla Santiago Master Trust, et al. take nothing on their claims for breach of contract with respect to the Leases and Option Agreement.

9. At the time of the March 30, 2010 partial summary judgment order in the Travis County suit, Thomas M. McMurray and Charles Chandler Davis either had or claimed to have ownership interests in Playa Arroyo, Playa Arena, and Playa Laguna, with all of the entities being represented in the Travis County suit by Charles Chandler Davis. Charles Chandler Davis also owns or claims to own an interest in Arroyo Colorado, a Texas General Partnership.

10. On April 22, 2010, Charles Chandler Davis filed suit on behalf of certain unnamed Plaintiffs against Thomas M. McMurray, individually and in his capacity as Former Chief Reorganization officer of Saddle Creek Energy Development, LP in Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas.

11. Charles Chandler Davis concealed the filing of the Kleberg County suit from Defendants and their counsel in the Travis County suit.

12. In Plaintiff's Petitions filed in Cause No. 10-180-D, Charles Chandler Davis and his clients knowingly made the following false statements of material facts to the Honorable J. Manuel Banales, the then Presiding Judge of the 105th Judicial District Court of Kleberg County, Texas, to-wit:

(1) "Plaintiffs own real property interests in Kleberg County, Texas, similarly situated Master Lease, the subject of this proceeding, encompasses acreage in FIVE(5) counties in the State of Texas, including, Nueces, Kleberg, Willacy, Kenedy and Cameron County." (Original and First Amended Petitions, ¶2)

(2) "Plaintiff, Isla Santiago Master Trust, EIN 27-6204936 perfected a lien and secured a deed of trust to protect the viability of the master lease and deed of trust attached as Exhibits, attached hereto and incorporated herewith..." (First Amended Petition, ¶5)

13. At the time that Charles Chandler Davis and his clients filed both the Original and First Amended Petitions in Cause No. 10-180-D, he (Davis) engaged in conduct involving dishonesty, deceit, misrepresentation, and fraud upon the Court, and violated his duty of candor to the Court, by failing to disclose to the Honorable Judge Manuel Banales that the five Leases and the Option Agreement had previously been declared terminated and of no force and effect by the March 30, 2010 partial summary judgment order in the Travis County suit.

14. Charles Chandler Davis intentionally and knowingly filed and presented false pleadings to the Court, with the intent to harm or defraud another.

15. Charles Chandler Davis violated his duty of candor to the Court by failing to disclose to the Honorable Judge Manuel Banales that the Isla Santiago Master Trust lien was filed after the Honorable Judge Lora J. Livingston had issued her letter ruling granting partial summary judgment on February 22, 2010.

16. At the time that Charles Chandler Davis and his clients filed both the Original and First Amended Petitions in Cause No. 10-180-D, Thomas M. McMurray, having or claiming to have an ownership interest in Playa Arena, Playa Arroyo, and Playa Laguna, was also aware of the March 30, 2010 partial summary judgment order in the Travis County suit.

17. At the time that Charles Chandler Davis and his clients filed both the Original and First Amended Petitions in Cause No. 10-180-D, Thomas M. McMurray had no authority to act for Saddle Creek Energy Development, LP in any capacity; nor did he own any mineral or royalty interest in any tract of land under Padre Island; and these facts were known by both Charles Chandler Davis and Thomas M. McMurray.

18. At the time that Charles Chandler Davis and his clients filed the Original Petition in Cause No. 10-180-D, Saddle Creek Energy Development, LP was in bankruptcy in Cause No. 07-41365 in the United States Bankruptcy Court for the Eastern District of Texas. Charles Chandler Davis did not seek a lifting of the automatic stay provisions of U.S.C.A. § 362 before filing suit against Thomas M. McMurray, in his capacity as Former Reorganization Officer of Saddle Creek Energy Development, LP.

19. On July 8, 2010, Charles Chandler Davis violated his duty of candor to the Court and again engaged in conduct involving dishonesty, deceit, misrepresentation, and fraud upon the Honorable Judge Manuel Banales by failing to disclose the March 30, 2010 partial summary judgment order in the Travis County suit, and in knowingly making false statements and stipulations of material facts contained in the agreed and stipulated Final Judgment presented to the Court in Cause No. 10-180-D, to-wit:

(1) "Plaintiffs are currently in possession of all real property interests, including oil, gas and mineral interests in and to all described leaseholds as attached in Exhibit "A", and incorporated hereto..." (¶1)

(2) "Plaintiffs have the exclusive right to develop the leases, mineral interests and pipeline easements, gathering systems, marketing, surveying, transporting and all access, ingress and facilities for same, any easement rights, licenses, permits and the rights inherent therein permitting and enabling the protection, defense, use and enjoyment of all such described lands." (¶2)

(3) "The Plaintiffs may designate any agent, licensee, contractor, consultant, sub-contractor, compliance officer or employee as having the right to enter, examine, survey, explore and to prepare, construct and commence drilling operations, seismic operations, research, soil samples, site preparations and pipeline and infrastructure construction. *Subject to 37.001 of the Texas Civil Practice and Remedies Code*, each designee may be a "person", meaning an "individual, partnership, joint stock company,.....corporation, limited liability company or any other corporation of any character..." (¶3)

(4) "The Plaintiffs have sought and are entitled to the requested remedial relief, declaring the correct, valid and existing, legal and equitable, right, title and interest and clarification of the status and the legal relations concerning the subject properties and the real property interests therein described." (¶4)

(5) "...There are no necessary third parties to this order of the court and both Plaintiff and Defendant have authority and adequate consideration to enter into the stipulations as set out and mutually request such a judgment to be entered..." (¶5)

(6) "All contracts, leases, options and franchises, easements and interests, including all possessory rights held by Plaintiff are construed as fully and completely valid, subsisting and complete. All working interest rights, leasehold development rights and all real property mineral development rights, exclusive of any surface rights, claimed, owned or held by others, and any rights purchased, assigned or acquired by action of law or equity are perfected, all security interests necessary for development are perfected. Any and all rights, both legal and equitable, are held by the purchaser, lessee, owner and operator, Arroyo Colorado, a Texas General Partnership, EIN No. 20-5446006..." (¶6)

(7) "All possessory rights, development rights and contractual rights are held, owned and duly exercised by Arroyo Colorado, a Texas General Partnership, EIN No. 20-5446006, regarding the subject leases as described, the subject contracts and any and all right, title and interest, thereto rests with the same Arroyo Colorado, a Texas General Partnership." (¶7)

(8) "All spurious claims, from any third party, which have threatened, infringed, impacted or clouded the title are specifically denied..." (¶8)

(9) "The Court finds that the Plaintiffs have a liquidated amount of consideration of $8,000,000.00 (Eight million dollars) based upon the money expended to acquire the real property interests and that any lien, security position or claim regarding the payment of those funds held by Plaintiff is valid..." (¶10)

(10) The Court finds that such judgment is enforceable against the subject properties." (¶11)

20. Charles Chandler Davis intentionally and knowingly filed and presented a false judgment to the Honorable Judge Manuel Banales in Cause No. 10-180-D, with the intent to harm or defraud another.

21. At the time Thomas M. McMurray signed and approved the July 8, 2010 agreed judgment in Cause No. 10-180-D as to form and substance, he also knew that the material facts recited in Finding of Fact 19 were false. Thomas M. McMurray also knew that his representation to the Court that he had the authority to enter into the stipulated findings set forth in Finding of Fact 19 was false.

22. At the time the July 8, 2010 judgment was signed in Cause No. 10-180-D, the Exhibit A was omitted from the judgment.

23. The Exhibit A from the July 8, 2010 judgment in Cause No. 10-180-D was not sent for filing with the Clerk of the Court until September 9, 2010, and was attached to the judgment without permission from the Court.

24. Charles Chandler Davis colluded with Thomas M. McMurray in presenting a fraudulent judgment to be signed by Judge Banales in Cause No. 10-180-D. Charles Chandler Davis, with assistance and complicity of Thomas M. McMurray, committed a fraud upon the Honorable Judge Manuel Banales by making materially false statements and misrepresentations of material facts in the July 8, 2010 agreed judgment, with the intent that Judge Banales rely on such false statements and misrepresentations, and with the intent to harm or defraud another.

25. The July 8, 2010 judgment in Cause No. 10-180-D, which was procured and obtained by a collusive act of fraud upon the Court by Charles Chandler

Davis, with the assistance and complicity of Thomas M. McMurray, materially and prejudicially affected the interests of the hundreds of absent mineral and surface owners under the over 60,000 acres of land described on Exhibit A to the judgment by clouding and impairing title to the mineral and surface ownership rights.

26. Santiago Resources, LP, acting through its general partner, Padre Island Minerals, LLC; 1519 Partners, LP, acting through its general partner Sendero Minerals, LLC; and Via Fortuna Minerals, LLC are mineral owners under the tracts of land described on Exhibit A to the July 8, 2010 judgment in Cause No. 10-180-D, and have been materially and prejudicially affected by the collusive fraud committed on Judge Banales in obtaining the July 8, 2010 judgment, and by the judgment and the five abstracts of judgment recorded by Charles Chandler Davis.

27. Abogado Minerals, LP, acting through its general partner, AM Genpar, LLC (collectively "Abogado"), was a mineral owner in the land described on Exhibit A to the July 8, 2010 judgment at the time the five Leases and Option Agreement were entered into with Arroyo Colorado, LLC. Abogado has been materially and prejudicially affected by the collusive fraud committed on the Honorable Judge Manuel Banales in obtaining the July 8, 2010 judgment in Cause No. 10-180-D, and by the judgment and the five abstracts of judgment recorded by Charles Chandler Davis. The July 8, 2010 judgment conflicts with the March 30, 2010 partial summary judgment order in the Travis County suit, and impairing Abogado's contractual rights.

28. Any Conclusion of Law, which also constitutes a Finding of Fact, is adopted as a Finding of Fact.

CONCLUSIONS OF LAW

1. Any Finding of Fact, which also constitutes a Conclusion of Law, is adopted as a Conclusion of Law.

2. Abogado Minerals, LP, acting through its general partner, AM Genpar, LLC; Santiago Resources, LP, acting through its general partner, Padre Island Minerals, LLC; 1519 Partners, LP, acting through its general partner Sendero Minerals, LLC; and Via Fortuna Minerals, LLC have standing to bring this bill of review proceeding because they had then existing interests and rights that were prejudiced by the July 8, 2010 judgment in Cause No. 10-180-D.

3. The July 8, 2010 judgment in Cause No. 10-180-D was procured by collusive fraud between Charles Chandler Davis and Thomas M. McMurray.

4. The bill of review should be granted, with the July 8, 2010 judgment being vacated and set aside.

5. The suit filed in Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas on April 22, 2010, constitutes an improper collateral attack on the March 30, 2010 partial summary judgment order in Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas.

6. Cause No. 10-180-D in the 105th Judicial District Court of Kleberg County, Texas should be dismissed without prejudice because dominant jurisdiction of the claims by Arroyo Colorado, a Texas General Partnership, with respect to the five Leases and Option Agreement, is in Cause No. D-1-GN-09-002882 in the 53rd Judicial District Court of Travis County, Texas.

7. Any claim by Arroyo Colorado, a Texas General Partnership, against Thomas M. McMurray, in his capacity as Former Reorganization Officer is a suit against Saddle Creek Energy Development, LP, which is currently in bankruptcy. Cause No. 10-180-D should also be dismissed as to all claims by Arroyo Colorado, a Texas General Partnership, against Saddle Creek Energy Development, LP. The Bankruptcy Court has not lifted the automatic stay provision of U.S.C.A. § 362, and the Court does not have jurisdiction over claims by Arroyo Colorado, a Texas General Partnership, against Saddle Creek Energy Development, LP.

SIGNED this 30th day of March, 2011.

The Honorable Angelica Hernandez
Presiding Judge

CAUSE NO. D-1-GN-09-002882

ARROYO COLORADO, et al.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	TRAVIS COUNTY, TEXAS
TOM C. McCALL, et al.,	§	
Defendants.	§	53RD JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS

On November 18, 2010, the Court heard and considered the Motion for Sanctions against Charles Chandler Davis, and Supplement thereto, filed by Defendants AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, and Britton D. Monts ("Abogado Defendants"). Defendant Balli Minerals & Royalty, LLC ("BMAR") later joined in the Motion.

The Court finds that Charles Chandler Davis and Plaintiffs were properly served with the motion and supplement, and that notice of the hearing was also served properly.

Defendants appeared in person and through their counsel of record.

Charles Chandler Davis appeared in person for himself and as counsel of record for Plaintiffs.

After considering the motion and supplement thereto, the pleadings, any responses, hearing testimony and transcripts, evidence received and admitted, taking judicial notice of the contents of the Court's file, and arguments of counsel, the Court finds that Defendants' Motion for Sanctions is well taken and should be GRANTED.

The Court makes the following FINDINGS:

1. Charles Chandler Davis and Plaintiffs have engaged in a continuing pattern of misconduct in this litigation.

2. Charles Chandler Davis and Plaintiffs have repeatedly filed false pleadings.

3. Charles Chandler Davis and Plaintiffs have filed frivolous and groundless pleadings.

4. Charles Chandler Davis has engaged in unprofessional conduct and violated his duty of candor to the Court.

5. ~~Charles Chandler Davis has taken inconsistent and disingenuous positions with the Court.~~

6. ~~Charles Chandler Davis gave evasive, inconsistent, and misleading testimony to the Court.~~

7. Charles Chandler Davis filed of record in Willacy County, Texas on February 25, 2010, an affidavit claiming a lien against mineral interests based on claims that this Court had already rejected in a February 22, 2010 letter ruling to the parties granting partial summary judgment against Mr. Davis' clients, the Plaintiffs.

8. Charles Chandler Davis and Plaintiffs openly declared in writing to Defendants and their counsel that they would not recognize or respect prior adverse rulings and orders of this Court with which they disagree.

9. Despite the rulings and orders of this Court, Plaintiffs and their counsel, Charles Chandler Davis, have continued to file liens, affidavits and other instruments asserting rights under the terminated Leases and Option Agreement.

10. Plaintiff Arroyo Colorado, a Texas General Partnership, and its counsel, Charles Chandler Davis, filed at least one other lawsuit in Kleberg County, Texas asserting alleged rights under the terminated Leases and Option Agreement after this Court signed an order granting partial summary judgment against Plaintiffs as to those claims.

11. Arroyo Colorado later submitted a false judgment to the Kleberg County district court purporting to create a judgment lien on the mineral properties on Padre Island owned by Defendants and others, and after the judgment was signed, Plaintiff Arroyo Colorado and Charles Chandler Davis abstracted the judgment in the five (5) counties in which Padre Island lies. The Kleberg County district court later vacated and set aside the judgment and entered findings and conclusions, including findings that "Charles Chandler Davis intentionally and

knowingly filed and presented a false judgment [to the court] with the intent to harm or defraud another." The Court takes judicial notice of the Bill of Review proceeding in Kleberg County, including the Order Granting Bill of Review and Vacating Judgment, and Findings of Fact and Conclusions of Law.

12. ~~Charles Chandler Davis and Plaintiffs are serial violators of Rule 21a of the Texas Rules of Civil Procedure.~~ JPP

13. Charles Chandler Davis and Plaintiffs have failed and refused to respond to a single written discovery request served by Defendants despite three previous Court Orders compelling them to respond to such requests and sanctioning them $375.00 in each Order.

14. Charles Chandler Davis and Plaintiffs have repeatedly abused the discovery process and resisted discovery.

15. Charles Chandler Davis and Plaintiffs knowingly filed false and groundless pleadings against Kara O'Shaughnessy, Tom McCall's paralegal, and despite the entry of a partial summary judgment order against Plaintiffs on those claims, and an order imposing monetary sanctions of $2,500.00 for filing a false pleading, Charles Chandler Davis added new Plaintiffs (Ventana Minerals, LLP and FABDA, Inc., companies owned by him) and reasserted the same or similar false claims against Ms. O'Shaughnessy, and added a claim of $1 million in damages against her.

16. ~~Plaintiffs Playa Arroyo Exploration, LLP, Playa Arena Gathering, LLP, Playa Laguna Energy, LP and Santiago Minerals, LP are fictitious entities and are nothing more than expired registered name reservations taken out by Charles Chandler Davis at the Texas Secretary of State's office.~~ JPP

17. Plaintiffs FABDA, Inc. and Ventana Minerals, LLP are entities, now existing or not, owned and controlled by Charles Chandler Davis. Ventana Minerals LLP is a former entity with a charter that has been forfeited. Charles Chandler Davis also claims to be a partner in Plaintiff Arroyo Colorado, an alleged Texas General Partnership, and a member of Plaintiff Saddle Creek Joint Venture. Charles Chandler Davis also claims to be the managing partner of Saddle Creek Joint Venture. The Court finds that the conduct of Charles Chandler Davis is indistinguishable from the conduct of the Plaintiffs he represents.

18. Charles Chandler Davis and Plaintiffs have continued to file amended pleadings re-labeling and re-asserting claims on which this Court has previously signed orders granting summary judgment in Abogado Defendants' favor.

19. The conduct of Charles Chandler Davis and Plaintiffs has needlessly confused the record, caused delay, and increased the cost of this litigation.

20. At a status conference hearing on October 6, 2010, Charles Chandler Davis gave the Court a document he represented to the Court to be a publicly filed affidavit and declaration, when in fact, the document Mr. Davis gave to the Court was an intentionally and materially altered copy of an instrument filed of record.

21. Charles Chandler Davis has represented that he is an attorney licensed to practice law in Texas and that he is a former district judge.

22. Charles Chandler Davis' conduct on behalf of his clients in this case has been deliberate.

23. The conduct and abuses of Charles Chandler Davis and Plaintiffs in this case are so egregious, in bad faith and flagrant so as to create a presumption that Plaintiffs' remaining claims are without merit.

24. This is an exceptional case and the sanctions available to the Court through its inherent power, and under TRCP Rules 13, 21b and 215.2(b); CPRC Sections 9 and 10; and under Tex. Gov't Code Ann. Sections 21.002 and 82.061 are appropriate, including but not limited to an order striking out pleadings and parts thereof, or dismissing with or without prejudice the action or proceedings or any part thereof.

25. The conduct of Charles Chandler Davis and Plaintiffs set forth herein has significantly interfered with the core function of this Court. The Court has the inherent power to sanction conduct that significantly interferes with the trial court's management and administration of the case. By their conduct, Charles Chandler Davis and Plaintiffs have defied this Court's rulings and orders and engaged in conduct designed to thwart the administration of justice.

26. There is a direct relationship between the extensive and far-reaching misconduct by Charles Chandler Davis and Plaintiffs, and the sanctions imposed by this Order. The sanctionable conduct is attributable to Charles Chandler Davis personally and to Arroyo Colorado, an alleged Texas General Partnership, Saddle Creek Joint Venture, Santiago Minerals, FABDA, Inc., Ventana Minerals, LLP, Playa Laguna Energy, LP, Playa Arroyo Energy, LP, and Playa Arena Gathering, LLP, specifically because those are expired or fictitious entities, or entities owned and/or controlled by Mr. Davis. The sanctions imposed by this Order are assessed against all Plaintiffs, including those Plaintiffs who were later nonsuited by Mr. Davis after committing offending conduct in this case.

27. The Court has carefully considered all of the known conduct of Charles Chandler Davis and Plaintiffs during this case. The Court previously has entered orders imposing lesser sanctions on at least four occasions and each time, Charles Chandler Davis and Plaintiffs ignored those orders by continuing to engage in further sanctionable conduct. As a result, the Court finds that lesser sanctions, including orders compelling compliance with the rules of discovery and monetary sanctions previously ordered, have not been sufficient to deter the conduct of Mr. Davis as counsel for himself and Plaintiffs. Imposition of further monetary sanctions would be futile and insufficient to deter Mr. Davis' conduct and that of his clients.

28. The sanctions imposed by this Order are not excessive under the circumstances.

29. Most of Plaintiffs' claims against Abogado Defendants have been disposed of by partial summary judgment orders in Abogado Defendants' favor leaving only a few claims remaining against Defendants. A death penalty sanction dismissing all with prejudice all of Plaintiffs' remaining claims against Defendants not previously disposed of by partial summary judgment, is an appropriate sanction in this instance.

IT IS THEREFORE ORDERED that all remaining claims and causes of action of Plaintiffs, Arroyo Colorado, an alleged Texas General Partnership, and Saddle Creek Joint Venture, against Defendants AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, and Britton D. Monts, not previously disposed of by the partial summary judgment orders signed on March 30, 2010, April 20, 2010 and April 29, 2010, are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that all claims and causes of action of Plaintiffs, Arroyo Colorado, an alleged Texas General Partnership, and Saddle Creek Joint Venture, against Defendant Balli Minerals & Royalty, LLC not otherwise disposed of by summary judgment are hereby dismissed with prejudice.

It is further Ordered that all costs of Court are to be assessed both jointly and severally against Charles Chandler Davis, individually.

SIGNED this 3rd day of May, 2012.

HONORABLE JAN PATTERSON
Presiding Judge

CAUSE NO. D-1-GN-09-002882

ARROYO COLORADO, et al.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	TRAVIS COUNTY, TEXAS
TOM C. McCALL, et al.,	§	
Defendants.	§	53RD JUDICIAL DISTRICT

FINAL JUDGMENT and PERMANENT INJUNCTION

On March 30, 2010, the Court granted the First Amended Motion for Partial Summary Judgment filed by Defendant and Counter-Plaintiff, AM Genpar, LLC, the General Partner of Defendant, Abogado Minerals, LP, and Defendants, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, and Britton D. Monts.

On April 20, 2010, the Court granted the No-Evidence Motion for Partial Summary Judgment filed by Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, and Britton D. Monts.

On April 29, 2010, the Court granted the Motion for Partial Summary Judgment as to Plaintiffs' Trust Fund Claims filed by Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, and Britton D. Monts.

On May 3 2012 the Court granted the Traditional and No-Evidence Motion for Partial Summary Judgment filed by Defendant, Allen D. Cummings.

On May 3 2012 the Court granted the Traditional and No-Evidence Motions for Summary Judgment filed by Defendant, Balli Minerals & Royalty, LLC.

On May 3 2012 the Court granted the Motion for Sanctions filed by Defendants AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, and Britton D. Monts, and joined in by Defendant, Balli Minerals & Royalty, LLC.

EXHIBIT P-17

The Court incorporates by reference all prior summary judgment orders, the sanction orders dated January 20, 2010 and April 29, 2010, together with the above-referenced sanction order dated May 3, 2012.

The Court has disposed of all issues and parties and hereby enters Final Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that:

1. Plaintiffs, Arroyo Colorado, a Texas General Partnership, Saddle Creek Joint Venture, Arroyo Colorado, LLC, and Arroyo Colorado Energy, LLC, take nothing on their claims against Defendant Allen D. Cummings.

2. Plaintiffs, Arroyo Colorado, a Texas General Partnership, and Saddle Creek Joint Venture, take nothing on their claims against Defendant Balli Minerals & Royalty, LLC.

3. Plaintiffs, Arroyo Colorado, a Texas General Partnership, Saddle Creek Joint Venture, Arroyo Colorado, LLC, Arroyo Colorado Energy, LLC d/b/a Arroyo Colorado, LLC, Ventana Minerals, LLP, Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Playa Arroyo, Playa Arena, Playa Laguna, Alan and Debra Osenbaugh Family Limited Partnership, Craig Place Partners, FABDA, Inc., Saddle Creek Joint Venture, Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, take nothing on their claims against Defendant and Counter-Plaintiff, AM Genpar, LLC, the General Partner of Defendant, Abogado Minerals, LP, and Defendants, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, and Britton D. Monts.

4. Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., and Wesley G. Ritchie, recover monetary sanctions, both jointly and severally, in the amount of $1,125.00 against Plaintiffs, Arroyo Colorado, a Texas General Partnership, Arroyo Colorado, LLC, and Santiago Minerals, and payable within ~~ten (10)~~ thirty (30) days from the date of this Final Judgment.

5. Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, and Britton D. Monts, recover monetary sanctions, both jointly and severally, in the amount of $2,500.00 against Charles Chandler Davis, individually, and Plaintiffs, Arroyo Colorado, a Texas General Partnership, Saddle Creek Joint Venture, Arroyo Colorado, LLC, Arroyo Colorado Energy, LLC d/b/a Arroyo Colorado, LLC, Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Saddle Creek Joint Venture, Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, and payable within ~~ten~~ thirty (~~10~~ 30) days from the date of this Final Judgment.

6. Defendants are awarded post-judgment interest at the rate of 5% per annum on all monetary awards from date of judgment until paid.

7. All costs of court are taxed to Charles Chandler Davis, individually and Plaintiffs, Arroyo Colorado, a Texas General Partnership, Saddle Creek Joint Venture, Arroyo Colorado, LLC, Arroyo Colorado Energy, LLC d/b/a Arroyo Colorado, LLC, Ventana Minerals, LLP, Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Playa Arroyo, Playa Arena, Playa Laguna, Alan and Debra Osenbaugh Family Limited Partnership, Craig Place Partners, FABDA, Inc., Saddle Creek Joint Venture, Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, both jointly and severally.

8. Defendants are allowed such writs and processes as may be necessary in the enforcement and collection of this Final Judgment.

IT IS FURTHER ORDERED and DECLARED that the following described leases dated March 1, 2007 from Abogado Minerals, LP to Arroyo Colorado, LLC, and the leases also dated March 1, 2007 from Balli Minerals & Royalty, LLC to Arroyo Colorado, LLC, were each properly terminated in accordance with their terms by Abogado Minerals, LP on December 6, 2007 and by Balli Minerals & Royalty, LLC on January 11, 2008; that said leases executed by Abogado Minerals, LP were terminated and of no force and effect as of December 6, 2007, and that said leases executed by Balli Minerals

& Royalty, LLC were terminated and of no force and effect as of January 11, 2008, to wit:

1. **Oil and Gas Leases dated March 1, 2007 covering Tract 1, Parcels A and B, and being further described as follows:**

   1,000.00 undivided mineral acres on the Northmost portion of Padre Island in Nueces County, Texas, more particularly described as follows:

   PARCEL A – A tract of land containing 500.00 undivided acres, as described in mineral conveyance dated January 25, 1943 from Burton Dunn and Edward R. Kleberg to Gilbert Kerlin, recorded in Volume 69, Page 275 of the Oil and Gas Records of Nueces County, Texas.

   PARCEL B – A tract of land containing 500.00 undivided mineral acres, as described in mineral conveyance dated March 20, 1943 from Albert R. Jones to Gilbert Kerlin, recorded in Volume 69, Page 276 of the Oil and Gas Records of Nueces County, Texas.

2. **Oil and Gas Leases dated March 1, 2007 covering Tract 3, Parcel A, and being further described as follows:**

   PARCEL A – Being 20,000.00 acres, more or less, in Willacy and Kenedy Counties, Texas, as described in the Deed dated December 14, 1942 from Albert R. Jones, et al., to Gilbert Kerlin, recorded in Volume 27, Page 362 of the Deed Records of Willacy County, Texas, and in that certain Correction Deed dated September 17, 1982 from Albert R. Jones, et al., to Gilbert Kerlin, Individually and as Trustee, recorded in Volume 39, Page 211 of the Deed Records of Kennedy County, Texas and Volume 143, Page 464 of the Deed Records of Willacy County, Texas.

3. **Oil and Gas Leases dated March 1, 2007 covering Tract 3, Parcels B and C, and being further described as follows:**

   PARCEL B – Being 11,925.60 acres, more or less, in Willacy County, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-154-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 244 of the District Court Records of Cameron County, Texas and in Volume 138, Page 270 of the Deed Records of Willacy County, Texas.

PARCEL C – Being 5,234.97 acres, more or less, situated in Willacy and Kenedy Counties, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-155-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 254 of the District Court Records of Cameron County, Texas; in Volume 17, Page 364 of the Deed Records of Kenedy County, Texas; and in Volume 138, Page 281 of the Deed Records of Willacy County, Texas.

4. **Oil and Gas Leases dated March 1, 2007 covering Tract 4, Parcel A, and being further described as follows:**

PARCEL A – 6,600.22 acres in Cameron County, Texas being part of the lands described in the judgment of title adjudication entered December 6, 1948 in the District Court of the United States Southern District of Texas, Brownsville Division, Cause No. C. A. 142 styled *United States of America v. 34,884 acres of land, et al.* as the North 1,729.81 acres of Tract PI-3 (being all of said Tract PI-3 except the South 2,943.19 acres thereof) and all of Tract PI-4, as more particularly described in Plaintiff's Second Amended Original Petition in Condemnation and Second Amendment to the Declaration of Taking.

5. **Oil and Gas Leases dated March 1, 2007 covering Tracts 5 and 6, and being further described as follows:**

TRACT 5 – 3,750.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as the Northerly 3,750.00 acres out of a 6,000.00 acre tract adjudicated and set apart to Mrs. H. M. King by Judgment and Decree rendered November 16, 1905 styled *Maria Romula Salinas de Grisanti, et al. v. The American Trust Company of New Jersey, et al.*, Cause No. C. L. 18, United States Circuit Court at Laredo, Texas and pursuant to the terms of the Agreement dated June 9, 1943 between Gilbert Kerlin, Individually and Trustee, and the King Ranch, recorded in Volume 331, Page 3 of the Deed Records of Cameron County, Texas.

TRACT 6 – 250.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as all of that certain 2,250.00 acres described in the Confirmation Deed dated January 4, 1951, from Elizabeth A. Baldwin, et vir, James P. Baldwin to Gilbert Kerlin, recorded in Volume 1403, Page 664 of the Deed Records of Cameron County, Texas, LESS AND EXCEPT that certain 2,000.00 acres described in the Agreement and

Conveyance dated September 3, 1980, from Gilbert Kerlin, Individually and as Trustee, to Helen F. Pinnell, as Trustee, et al., recorded in Volume 1210, Page 265 of the Deed Records of Cameron County, Texas.

IT IS FURTHER ORDRED and DECLARED that the March 1, 2007 Option Agreement between Abogado Minerals, LP and Arroyo Colorado, LLC, covering the following described tract of land in Willacy County, Texas, expired and terminated in accordance with its terms at 12:01 a.m. on August 31, 2007, and is of no force and effect, to-wit:

Bounded on the North by the South Boundary Line of Tract 2, containing 11,925.6 acres, described in the Final Judgment in Cause No. 78-154-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;

Bounded on the South by the North Boundary Line of Tract 1, containing 10,223.20 acres, described in the Final Judgment in Cause No. 78-153-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;

Bounded on the West by the line surveyed by M.L. Claunch in 1973 as the line of mean higher high water between the Laguna Madre and Padre Island, said survey being of record in the survey records of the Texas General Land Office; having also been filed as an Exhibit to the judgment in Cause No. 78-154-C, in suit styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, in the 197th Judicial District Court of Cameron County, Texas; and

Bounded on the East by the western boundary of Padre Island as shown in the 1941 survey prepared by J. Stuart Boyles for the Office of the Attorney General for the State of Texas, and now on file in the General Land Office of The State of Texas.

PERMANENT INJUNCTION

The Court finds that based on the conduct of Plaintiffs and their counsel, Charles Chandler Davis, throughout this litigation, that Defendants, AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP, Kara L. O'Shaughnessy, Britton D. Monts, and Balli Minerals & Royalty, LLC, will suffer imminent harm and suffer irreparable injury without adequate remedy at law unless the Court grants a permanent injunction.

IT IS THEREFORE ORDERED THAT PLAINTIFFS, Arroyo Colorado, an alleged Texas General Partnership, Saddle Creek Joint Venture, Arroyo Colorado, LLC, Arroyo Colorado Energy, LLC d/b/a Arroyo Colorado, LLC, Ventana Minerals, LLP, Santiago Minerals, a Texas Single Asset Joint Venture, Isla Santiago Master Trust, Playa Arroyo, Playa Arena, Playa Laguna, Alan and Debra Osenbaugh Family Limited Partnership, Craig Place Partners, FABDA, Inc., Stahlman Slidell Barnett No. 1 JV, Schluter Slidell Barnett No. 1 JV, Judkins Slidell Barnett No. 1 JV, Turpen Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 1 JV, Fomby Slidell Barnett No. 2 JV, and Goldston Slidell Barnett No. 1 JV, and Charles Chandler Davis, and their attorneys, officers, agents, servants, employees, and representatives and those in privity with them, and those acting in concert or in participation with the named Plaintiffs or Charles Chandler Davis, who receive actual notice of this Final Judgment by personal service or otherwise, ARE FROM THIS DATE FORWARD PERMANENTLY ENJOINED FROM (A) DIRECTLY OR INDIRECTLY FILING OF RECORD IN ANY COUNTY IN THE STATE OF TEXAS ANY LAWSUIT, LIS PENDENS, LIEN, AFFIDAVIT, DECLARATION OR ANY OTHER INSTRUMENT, NO MATTER HOW LABELED OR DESCRIBED, ALLEGING OR PURPORTING TO CLAIM OR ASSERT ANY INTEREST IN OR RIGHTS WHATSOEVER IN THE FOLLOWING DESCRIBED PROPERTY, OR (B) EXERCISING "SELF-HELP" AGAINST, AND/OR PURPORTING TO ACT AS LESSEES, OR OPTION HOLDERS, OR OWNERS OF OR IN THE FOLLOWING DESCRIBED MINERAL PROPERTY INTERESTS, TOGETHER WITH THE FOLLOWING DESCRIBED OIL, GAS AND MINERAL LEASES AND OPTION AGREEMENT, TO-WIT:

1. **Terminated Oil and Gas Leases dated March 1, 2007 covering Tract 1, Parcels A and B, and being further described as follows:**

   1,000.00 undivided mineral acres on the Northmost portion of Padre Island in Nueces County, Texas, more particularly described as follows:

   PARCEL A - A tract of land containing 500.00 undivided acres, as described in mineral conveyance dated January 25, 1943 from Burton Dunn and Edward R. Kleberg to Gilbert Kerlin, recorded in Volume 69, Page 275 of the Oil and Gas Records of Nueces County, Texas.

   PARCEL B - A tract of land containing 500.00 undivided mineral acres, as described in mineral conveyance dated March 20, 1943 from Albert R. Jones to Gilbert Kerlin, recorded in Volume 69, Page 276 of the Oil and Gas Records of Nueces County, Texas.

2. **Terminated Oil and Gas Leases dated March 1, 2007 covering Tract 3, Parcel A, and being further described as follows:**

PARCEL A – Being 20,000.00 acres, more or less, in Willacy and Kenedy Counties, Texas, as described in the Deed dated December 14, 1942 from Albert R. Jones, et al., to Gilbert Kerlin, recorded in Volume 27, Page 362 of the Deed Records of Willacy County, Texas, and in that certain Correction Deed dated September 17, 1982 from Albert R. Jones, et al., to Gilbert Kerlin, Individually and as Trustee, recorded in Volume 39, Page 211 of the Deed Records of Kennedy County, Texas and Volume 143, Page 464 of the Deed Records of Willacy County, Texas.

3. **Terminated Oil and Gas Leases dated March 1, 2007 covering Tract 3, Parcels B and C, and being further described as follows:**

PARCEL B – Being 11,925.60 acres, more or less, in Willacy County, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-154-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 244 of the District Court Records of Cameron County, Texas and in Volume 138, Page 270 of the Deed Records of Willacy County, Texas.

PARCEL C – Being 5,234.97 acres, more or less, situated in Willacy and Kenedy Counties, Texas, and being a part of the lands described in that certain Final Judgment dated August 31, 1981 styled *South Padre Island Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, Cause No. 78-155-C, 197th Judicial District Court of Cameron County, Texas and recorded in Volume CV-65, Page 254 of the District Court Records of Cameron County, Texas; in Volume 17, Page 364 of the Deed Records of Kenedy County, Texas; and in Volume 138, Page 281 of the Deed Records of Willacy County, Texas.

4. **Terminated Oil and Gas Lease dated March 1, 2007 covering Tract 4, Parcel A, and being further described as follows:**

PARCEL A – 6,600.22 acres in Cameron County, Texas being part of the lands described in the judgment of title adjudication entered December 6, 1948 in the District Court of the United States Southern District of Texas, Brownsville Division, Cause No. C. A. 142 styled *United States of America v. 34,884 acres of land, et al.* as the North 1,729.81 acres of Tract PI-3 (being all of said Tract PI-3 except the South 2,943.19 acres thereof) and all of Tract PI-4, as more particularly

described in Plaintiff's Second Amended Original Petition in Condemnation and Second Amendment to the Declaration of Taking.

5. **Terminated Oil and Gas Lease dated March 1, 2007 covering Tracts 5 and 6, and being further described as follows:**

TRACT 5 – 3,750.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as the Northerly 3,750.00 acres out of a 6,000.00 acre tract adjudicated and set apart to Mrs. H. M. King by Judgment and Decree rendered November 16, 1905 styled *Maria Romula Salinas de Grisanti, et al. v. The American Trust Company of New Jersey, et al.*, Cause No. C. L. 18, United States Circuit Court at Laredo, Texas and pursuant to the terms of the Agreement dated June 9, 1943 between Gilbert Kerlin, Individually and Trustee, and the King Ranch, recorded in Volume 331, Page 3 of the Deed Records of Cameron County, Texas.

TRACT 6 – 250.00 acres being a part of Padre Island in Cameron County, Texas, plus any accretions thereto, if any, more fully described as all of that certain 2,250.00 acres described in the Confirmation Deed dated January 4, 1951, from Elizabeth A. Baldwin, et vir, James P. Baldwin to Gilbert Kerlin, recorded in Volume 1403, Page 664 of the Deed Records of Cameron County, Texas, LESS AND EXCEPT that certain 2,000.00 acres described in the Agreement and Conveyance dated September 3, 1980, from Gilbert Kerlin, Individually and as Trustee, to Helen F. Pinnell, as Trustee, et al., recorded in Volume 1210, Page 265 of the Deed Records of Cameron County, Texas.

6. **Expired Option Agreement effective March 1, 2007 between Abogado Minerals, LP and Arroyo Colorado, LLC, covering the following described tract of land in Willacy County, Texas:**

Bounded on the North by the South Boundary Line of Tract 2, containing 11,925.6 acres, described in the Final Judgment in Cause No. 78-154-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;

Bounded on the South by the North Boundary Line of Tract 1, containing 10,223.20 acres, described in the Final Judgment in Cause No. 78-153-C, styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee, vs. The State of Texas, et al.*, in the District Court of Cameron County, 197th Judicial District;

Bounded on the West by the line surveyed by M.L. Claunch in 1973 as the line of mean higher high water between the Laguna Madre and Padre Island, said survey being of record in the survey records of the Texas General Land Office; having also been filed as an Exhibit to the judgment in Cause No. 78-154-C, in suit styled *South Padre Land Company and Gilbert Kerlin, Individually and as Trustee v. The State of Texas, et al.*, in the 197th Judicial District Court of Cameron County, Texas; and

Bounded on the East by the western boundary of Padre Island as shown in the 1941 survey prepared by J. Stuart Boyles for the Office of the Attorney General for the State of Texas, and now on file in the General Land Office of The State of Texas.

All relief not granted herein is denied. This is a final judgment that disposes of all parties and all claims asserted herein by and between all named parties and is appealable.

SIGNED this 3rd day of May, 2012.

HONORABLE JAN PATTERSON
Judge Presiding

Approved as to form:

THE McCALL FIRM
2600 Via Fortuna, Suite 200
Austin, Texas 78746-7991
Telephone: 512-477-4242
Facsimile: 512-477-2271

By: _____
Tom C. McCall
State Bar No. 13350300
tmccall@themccallfirm.com

Counsel for AM Genpar, LLC, Abogado Minerals, LP, Tom C. McCall, David B. McCall, Hector H. Cardenas, Jr., Wesley G. Ritchie, McCall & Ritchie, LLP and Kara L. O'Shaughnessy

McGINNIS, LOCHRIDGE & KILGORE, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701-2986
Telephone: 512-495-6084
Facsimile: 512-505-6384

By: _____
Stacey V. Reese
State Bar No. 24056188
sreese@mcginnislaw.com

Counsel for Britton D. Monts

CLEMENS & SPENCER, PC
112 East Pecan, Suite 1300
San Antonio, Texas 78205-1512
Telephone: 210-227-7121
Facsimile: 210-227-0732

By: _____
Kathryn A. Stephens
State Bar No. 24046911
stephensk@clemens-spencer.com

Counsel for Allen D. Cummings

ADAM PAISLEY & APPELL, PC
P.O. Box 331
Alice, Texas 78333-0331
Telephone: 361-668-8101
Facsimile: 361-668-8106

By: _____
Mark R. Paisley
State Bar No. 15420750
mpaisley@ampalaw.com

Counsel for Balli Minerals & Royalty, LLC

LAW OFFICE OF
CHARLES CHANDLER DAVIS
6910 FM 1830
Argyle, Texas 76226
Telephone: 940-368-1205

By: _____
Charles Chandler Davis
State Bar No. 465900
Charlie@arroyocoloradoenergy.com

Counsel for Plaintiffs