

NO. C-1-PB-14-001245

In Re: § **In the Probate Court No. 1**
§
§ **of**
§
TEL Offshore Trust § **Travis County, Texas**

RNR Production Land and Cattle's Original Petition as Realigned Plaintiff

RNR Production Land and Cattle (“RNR”), files this Original Petition as Realigned Plaintiff. All conditions precedent to the assertion of the claims and recovery of the relief below have occurred or have been waived.

I. Parties

A. Plaintiff

1. Plaintiff is RNR Production Land and Cattle (“RNR”). RNR has previously appeared in this case.

B. Defendants

2. Defendant Bank of New York Mellon Trust Company, N. A. (“BONY”), as trustee of the TEL Offshore Trust, has previously appeared in this case.

3. Defendant Jeffrey S. Swanson (“Swanson”) as trustee of the TEL Offshore Trust has previously appeared in this case.

4. Defendant Gary C. Evans (“Evans”) as trustee of the TEL Offshore Trust has previously appeared in this case.

5. Defendant Thomas H. Owen, Jr. (“Owen”) as trustee of the TEL Offshore Trust has previously appeared in this case.

6. Defendant Daniel Conwill, IV (“Conwill”) as former trustee of the TEL Offshore Trust may be served with citation at 70 Audobon Boulevard, New Orleans, Louisiana 70118.

7. BONY, Swanson, Evans, Owen, and Conwill together will be referred to as “Trustees.”

II. Jurisdiction, Venue and Discovery Control Plan

8. RNR seeks damages within the jurisdictional limits of this Court. Jurisdiction in this Court is proper under Sections 32.006 and 32.007 of the Texas Estates Code and under Sections 112.054, 113.151 and 115.001 of the Texas Trust Code. Venue is proper in Travis County because there is a corporate trustee and the situs of administration of the Trust is maintained in Travis County or has been maintained in Travis County at any time during the four-year period before the date the Petition was filed.

9. In their Petition, the Trustees stated that discovery in this action is intended to be conducted under Level 2 in accordance with Texas Rule of Civil Procedure 190.3. Consistent with the Court’s order, RNR expects to reach an agreement on a Level 3 discovery control plan with the other parties.

III. Facts

A. Before 2009 the revenues from the Trust’s main asset—a 25% net profits interest in offshore oil and gas properties—were sufficient to pay administrative expenses and provide substantial distributions to the Beneficiaries.

10. The Trust was created by trust agreement (the “Trust Agreement” or “Agreement”) dated January 1, 1983, by and between Tenneco Offshore Company, Inc., acting on behalf of the owners of units as trustor and Texas Commerce Bank National Association, Horace C. Bailey, Joseph C. Broadus and F. Arnold Daum as original trustees. The Trustees are successors to the original trustees. Apart from this action and the amendments to the Trust by order of the Court, the Agreement has not been amended and is irrevocable.

11. The principal asset of the Trust is a 99.99% interest in the TEL Offshore Trust Partnership (the “Partnership”). Chevron U.S.A., Inc. (“Chevron”) owns the other 0.01% interest in the Partnership and operates the Partnership. The beneficiaries of the Trust (the “Beneficiaries”) hold units in the Trust which are publicly traded securities.

12. The Trust Agreement contains explicit provisions regarding the termination of the Trust.

13. 9.01 Termination. The Trust shall terminate upon the first to occur of the following events or times:

(a) at such time as the total future net revenues attributable to the Overriding Royalty Interest, as determined by independent petroleum engineers as of the end of any year, are less than \$2 million;

14. The Partnership’s principal asset is a net profit interests (the “Net Profits Interest”) in oil and gas properties (the “Royalty Properties”) located offshore of Louisiana. Chevron operates some of the Royalty Properties.

15. The Trust’s Net Profits Interest is burdened by a share of the Partnership’s operating and production costs (“operating costs”). In addition, the Trust has significant general and administrative expenses, including Trustee compensation, attorney’s fees and accountant fees (“administrative expenses”).

16. In sum, before 2009 the Trust and the Partnership operated in this manner:

- a. Oil and gas production from the Royalty Properties generated income to the Partnership through its net profits interest;
- b. Some of the income paid the Partnership’s share of operating costs;
- c. Some of the income paid the Trust’s administrative expenses;

d. Some of the income was held in reserve for future administrative expenses; and

e. Excess income was distributed to the Beneficiaries.

B. In September 2008, Hurricane Ike destroyed the property that generated approximately half of the Trust's income (Eugene Island 339) and delayed revenues from the property that generated the other half of revenues (Ship Shoal), eliminating distributions.

17. Of the six Royalty Properties still in production in 2008, two contributed more than 98.5% of the Trust's revenues: Eugene Island 339 and Ship Shoal 182/183. In the third quarter of 2008, for instance, both Eugene Island 339 and Ship Shoal 182/183 each contributed over 48% of the net proceeds distributed to the Trust.

18. In September 2008, Hurricane Ike swept through the Louisiana Gulf coast area devastating the Royalty Properties. It completely destroyed all the wells, production platforms, sales platforms and other infrastructure on Eugene Island 339. It destroyed the third party pipeline that enabled sales of production from Ship Shoal 182/183. Hurricane Ike eliminated virtually all of the Trust income, and, in the immediate aftermath, it was unclear if that income would ever be restored.

C. Based on the undisclosed DeGolyer & MacNaughton's report, the Trust should have terminated under its own terms on or about May 15, 2009, before RNR purchased its interest in the Trust.

19. Subsequent to Hurricane Ike, in accordance with the requirements of the Trust, the petroleum engineering firm of DeGolyer & MacNaughton performed a reservoir study to determine the reserves attributable to the Royalty Properties and the Partnership's projected future net revenues as of an October 31, 2008 valuation date. Such reports were prepared annually for the Trustees and included the "total future net revenues" attributable to the

Partnership's interest that the Trustees utilized in connection with the Trust's required securities filings. The report issued as of October 31, 2008 reported total future net revenues attributable to the Trust's interest in the Royalty Properties of \$24,225,749. However, unlike prior reports prepared by DeGolyer & MacNaughton, this report had unique modifying language. In providing the October 31, 2008 report, DeGolyer & MacNaughton advised the recipients of the report that due to the damage to the Eugene Island 339 platforms and wells caused by Hurricane Ike and the uncertainties associated with their redevelopment, the Eugene Island 339 field has been omitted from the report at the request of Chevron. The report further advised that DeGolyer & MacNaughton had agreed to omit Eugene Island 339 from the report with the understanding that "this report will be updated once Chevron's assessment of Eugene Island 339 is completed."

20. In March, 2009, the Trust filed its annual form 10-K advising the SEC and current and potential unit holders that the total future net revenues for the Trust were \$24,225,749. The costs associated with the plugging and abandonment related to Eugene Island 339, estimated to be approximately \$61 million for 2009, alone, were not included. At no point did the Trustees disclose in the Trust's 2009 10-K filing that DeGolyer & MacNaughton's October 31, 2008 report was incomplete and would be updated.

21. On May 15, 2009, DeGolyer & MacNaughton did update their report. The updated report, which included all the properties held by the Trust, and was the first complete report provided since DeGoyler & MacNaughton's October 31, 2007 report, reflected total future net revenues for the Trust properties of \$0 - well below the \$2 million minimum mandated by the Trust Agreement to allow for the continued operation of the Trust.

22. Based on the findings of the May 15, 2009 DeGolyer & MacNaughton report, the Trust had automatically terminated by its terms and the Trustees should have placed the Trust in a wind-down mode with the intent to sell all the assets of the Trust. Such a sale was mandated by the Trust Agreement and did not require the approval of the unit holders.

23. Subsequent to the issuance of the May 15, 2009 DeGolyer & MacNaughton report the Trustees, on behalf of the Trust, made six filings with the SEC in 2009 and three filings with the SEC in 2010. At no time, in any of those filings, did the Trustees acknowledge the existence of the May 15, 2009 DeGolyer & MacNaughton report, much less the findings contained therein. Nor did the filings mention that the Trust had terminated by its own terms. These nine filings occurred immediately prior to RNR's initial purchase of trust units on May 20, 2010.

24. The Trustees' failure to disclose the existence and contents of the May 15, 2009 DeGolyer & MacNaughton report and failure to act to liquidate and terminate the Trust in accordance with the express provisions of the Trust Agreement allowed the Trust to continue to hold itself out as an operating entity when the Trust had already terminated under its own express provisions.

25. This resulted in a situation in which individuals and entities, such as RNR, became owners in what should have been an otherwise terminated trust based on intentionally withheld, misleading and otherwise factually incorrect information.

D. Even if the Trust was not terminated in May, 2009, the Trustees failed to act to terminate the Trust and liquidate Trust assets to maximize the value to the Unit Holders.

26. Alternatively, subsequent to Hurricane Ike and issuance of the 2008 and 2009 DeGolyer & MacNaughton reports, it should have been apparent to the Trustees that the only

prudent course of action was to take appropriate actions to liquidate the Trust assets to maximize the remaining value to the Unit Holders.

27. By 2009, the Trustees knew the dire situation. They considered various options to deal with the problem. These included selling part of the property, obtaining loans and even resigning as Trustees. However, they did not disclose any of these options – or that they were considering these options – to the Beneficiaries. They certainly did not tell the Beneficiaries that the situation was so bad that the Trustees were considering resigning – an act that might help the Trustees but would do the Beneficiaries no good.

28. Each year, DeGolyer & MacNaughton determined the reserves of the Royalty Properties and the Partnership's projected future net revenues as of October 31. The Trustees included the "total future net revenues" attributable to the Partnership's interest in its securities filings. As of October 31, 2010 the DeGolyer & MacNaughton report showed that the total future net revenues were close to \$20 million.

29. Paragraph 6.04 of the Trust Agreement authorizes the Trustees to sell all of the Trust property upon the affirmative vote of a majority of the Beneficiaries. The Trustees never asked the Beneficiaries, including RNR, whether they wanted such a meeting, and they never attempted to set such a meeting. In fact, the longer the Trust continued, the more the Trustees were paid. The Trustees sought to shut down the Trust only when there was no possibility of getting paid.

30. The Trustees' subsequent sales of Trust assets in 2011 and 2013, solely for the purpose of paying incurred and future general and administrative expenses, further reduced the future distributions available to the Trust and exacerbated an otherwise dire situation.

E. In 2014, the Trustees finally sought court approval to sell the remainder of the Royalty Properties.

31. In July 2014, the Trustees filed this action to modify and terminate the Trust. The Trustees' authority to do so—Section 112.054 of the Texas Trust Code—did not change from 2009 through 2014: The Trustees were empowered to seek a court order terminating the Trust if the purposes of the Trust have become impossible to fulfill or if, because of changed circumstances since the drafting of the Trust agreement, termination would further the purposes of the Trust. These reasons have existed since at least 2009, yet the Trustees waited until 2014 to act.

32. The Trustees' delay in seeking the sale of all of the Trust's interest in the Royalty Properties and termination of the Trust estate has damaged the Trust and, consequently, RNR. These damages include RNR's proportionate share of the unnecessary administrative expenses incurred by the Trustees on the Trust's behalf, unnecessary management fees and expenses associated with the continued existence of the Partnership and the decline in the value of the Trust's property.

IV. Causes of Action

A. Accounting

33. The allegations in the foregoing paragraphs are fully incorporated herein. The Trustees have a duty to account to the Beneficiaries of the Trust under Section 113.151 of the Texas Trust Code if demanded to do so by a beneficiary. The Trustees also have a duty of full disclosure of all material facts known to them that might affect a beneficiary's rights.

34. RNR demands a detailed accounting of general and administrative expenses and trustee compensation for the years 2008 through the present and such other relevant information as the Court may determine within 60 days of the Court's order.

B. Breach of Fiduciary Duty

35. The allegations in the foregoing paragraphs are fully incorporated herein.

36. The Trustees owe the Beneficiaries a duty to act competently and prudently. One of the express purposes of the Trust is to protect and conserve the Trust property for the benefit of the Beneficiaries. The Trustees are required to take such actions as in their judgment are necessary, desirable or advisable to achieve the purposes of the Trust.

37. Under Texas Trust Code Section 117.004(a), the Trustees are required to manage Trust assets as a prudent investor would, considering the purposes, terms, distribution requirements, and other circumstances of the Trust, and in doing so the Trustees must exercise reasonable care, skill, and caution. In addition, the Trustees have special skills or expertise to operate the Trust and its properties, including but not limited to special skills and expertise in the oil and gas industry and are required to use those special skills and expertise under Texas Trust Code Section 117.004(f).

38. By their actions and inactions described above, the Trustees have failed to act competently and prudently. These breaches of the Trustees' duty have damaged the Trust and its Beneficiaries, including RNR.

39. Pursuant to Texas Trust Code Section 117.007, the Trustees also owe the Beneficiaries the duty of loyalty. The Trustees were required to manage the Trust assets solely in the Beneficiaries' interest. The Trustees benefited personally by continuing to pay themselves compensation while failing to act to protect and conserve the Trust property and the interests of

the Beneficiaries. By their actions and inactions described above, the Trustees have breached their duty of loyalty. These breaches of the Trustees' duty have damaged the Trust and its Beneficiaries, including RNR.

40. The Trustees' actions constitute self-dealing. They profited from their decision to continue the Trust by receiving additional compensation rather than sell the Net Profits Interest. They profited from their decision to purchase insurance to cover their actions rather than fulfilling their duties by selling the Net Profits Interest. The Trustees must prove that their actions were fair and equitable to the Beneficiaries, including RNR.

41. The Trustees owe the Beneficiaries a duty to administer the Trust in good faith and in accordance with the purposes of the Trust. Tex. Trust Code §111.0035(b)(4)(B). By their conduct described above, the Trustees breached their duty to administer the Trust in good faith and in accordance with the purposes of the Trust. These breaches of the Trustees' duty have damaged the beneficiaries of the Trust, including RNR.

42. In addition, the Corporate Trustee has breached its fiduciary duty by paying itself compensation contrary to the terms of the Trust Agreement. Rather than following the terms governing compensation in the Trust Agreement, the Corporate Trustee paid itself what it wanted. This action shows an intentional disregard for the Trustee's obligations under the Trust Agreement and is an intentional breach of the trust that had damaged the Trust estate and caused harm to its Beneficiaries, including RNR.

43. Further, the individual Trustees' failure to mandate compliance by the Corporate Trustee with the Trust Agreement shows an intentional disregard for their obligations under the Trust Agreement and is an intentional breach of the trust that had damaged the Trust estate and caused harm to its Beneficiaries, including RNR.

44. Because of this conduct, RNR is entitled to the following remedies:

a. The Court should award money damages in an amount equal to the actual damages sustained and in an amount sufficient to make RNR whole for its purchases of units. Tex. Trust Code §114.008(3).

b. The Court should deny the Trustees compensation and order them to disgorge all compensation, interest, liability insurance premiums and other benefits received by any one or more of the Trustees. Tex. Trust Code §§114.008 and 114.009.

C. Gross Negligence, Intentional Conduct and Bad Faith

45. The allegations in the foregoing paragraphs are fully incorporated herein.

46. The Trustees' actions and inactions were intentional and in bad faith and constitute gross negligence that proximately and directly caused damage and injury to the Beneficiaries of the Trust, including RNR. In addition, the Trustees acted with reckless indifference that proximately and directly caused damage and injury to the Beneficiaries of the Trust, including RNR. Because of these actions and inactions, RNR is entitled to judgment jointly and severally against the Trustees in an amount equal to the actual damages sustained.

D. Fee Forfeiture and Punitive Damages

47. The allegations in the foregoing paragraphs are fully incorporated herein.

48. The Trustees' actions and inactions described above constitute a clear and serious breach of their fiduciary duty. Accordingly, the Court should order them to forfeit all compensation received under the Trust Agreement.

49. Pleading further and in the alternative, if necessary, the Court should impose punitive damages against the Trustees.

E. Claim For Award of Attorney's Fees and Costs Against Trustees

50. The allegations in the foregoing paragraphs are fully incorporated herein.

51. Counsel for RNR is entitled to recover attorney's fees and reimbursement of costs as are equitable and just pursuant to Section 114.064 of the Texas Trust Code.

52. In addition, because of the actions and inactions and breaches of fiduciary duties of the Trustees described above, pursuant to Section 114.064 of the Texas Trust Code, the Court should order the Trustees to pay personally all attorney's fees and costs, including but not limited to the Trustees' own attorney's fees and costs as well as the compensation of RNR.

53. To the extent any of the amounts described in the preceding paragraph have already been paid from the Trust, the Trustees should be ordered to reimburse the Trust.

PRAYER

RNR prays that the Court will:

- a. Deny the relief sought in the Petition;
- b. Award RNR money damages in an amount of the actual damages sustained and in an amount sufficient to make it whole;
- c. Deny the Trustees' compensation and order each Trustee to disgorge all gain, compensation, interest and other benefits received by him or it;
- d. Order the Trustees to pay individually their own attorney's fees and costs and the reasonable and necessary attorney's fees and costs of RNR and to reimburse the Trust for any amounts already paid from the Trust;
- e. Award punitive damages;
- f. Award pre-judgment and post-judgment interest; and
- g. Award RNR such other and further relief to which it may be entitled.
- h.

Respectfully Submitted,

/s/ Shannon H. Ratliff

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ATTORNEYS FOR DEFENDANT
RNR PRODUCTION LAND AND CATTLE

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2016, a true and correct copy of the foregoing has been served or will be served in accordance with the Court's orders regarding service dated September 28, 2015 and January 21, 2016.

/s/ Shannon H. Ratliff

Shannon H. Ratliff