

NO. C-1-PB-14-001245

IN RE:	§	IN THE PROBATE COURT
	§	
	§	NO. 1 OF
	§	
TEL OFFSHORE TRUST	§	TRAVIS COUNTY, TEXAS

TRUSTEES’ SPECIAL EXCEPTIONS AND PLEA TO THE JURISDICTION TO AD LITEM’S “FIRST AMENDED PETITION AS REALIGNED PLAINTIFF”

The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee of the TEL Offshore Trust (the "Trust"), and Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr., as Individual Trustees of the Trust (collectively, the “Trustees”), specially except to, and plead to the jurisdiction with respect to, the “Attorney Ad Litem’s First Amended Petition as Realigned Plaintiff” (the “ Amended Petition”) filed on or about October 28, 2016.

I.
INTRODUCTION

The Trustees incorporate by reference their Special Exceptions and Plea to the Jurisdiction to Ad Litem’s “Original Petition as Realigned Plaintiff” (the “Prior Special Exceptions”) (filed October 25, 2016) as if fully stated herein. The Prior Special Exceptions asserted that the Ad Litem lacks authority to bring affirmative claims on behalf of the absent beneficiaries and cannot seek damages or other recovery on behalf of the whole Trust.

In response to the Prior Special Exceptions, the Ad Litem filed yet another amended petition on October 28, just as he did before the previous hearing on the Trustees’ special exceptions. Once again, the Amended Petition (which is the *fourth* amended pleading filed by the Ad Litem) contains cosmetic changes that fail to cure the defects at issue. The Amended Petition *still* asserts claims on behalf of the absent unitholders who were served by publication and did not appear in the proceeding. *See, e.g.*, Amended Petition p. 1 and ¶¶ 1, 11, 64, 65, 66, 67, 68, 72, 73, 76, 79, 89. The Amended Petition also *still* asserts claims for damage to the

whole Trust estate. *See, e.g.*, Amended Petition ¶¶ 11 (“By failing to take appropriate action within a reasonable time of this damage, the Trustees benefited themselves personally but caused the trust estate millions of dollars in damage”), 64, 65, 68, 71, 72, 73, 74, 79 (“The Trustees’ actions and inactions constitute gross negligence that proximately and directly caused damage and injury to the Trust and its Beneficiaries”), 82 and Prayer. The Prayer, in particular, implicitly seeks damages and other relief for all beneficiaries of the Trust, not merely the “AAL Parties” that the Ad Litem was appointed to represent. Paragraphs b, c, d, and e seek damages and other relief not limited to the AAL Parties, and clearly seek the same type of derivative relief for the whole Trust and for all beneficiaries that had been sought in the prior Petition and Amended Counterclaims. In short, the Amended Petition cures none of the problems identified in the Prior Special Exceptions.

The Trustees thus specially except and plead to the jurisdiction with respect to the Amended Petition as a whole (and, without limitation, to the paragraphs cited above) on the same grounds asserted in the Prior Special Exceptions.

II. **CONCLUSION**

For the reasons set forth above, the Court should sustain the Trustees’ special exceptions and plea to the jurisdiction, dismiss the Amended Petition in its entirety or, alternatively, require the Ad Litem to replead to eliminate all impermissible claims.

Respectfully submitted,

THOMPSON & KNIGHT LLP

/s/ Craig A. Haynes

Craig A. Haynes (Texas Bar No. 09284020)

craig.haynes@tklaw.com

Rachelle H. Glazer (Texas Bar No. 09785900)

rachelle.glazer@tklaw.com

One Arts Plaza

1722 Routh Street, Suite 1500

Dallas, TX 75201

Telephone: (214) 969-1700

Facsimile: (214) 969-1751

James E. Cousar (Texas Bar No. 04898700)

James.Cousar@tklaw.com

98 San Jacinto Blvd., Suite 1900

Austin, TX 78701

Telephone: (512) 469-6100

Facsimile: (512) 469-6180

ATTORNEYS FOR CORPORATE TRUSTEE

NORTON ROSE FULBRIGHT US, L.L.P.

/s/ Paul Trahan

Paul Trahan (Texas Bar No. 24003075)

Paul.trahan@nortonrosefulbright.com

Peter Stokes (Texas Bar No. 24028017)

Peter.stokes@nortonrosefulbright.com

98 San Jacinto Boulevard, Suite 1100

Austin, Texas 78701-4255

Telephone: (512) 474-5201

Facsimile: (512) 536-4598

Daniel M. McClure (Texas Bar No. 13427400)

Dan.mcclure@nortonrosefulbright.com

1301 McKinney, Suite 5100

Houston, Texas 77010

Telephone: (713) 651-5159

Facsimile: (713) 651-5246

ATTORNEYS FOR INDIVIDUAL TRUSTEES

GARY C. EVANS, JEFFREY S. SWANSON,

AND THOMAS H. OWENS, JR.

CERTIFICATE OF CONFERENCE

I hereby certify that, on October 28, 2016, I was informed by Cindy Saiter, counsel for the Ad Litem, that Ad Litem opposes the special exceptions and a plea to the jurisdiction to the Amended Petition, and is not opposed to having such special exceptions and plea heard at the hearing set for October 31, 2016.

/s/ Peter A. Stokes
Peter A. Stokes

CERTIFICATE OF SERVICE

I hereby certify that, on October 28, 2016, a true and correct copy of the foregoing has been served on all interested parties in this matter in accordance with the Court's Order Directing Method of Service dated January 21, 2016.

/s/ Peter A. Stokes
Peter A. Stokes



October 28, 2016

Probate Clerk
Travis County Probate Court
Travis County Courthouse
100 Guadalupe Street, Room 217
Austin, TX 78701

Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
United States

Peter A. Stokes
Partner
Direct line +1 512 536 5287
peter.stokes@nortonrosefulbright.com

Tel +1 512 474 5201
Fax +1 512 536 4598
nortonrosefulbright.com

Re: No: C-1-PB-14-001245; In re: Tel Offshore Trust; in the Probate County No. 1 of Travis County Texas

Dear Clerk:

Attached for e-filing for the Court please find the proposed Order granting the Trustees of the TEL Offshore Trust's Special Exceptions to Attorney Ad Litem's First Amended Petition as Realigned Plaintiff. I am also paying the \$2.00 fee for the signature for the Order. Thank you for your assistance with this filing.

Please let us know if you have any questions.

Very truly yours,

/s/ Peter A. Stokes

Peter A. Stokes

PAS/jw
Enclosure

Cc: Via Texas e-filing and email on Ad Litem, counsel for Ad Litem, Albert Speisman, counsel for RNR Production Land and Cattle, and counsel for Corporate Trustee Bank of New York Mellon Trust Company, N.A. and all other interested parties in this matter in accordance with the Court's Order Directing Method of Service dated January 21, 2016.

CAUSE NO. C-1-PB-14-001245

IN RE: § IN THE PROBATE COURT
§
§ OF
§
TEL OFFSHORE TRUST § TRAVIS COUNTY, TEXAS

ORDER GRANTING SPECIAL EXCEPTIONS AND PLEA TO THE JURISDICTION

On this day came on to be considered the Special Exceptions and Plea to the Jurisdiction filed by The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee of the TEL Offshore Trust (the "Trust"), and Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr., as Individual Trustees of the Trust (collectively, the "Trustees") in response to the Ad Litem's First Amended Petition as Realigned Plaintiff filed on or about October 28, 2016. The Court, having reviewed same, as well as the filings relevant thereto and the argument of counsel, is of the opinion such motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

The Trustees' Special Exception and Plea to the Jurisdiction No. 1 is sustained for the reasons stated therein. The Ad Litem cannot assert claims against the Individual Trustees on behalf of the absent beneficiaries.

The Trustees' Special Exception and Plea to the Jurisdiction No. 2 is sustained for the reasons stated therein. The Ad Litem cannot seek or recover damages or other relief on behalf of the whole Trust.

The Ad Litem may file an amended petition within 7 days that complies with Texas law and the rulings set forth above. If the Ad Litem fails to correct the deficiencies, the claims will be dismissed.

JUDGE PRESIDING