



asserting, for the first time, a litany of purported breaches of fiduciary duty by the Trustees related to their management of the Trust, including claiming that the Trustees “put their interests ahead of the interests of the Beneficiaries by using Trust funds for their own benefit while the Beneficiaries received zero benefit.” Further, the Ad Litem asserts that the Amended Counterclaim is brought “on behalf of the TEL Offshore Trust and all of its beneficiaries.” However, not one of the 3,610 unit holders that were served have asserted such a claim and more importantly, the Ad Litem does not represent these unit holders.

4. The Ad Litem’s purported representation of the *Trust* and *all* of its beneficiaries far exceeds the scope of this Court’s appointment. In essence, the Ad Litem is attempting to assert a unit holder derivative action and class action against the Trustees, which he cannot do and is not authorized to do. The Ad Litem cannot meet the strict requirements for representative actions and he should not be awarded attorney’s fees for bringing such an action.

5. The Ad Litem is currently putting his, his litigation counsel’s, and his expert’s interests ahead of the interests of the unit holders by seeking unreasonable, unnecessary, and excessive compensation for bringing time-barred and legally unsupportable claims against the Trustees. As such, the Corporate Trustee objects to the Ad Litem’s September 2016 Fee Application.

6. The Ad Litem is entitled to recover only a “reasonable” fee for his services. TEX. R. CIV. P. 244. Here, the Trustees have fully cooperated with the Ad

Litem and his agents and, in fact, did not oppose the Ad Litem's prior fee applications because the Trustees supported the Ad Litem's independent review of the Trustees' conduct on behalf of those holders served by publication and were confident such review would satisfy the Ad Litem of the Trustees' diligence and care in administering the Trust. The Trustees believed that such prior fee applications reflected the Ad Litem's good-faith efforts to protect the interests of a subset of unit holders.

7. The Ad Litem's September 2016 Fee Application, however, in excess of \$100,000, is not in the best interest of that subset of unit holders. Nor does it pretend to be. Rather, the Ad Litem now seeks to recover significant fees incurred asserting borderline frivolous claims on behalf of both unit holders he does not represent, and the Trust itself. This is impermissible and not in the best interest of the Trust.

8. Moreover, as the Court is aware, the Trust is no longer generating sufficient revenue to pay for its requisite SEC filings and related audit fees and administrative costs, which is what necessitated the Trustees' petition in the first place. The sole source of funds to cover these ongoing Trust expenses is the segregated account established by this Court's January 15, 2016 Final Judgment and Order, which currently holds the proceeds from the June 2016 sale of the Trust's remaining royalty interest. The Trustees anticipated using these funds to pay off the Trust's liabilities and distribute the remainder to unit holders. The Ad Litem, on the other hand, seeks to use these funds to finance a class action and derivative lawsuit that has no basis in fact or law and will result in no distribution to unit holders—and leave the Trustees to pay

out-of-pocket (i) their own legal fees defending this meritless lawsuit, and (ii) the Trust's ongoing administrative expenses. This is an unprecedented demand that advances nobody's interests but the Ad Litem's.

9. Rule 42 of the Texas Rules of Civil Procedure imposes heightened requirements for class actions, including requirements of adequate representation, commonality, typicality, and predominance. The Ad Litem has not even pled the requirements and, had he done so, he could not satisfy them. The Court should not permit the Ad Litem to fund a meritless class action and impermissible derivative lawsuit with the Trust's and unit holders' funds.

10. In his most recent application, the Ad Litem seeks \$118,203.31 in reimbursement for expenses incurred from July 17, 2016 through August 31, 2016. This sum is comprised of \$60,923.87 for attorney's fee expenses charged by the Ad Litem's litigation counsel, \$46,375.00 for fees charged by his expert witness, and \$10,780.00 for fees for the Ad Litem personally. These expenses represent unnecessary, unreasonable and/or excessive charges for which the Trust should bear no liability.

11. First, the Court should deny Ad Litem reimbursement for the costs associated with preparing the Amended Counterclaim. The Ad Litem has brought allegations on behalf of unit holders he has no authority to represent against both a well-respected financial institution and three well-respected individuals premised solely on the unfounded theory that the Trustees breached various duties to the Trust by failing to sell the Trust's royalty interest and terminate the Trust sooner. Neither the

Trust Agreement nor Texas law impose any such duty, and the Ad Litem should not be permitted to use this case and the Trust's limited funds as an academic exercise to test new legal theories and create new law. The Corporate Trustee objects to the Ad Litem's request for reimbursement of fees which reflect his attempt to do so.

12. Further, the fact that (i) the Ad Litem lacks standing to bring the claims; (ii) the Amended Counterclaim contains patently time-barred claims (*i.e.*, all purported breaches occurring prior to December 28, 2011); (iii) the Trust Agreement expressly absolves the Trustees from liability for the precise misconduct alleged by the Ad Litem (*e.g.*, "The Trustees shall be under no obligation ... to dispose of any wasting asset."); and (iv) the Ad Litem brings causes of action for which the Trustees can never be found liable (*e.g.*, negligence), further undermines his right to recovery for such expenses. Only reasonable ad litem expenses are compensable.

13. The Ad Litem has opted to pursue this ill-conceived and unfounded course of action, and he should bear the risk of doing so.

14. In addition to the frivolous nature of the Ad Litem's claims, and, thus, the unnecessary and unreasonable work associated with bringing such claims, the Ad Litem's attorney's fee invoices are riddled with examples of overbilling and improper administrative charges, reimbursement for which the Trust should not be held responsible. For example, the fee invoices contain charges for 24.3 hours associated with "highlighting" Andrews Kurth's fee invoices. While the total value of these charges may not be a significant monetary figure, it is representative of clerical work

that should be considered as part of the Ad Litem's attorney's administrative overhead, which is not chargeable to the Trust. Similarly, charges for organizing correspondence, updating the case calendar, updating the electronic case file, updating a case information document, and burning CDs to send to the Ad Litem should not be charged to the Trust. The Corporate Trustee objects to the Ad Litem's recovery of all such amounts.

15. Additionally, prior to the September 2016 Fee Application, the Ad Litem sought and received \$37,240.53 in reimbursement for expenses related to his expert witness, Michael J. Wiggins, for work done during June and portions of July 2016. The Ad Litem now seeks \$46,375 in reimbursement for work performed by Mr. Wiggins from July 16, 2016 through August 31, 2016.

16. As an initial matter, the description that Mr. Wiggins provides to justify the 132.5 hours spent in one and a half months' time on this matter is wholly insufficient to judge the reasonableness and necessity of the work allegedly performed. Specifically, Mr. Wiggins' invoice describes his services as:

**PROFESSIONAL SERVICES:**

Participate in teleconferences with legal counsel. Review and analyze historical data for TEL Offshore royalty properties. Review and evaluate quarterly TEL Offshore Partnership net profit statements, annual reserve reports, EI 339 P&A costs, and Tel Offshore Trust documents. Prepare draft report with supporting documents and damage estimate.

Michael L. Wiggins      132.5 hrs. @ \$350      \$46,375.00

17. Mr. Wiggins is neither an attorney nor a fiduciary expert. He is a petroleum engineer who has been designated as an expert on oil and gas interests, operations, production, and reserves. As such, it is incomprehensible that it was necessary for the Ad Litem to incur expenses to the extent claimed *before* any formal allegations were ever brought by the Ad Litem. This is especially true in light of the fact that the Trustees (and the Ad Litem) previously believed that attempting to resolve this matter in mediation was the best way to ensure that the Trust's limited assets would be preserved as much as possible.

18. Apparently, while the Trustees were preparing to resolve this matter at mediation, the Ad Litem was engaged in full blown expert discovery. Mr. Wiggins has billed 236 hours to this matter since June 2016. By comparison, the Ad Litem's litigation counsel, Mr. Bitting, has billed 237.2 hours during this same time period. Even if the Ad Litem provided the Court with time entries to substantiate the hours claimed, Mr. Wiggins' time is on its face excessive; and without such time entries, recovery for any of the amount sought is inappropriate.

19. The Ad Litem's September 2016 Fee Application cannot stand the requisite reasonableness scrutiny that this Court is required to apply. The requested fees are not reasonable, necessary or equitable. As such, the Ad Litem's fee application should be denied.

WHEREFORE, PREMISES CONSIDERED, The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee, prays that this Court (i) sustain its objections to

the Ad Litem's September 2016 Fee Application, as set forth above, (ii) deny the Ad Litem's September 2016 Fee Application, and (iii) award such other and further relief to which it may be justly entitled.

Respectfully submitted,

**ANDREWS KURTH LLP**

By: /s/ Georgia L. Lucier

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ATTORNEYS FOR THE BANK OF NEW  
YORK MELLON TRUST COMPANY, N.A., AS  
CORPORATE TRUSTEE

**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 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/ Georgia L. Lucier* \_\_\_\_\_

Georgia L. Lucier