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THE SCHULEIN FAMILY TRUST, THE MICHAEL A. GAFFEY  
AND JOANNE M. GAFFEY LIVING TRUST, MARCH 2000, AND  
THE GLICKMAN FAMILY TRUST DATED AUGUST 29, 1994  
THE WILLIAM J. AND JUDITH A. McDONALD LIVING  
TRUST DATED APRIL 16, 1991

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE:

ROCKIES REGION 2006 LIMITED PARTNERSHIP  
and ROCKIES REGION 2007 LIMITED  
PARTNERSHIP

DEBTORS

CASE NO. 18-33513  
CHAPTER 11

*Jointly Administered*

**MOTION TO COMPEL FURTHER TESTIMONY OF DARWIN STUMP AND  
KAREN NICOLAOU**

Robert R. Dufresne, as Trustee of the Dufresne Family Trust; Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; Jeffrey M. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and William J.

McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991 (collectively, the “Movants”), hereby file this Motion to Compel Further Testimony of Darwin Stump and Karen Nicolaou (the “Motion”) pursuant Federal Rule of Civil Procedure 30 and 37, made applicable herein by Federal Rule of Bankruptcy Procedure 7030 and 7037, seeking to compel responses to questions not answered at the depositions of Darwin Stump and Karen Nicolaou. In support of the relief requested, Movants would respectfully show the Court as follows:

**PRELIMINARY STATEMENT**

1. Pending before the Court are Movants’ Amended Motion to Dismiss Chapter 11 Case (the “Dismissal Motion”) and Debtors’ Applications for Order (i) Authorizing the Retention of Harney Management Partners to Provide Responsible Party and Additional Personnel; (ii) Designating Karen Nicolaou as Responsible Party Effective as of the Petition Date; and (iii) Granting Related Relief (the “Employment Motion”). The trial on these matters is scheduled to commence on June 20, 2019.

2. The issues raised in the Dismissal Motion are whether the cases should be dismissed either for cause as having been filed in bad faith, or that they were not properly authorized, or that the individual who filed the petitions was not authorized to do so under the Debtors’ respective partnership agreements and/or the laws of the State of West Virginia. With respect to the bad faith nature of the filings, Movants assert that the primary, if not sole and actual, purpose for filing the cases was to afford PDC Energy, Inc. (“PDC”), the Debtors’ managing general partner, (1) the opportunity to purchase the assets of the Debtors for less than the higher of cost or fair market value as required by the Partnerships Agreements and (2) a release of all pending and potential claims held by the Debtors and the limited partners, including those asserted by Movants in a

putative class action suit pending in the United States District Court for the District of Colorado which was filed on December 20, 2017 (the “Colorado Action”).<sup>1</sup>

3. In order to obtain additional evidence to support the contentions in Movants’ Dismissal Motion and their objection to the Employment Motion, Movants noticed the depositions of Darwin Stump (“Stump”), vice president of accounting operations at PDC, and Karen Nicolaou (“Nicolaou”), the ostensible “Responsible Party” for Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership (collectively, the “Debtors” or the “Partnerships”). Movants also noticed a deposition of PDC’s Person Most Knowledgeable (“PMK”) pursuant to FED. R. CIV. PRO. 30(b)(6). PDC designated Stump to testify in these proceedings as PDC’s PMK on issues set forth in the Notice of Deposition for the PMK.

4. The parties agreed that the depositions of Nicolaou, Stump, and the PMK would be limited to issues related to the Dismissal Motion and Employment Motion, with Movants reserving the right to depose the same witnesses on other issues at a later date.

5. Nicolaou had previously been retained by PDC to be the Responsible Party for twelve other PDC-sponsored drilling partnerships collectively referred to as the “Eastern Partnerships.” (*See In re Eastern 1996D Limited Partnership, et al.*, Case No. 13-34773-HDH-11, Dkt. No.106). In the Eastern Partnership bankruptcy proceedings, Nicolaou as Responsible Party filed Chapter 11 petitions for each of the Eastern Partnerships in 2013. Nicolaou proposed a plan in the Eastern Partnership bankruptcy proceedings to sell those partnerships’ oil and gas assets to PDC. There was no motion to dismiss filed in the Eastern Partnership bankruptcy proceedings. However, individual limited partners of the Eastern Partnership debtors formed a committee of

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<sup>1</sup> The Colorado Action was filed in early December 2017. The claims the subject of the Colorado Action involve derivative claims brought on behalf of the Debtors and the Debtors’ limited partners under the laws of the State of West Virginia. These claims are asserted as a class action.

equity security holders and filed their own alternative Chapter 11 plan. (*See In re Eastern 1996D Limited Partnership, et al.*, Dkt. No. 445). After protracted litigation, the committee of equity security holders, the Eastern Partnerships, and PDC ultimately filed a “joint” Plan in the Eastern Partnership proceedings pursuant to which PDC paid \$7,000,000 to the limited partners to acquire the oil and gas assets of the Eastern Partnerships. (*See In re Eastern 1996D Limited Partnership, et al.*, Dkt. No. 556).

6. Stump was previously deposed in an earlier case involving some of the Movants, titled *Schulein v. Petroleum Dev. Co.*, Case No. SAVV11-1891 AG (ANx) (“*Schulein*”). That class action was resolved when PDC entered into a court-approved \$37 million class action settlement with the investors in the 2002-2005 Partnerships.<sup>2</sup> (*Schulein*, Dkt. No. 265).

7. As vice president of accounting operations at PDC, Stump has intimate knowledge of both PDC and the Partnerships’ financial status, business, and operations. Stump’s knowledge, both individually and as PDC’s PMK, goes to how PDC, as the sole managing general partner of the Partnerships, managed the Partnerships and whether PDC managed the Partnerships in such a way as to deliberately make them unprofitable as a pretext for hiring Nicolaou as a proposed Responsible Party to put both Partnerships into bankruptcy. Furthermore, Stump, in his individual capacity and as PDC’s designated PMK, has knowledge about what responsibilities PDC owes the Partnerships and what expenses PDC is obligated to pay or fund on the Partnerships’ behalf based on the terms of the Partnership Agreements. Specifically, Nicolaou’s stated reason for filing bankruptcy petitions for the Partnerships is that they could not pay the plugging and abandonment

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<sup>2</sup> The limited partnerships involved in the *Schulein* Action include the: (1) PDC 2002-D LP; (2) PDC 2003-A LP; (3) PDC 2003-B LP; (4) PDC 2003-C LP; (5) PDC 2003-D LP; (6) PDC 2004-A LP; (7) PDC 2004-B LP; (8) PDC 2004-C LP; (9) PDC 2004-D LP; (10) PDC 2005-A LP; (11) PDC 2005-B LP; (12) and Rockies Region Private LP.

(“P&A”) costs needed for their vertical wells. A specific component of the Term Sheet entered into between Nicolaou as Responsible Party and PDC is that PDC, as consideration for purchasing the Debtors’ assets, will pay the cost to plug and abandon the Debtors’ vertical wells. (Dkt. No. 10.) However, the Partnership Agreements expressly provided in Sections 1.08(n), 2.01(b), and 7.12 that it is PDC’s responsibility as managing general partner to pay the P&A costs of the Partnerships’ vertical wells. (Dkt. No. 61, Ex. A & B.) Those provisions provide that PDC’s capital account is adjusted when it makes the required contributions to pay tangible or intangible costs of the Partnerships.

8. PDC, as managing general partner of the Partnerships, can only acquire assets of the Partnerships by complying with the provisions of the Partnership Agreements. Section 5.07(i) of both Partnership Agreements state that PDC must pay the higher of “cost or fair market value” to purchase undeveloped assets from the Partnerships. (Dkt. No. 61, Ex. A & B.) Section 6.07 (b) of the Partnership Agreements prohibits PDC or its affiliates from selling all or substantially all of the assets of the Partnerships without first obtaining the prior consent of the holders of a majority of the then outstanding limited partners by units of interest. (Dkt. No. 61, Ex. A & B.)

9. Movants maintain that PDC purposefully operated the Partnerships as to make them unprofitable by failing to refrac or recomplete the Partnerships’ vertical wells as expressly permitted by the terms of the Partnership Agreements in order to acquire the Partnerships’ assets for its own benefit and for less than cost or fair market value by retaining Ms. Nicolaou for the express purpose of putting the Partnerships into bankruptcy. The bankruptcy filings for the Partnerships and the retention of Nicolaou is one step in PDC’s scheme to obtain the assets of the Partnerships at less than fair market value—in violation of the express terms of the Partnership Agreements—and to avoid legal liability for mismanaging the Partnerships by failing to refrac or

recomplete the Partnerships' vertical wells.

10. Additionally, Nicolaou has similar knowledge about the Debtors and the facts surrounding the filing of the Chapter 11 Petitions for the Debtors. As Nicolaou is the one who filed the Chapter 11 Petitions and supposedly acts as the Debtors' representative, Nicolaou's knowledge pertains to the reasons why the Partnerships were put into bankruptcy as opposed to dissolving and winding down the Partnerships under the terms of Section 9 of the Partnership Agreements. Nicolaou's knowledge is also relevant as to whether the proposed Chapter 11 Plan adequately takes into account what assets the Partnerships own and what claims the Partnerships may have against PDC for failing to assign spacing units in Prospects—i.e., acreage—to the Partnerships. Movants contend that the Partnerships, and the limited partners, have valuable claims against PDC for failing to assign to the Partnerships interests in 32-acre spacing units in Prospects as required by the Partnership Agreements. Nicolaou testified at the Debtors' 341-A hearing that "arguably" PDC was required by the terms of the Partnership Agreements to assign 32 acres prospects to the Partnerships, yet she failed to include in the Debtors' schedules of assets, claims by the Debtors against PDC. When Nicolaou later amended the schedules, she included the Debtors' derivative claims against PDC, but stated the value of those claims was unknown. Nicolaou has failed to fully explore these claims and that failure negatively impacts the value of the Partnerships' estate.

11. On May 15, 2019, Movants took the deposition of Stump. At that deposition, PDC's counsel, Michael Morfey, made objections based on irrelevance and directed Stump not to respond to several questions that are in fact relevant to the Dismissal Motion and Employment Application. However, an objection of irrelevance is insufficient to avoid answering a question. Instead, the deponent should answer the question fully and then issues of relevance can be debated and adjudicated at a pre-hearing conference or the actual hearing if the information obtained by the

question is ever used. Moreover, each of Movants' questions to Stump were relevant. For example, Movants' counsel asked Stump questions regarding whether PDC is responsible for paying for the Partnerships' P&A liabilities and whether PDC plugged and abandoned Partnership wells so that it could drill its own more profitable horizontal wells adjacent to the Partnerships vertical wells. These questions go to whether PDC starved the Partnerships of funds and shirked its responsibilities to fund certain expenses in order to make the Partnerships appear suitable for bankruptcy. In doing so, PDC could acquire the Partnerships' assets relatively cheaply and then drill its own more profitable horizontal wells in place of the Partnerships' vertical wells. All of this shows that PDC acted in bad faith by pushing the Partnerships into bankruptcy for its own benefit and the interests of the Partnerships and their limited partners are not well served by these bankruptcy proceedings.

12. Prior to Stump's deposition, on May 7, 2019, Movants took Nicolaou's deposition. There, Nicolaou was instructed by her counsel not to answer several questions about whether Nicolaou relied on the advice of her counsel for her evaluation of the Partnerships' claims against PDC and what investigation her counsel made of those claims. This information is not protected by the attorney-client privilege, and, if the Court finds they are, Nicolaou has waived the privilege. For example, the Debtors maintain that Nicolaou concluded that the claims asserted in the Colorado Action were derivative—which, by virtue of the filing of these cases, now constitute claims of the bankruptcy estate—and have a “low likelihood of success,” and that the limited partners will “receive a greater distribution and be better served if the claims were settled and distributions made pursuant to a chapter 11 plan.” See, Dismissal Response, ¶¶ 10 and 20. Yet, Nicolaou and her counsel refuse to provide any facts supporting these conclusions; thus, leaving Movants, all other limited partners of the Debtors, and this Court to wonder what analysis, if any,

was actually done?

13. Movants are simply trying to determine if Nicolaou conducted a proper investigation of the Debtors' claims and the value of the Debtors assets in her purported role as "Responsible Party." Nicolaou should not be able to claim that she properly investigated these issues and properly exercised her judgment in initiating bankruptcy and then hide behind claims of privilege when Movants try to fact-check her.

### **RELIEF SOUGHT**

14. Pursuant to FED. R. CIV. P. 30 and FED. R. CIV. P. 37(a)(3)(B)(i), made applicable hereto by FED. R. BANKR. P. 7030, and FED. R. BANKR. P. 7037, Movants request entry of an order compelling further testimony of Darwin Stump and Karen Nicolaou.

### **ARGUMENTS AND AUTHORITIES**

#### **A. Applicable Standard.**

15. The scope of discovery under the Federal Rules of Civil Procedure is broad,<sup>3</sup> and should be liberally construed in favor of full and complete discovery.<sup>4</sup> Rule 26(b) allows a party to obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense." FED. R. CIV. P. 26(b)(1). The term "relevant" is construed broadly.<sup>5</sup> "Unless it is clear

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<sup>3</sup> See, e.g., *Schlagenhauf v. Holder*, 379 U.S. 104, 114-115 (1964) ("We enter upon determination of this construction with the basic premise that the deposition-discovery rules are to be accorded broad and liberal treatment to effectuate their purpose that civil trials in federal courts no longer need be carried on in the dark.") (citations and quotations omitted); *U.S. v. Holley*, 942 F.2d 916, 924 (5th Cir. 1991) ("Courts have long recognized the broad scope of discovery.").

<sup>4</sup> See, e.g., *Hickman v. Taylor*, 329 U.S. 495, 501 (1947) ("The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of issues and facts before trial."); *U.S. v. McWhirter*, 376 F.2d 102, 106 (5th Cir. 1967) ("The discovery provisions of the Federal Rules of Civil Procedure were designed to afford the parties the right to obtain information pertinent to the pending controversy, and to effectuate that purpose they are to be liberally construed.").

<sup>5</sup> E.g., *Merrill v. Waffle House, Inc.*, 227 F.R.D. 467, 470 (N.D. Tex. 2005) ("Relevancy is broadly construed, and a request for discovery should be considered relevant if there is any possibility that the



that the information sought can have no possible bearing on the claims or defenses of a party, the request for discovery should be allowed.”<sup>6</sup> Moreover, being relevant does not equate to being admissible. Rather, the discovery sought must be reasonably calculated to lead to the discovery of admissible evidence.<sup>7</sup> The Debtors and PDC bear the burden of proving that an exemption, privilege, or objection is sufficient to block each particular question.<sup>8</sup> More specifically, the party resisting discovery must show specifically how each question is not relevant or otherwise objectionable.<sup>9</sup>

**B. Darwin Stump Should be Compelled to Provide Further Testimony.**

16. This Motion requests that Stump provide answers to ten questions that he refused to answer during his deposition at the direction of PDC’s attorney, Michael Morfey. The primary objection made by Mr. Morfey, to these ten questions was that the questions were not relevant to the issues presented by the Dismissal Motion and/or Employment Motion.<sup>10</sup> For example,

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information sought may be relevant to the claim or defense of any party.”) (quotations and citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., FED. R. CIV. P. 26(b)(1); *Buchner v. Richardson Hosp. Auth.*, 160 F.R.D. 88, 93 (N.D. Tex. 1994) (“The discovery rules expressly provide that the information sought need not be admissible at trial if it ‘appears reasonably calculated to lead to the discovery of admissible evidence.’”).

<sup>8</sup> See, e.g., *EEOC v. BDO USA, L.L.P.*, 876 F.3d 690, 695 (5th Cir. 2017) (“the party asserting the [attorney-client] privilege bears the burden of proof”); *Merrill*, 227 F.R.D. at 470 (The burden is on the “party resisting discovery . . . to clarify and explain [its] objections and to provide support for those objections.”).

<sup>9</sup> See *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (Party resisting discovery “must have a valid objection” to avoid the discovery).

<sup>10</sup> Mr. Morfey also objected to some of the questions that are the subject of this Motion on the basis that those questions call for legal conclusions. In the event the Court finds that these questions do call for legal conclusions, Movants respectfully ask the Court for the opportunity to rephrase the question. Furthermore, the fact that a question to a deponent may call for a legal conclusion is not sufficient basis for the deponent not to answer the question. See *Howell v. Std. Motor Prods.*, No. 4:99-CV-987-E, 2001 U.S. Dist. LEXIS 5295, \*9 (N.D. Tex. Apr. 27, 2001) (“The Court is unaware of any caselaw or provisions of

Movants' counsel asked Stump a question about who was responsible for paying the Partnerships' expenses for plugging and abandoning their wells. *See* Rough Draft Transcript for Deposition of Darwin Stump ("Stump Depo."), 55:18–24.<sup>11</sup> This question went to whether PDC itself is responsible for paying the Partnerships' plugging and abandonment expenses and whether PDC adequately covered these expenses in the past. One of the purported main reasons the Partnerships were put into bankruptcy was because of their supposedly large P&A liabilities. *See* Declaration of Karen Nicolaou in Support of Chapter 11 Petitions and First Day Motions ("Nicolaou Dec.") (Dkt. No. 10) at 5–6. If PDC is responsible for paying these expenses and has the means to pay these expenses, then these expenses are not proper justification for filing bankruptcy as they can be covered by PDC. This fact would help show that PDC had a bad faith motive for pushing the Partnerships into bankruptcy, which Movants assert PDC did so that it could acquire the Partnerships' assets below fair market value. Despite all this, Mr. Morfey objected to the question as "outside of . . . [the] scope" of the current proceedings and instructed Stump not to answer. *Stump Depo.*, 56:6–7, 57:24–25. Mr. Morfey made similar objections regarding relevance to many other questions, resulting in Stump not answering several important questions.

17. While Mr. Morfey's objection of the questions being "outside of the scope" of the current proceedings does not use the word "relevance," such an objection is clearly a relevance objection. A question is only outside of the scope of the Dismissal Motion and Employment Motion if it is not relevant to the issues raised by those motions. And a question is within the scope of those motions if it is relevant to them. As such, Mr. Morfey's primary objection, and basis for

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the Federal Rules of Civil Procedure that support the position taken by [deponent's counsel] . . . that her client could refuse to answer a deposition question on the grounds that it called for a legal conclusion.").

<sup>11</sup> Presently, Movants only have the rough draft of the deposition transcript in their possession. Relevant portions of the Stump deposition transcript are attached hereto as "Exhibit A."

instructing Stump not to testify, was that the ten questions at issue in this Motion are not relevant to the Dismissal Motion and the Employment Motion.

18. However, many of Movants' questions are relevant as they go to PDC and the Debtors' bad faith motive for the bankruptcy filings. As Debtors assert in their objection to the Dismissal Motion, "[d]etermining whether the debtor's filing for relief is in good faith depends largely upon the bankruptcy court's on-the-spot evaluation of the debtor's financial condition, **motives**, and the local financial realities. Findings of lack of good faith in proceedings based on §§ 362(d) or 1112(b) have been predicated on certain recurring but non-exclusive patterns, and they are based on a conglomerate of factors rather than on any single datum." Debtors' Objection to Motion to Dismiss at 14 (Dkt. No. 141) (quoting *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986)) (emphasis bolded). Thus, PDC's motive for making the Partnerships allegedly insolvent so that Nicolaou could put them into bankruptcy and almost immediately file a proposed Plan to sell the Debtors' assets to PDC at less than fair market value is clearly relevant to the issue of bad faith presented by the Dismissal Motion.

19. Moreover, whether or not Mr. Morfey's objections are valid (which they are not), objections of relevance are insufficient to allow a deponent to avoid answering a question. *See Rangel v. Mascorro*, 274 F.R.D. 585, 591 (S.D. Tex. 2011) ("courts have generally concluded that it is improper to instruct a witness not to answer a question based on a relevancy objection"); *In re Stratosphere Corp. Securities Litig.*, 182 F.R.D. 614, 617–18 (D. Nev. 1998) ("If irrelevant questions are asked, the proper procedure is to answer the questions, noting them for resolution at pretrial or trial. . . . A party may object to an irrelevant line of question, but instructing a witness not to answer a question because it calls for inadmissible [sic] facts is sanctionable."). Based on this alone, Stump should have to provide answers to every question that he did not answer based

on an objection of relevance. Further, “any time that a lawyer instructs a deponent not to answer a question except as authorized by Rules 30(d)(1) [duration of deposition] or 30(d)(3) [motion to terminate or limit] the instruction is presumptively improper.” *Boyd v. University of Maryland Medical System*, 173 F.R.D. 143, 147 (D. Md. 1997). Therefore, each instruction given to Stump by Mr. Morfey based on supposed irrelevance is presumed improper.

20. Based on the foregoing authorities and the supporting facts presented below, Movants request that Stump be compelled to answer the following questions:

21. **Question 1:** “[I]f you read together Section 1.08(n) . . . and Section 2.01(b) [of the Partnership Agreements] which PDC pays all tangible costs as well as intangible drilling costs whose responsibility under those two sections it was to pay plugging and abandonment expenses for the partnership wells?” Stump Depo., 55:18–24.

22. This question is relevant to the Dismissal Motion because it concerns what is supposedly one of the main reasons the Partnerships were pushed into bankruptcy: their P&A liabilities. This question is simply asking that, if PDC is responsible for certain drilling costs under the Partnership Agreements, is it also responsible for paying the Partnerships’ P&A expenses? According to Nicolaou, one of the reasons for filing bankruptcy for the Partnerships was because the Partnerships do not have sufficient cash to fund their P&A liabilities. (*See* Dkt. No. 10 at 5–6.) However, if PDC is responsible for paying for these expenses and can pay these expenses, there is no reason to file bankruptcy because of the Partnerships’ own lack of cash. As such, this question seeks information relevant to whether the Chapter 11 Cases were filed in bad faith. The cases would not have been filed in good faith if one of the supposed main reasons for bankruptcy—the Partnerships’ lack of cash to cover their P&A liabilities—was not a valid reason. Thus, this question is not outside of the scope of discovery at this junction.

23. **Question 2:** “So with all of that information about what the reserves are, what the costs are to operate, how was it that PDC that’s managed more than 75 partnerships didn’t reserve sufficiently for the '06 and '07 partnerships to cover plugging and abandonment costs?” Stump Depo., 70:23–24, 71:1–3.

24. PDC as managing general partner had the right to withhold from distributions to the limited partners to pay operating costs of the Partnerships. PDC in fact began to withhold distributions from the limited partners to pay the P&A costs but did not withhold sufficient funds to actually pay those costs. It is these projected P&A costs that Nicolaou testified were in large part what convinced her that it was in the best interests of the Partnerships to put them into bankruptcy. Thus, this question is relevant as to whether PDC, acting in its capacity as managing general partner, properly reserved funds to cover the P&A liabilities of the Partnerships. Movants contend that, pursuant to the terms of the Partnership Agreements, PDC is responsible for these expenses if PDC failed to withhold from distributions to the limited partners sufficient funds to pay the P&A costs. If PDC purposefully failed to reserve sufficient funds, that could be a potential reason for why the Partnerships are unable to cover their current P&A costs, which was supposedly one of the main reasons cited by Nicolaou for putting the Partnerships into bankruptcy. Put another way, this question goes to whether PDC purposefully caused the Partnerships to incur debts they could not pay, making them appear suitable candidates for bankruptcy. If PDC did in fact do this, it shows that PDC manufactured a crisis related to the P&A costs in order to push the Partnerships into bankruptcy.

25. **Question 3:** “Sir, isn't it a fact that PDC made a decision as managing general partner to stop hedging the partnership's production?” Stump Depo., 75:21–23.

26. This question is relevant because it concerns PDC’s control over the Partnerships

and whether PDC purposefully made poor decisions in its management of the Partnerships in order to financially harm the Partnerships, making them ripe for bankruptcy.

27. **Question 4:** “Well, without speculating, based on what you've actually been told by people, what is your understanding of approximately how many wells -- horizontal wells PDC has drilled within the Wattenberg Field within 1500 feet of the partnerships' vertical wells?” Stump Depo., 143:12–17.

28. This question is relevant because it concerns whether PDC drilled horizontal wells so close to the Partnerships' vertical wells as to negatively impact the vertical wells' production, such that they could not pay the P&A costs for the vertical wells. The result of this is that the vertical well becomes unprofitable and must be plugged and abandoned or shut in, and if the vertical well is ever reopened, it would not have the same production as before. Therefore, this question is relevant as to whether PDC drilling horizontal wells for its own account on the Debtors' acreage negatively impacted the profitability of the Partnerships' vertical wells, causing the alleged necessity of plugging and abandoning of their wells—which PDC then charged to the Partnerships, causing them to incur debt. Put another way, this question concerns whether PDC's own actions caused the Partnerships to not be profitable and, as a result, to incur liabilities for plugging and abandoning their vertical wells.

29. **Question 5:** “Now, isn't it a fact, sir, that PDC stopped that program [refracting its own vertical wells] because it got a better return on investments by drilling horizontal wells rather than refracting on its own vertical wells because the vertical wells had the problems with high line pressure and the problems with the consent decree with the EPA?” Stump Depo., 154:16–22.

30. This question concerns PDC's motive for not refracting the Partnerships' vertical wells. PDC, as managing general partner of the Partnerships, informed the limited partners in 2010

that it would withhold money from their distributions to pay the costs of refracing the Partnerships' vertical wells to make them more productive. Thereafter, after successfully refracing eight of the Partnerships' vertical wells, PDC suspended refracing both its own vertical wells and the Partnerships' vertical wells in the Wattenberg Field in Colorado because those vertical wells competed with PDC's horizontal wells for gas and oil production in the Wattenberg Field. This is relevant because it concerns PDC's motive for mismanaging the Partnerships and pushing them into bankruptcy: PDC makes more money from its horizontal wells and is willing to financially harm the Partnerships for its own benefit.

31. **Question 6:** "And isn't that the same reason that PDC decided to stop refracing partnership wells in 2013 was if it was going to refrac a partnership well, it was kind of counter productive [sic] because you had to take into account if you wanted to put a -- a horizontal well in proximity to it, you might have to plug and abandon that well or replace the well head?" Stump Depo., 155:17–24.

32. This question is relevant because it concerns PDC's motive for pushing the Partnerships into bankruptcy. As previously stated, the motives for filing bankruptcy are relevant to whether the filing was in bad faith. *See In re Little Creek Dev. Co.*, 779 F.2d at 1072. The motive here is that PDC has an incentive to not refrac or recomplete the Partnerships' vertical wells, which would increase oil and gas production. Refracing or reCompleting the Partnerships' vertical wells would adversely impact PDC's ability to drill horizontal wells in close proximity to the Partnerships' vertical wells. Further, PDC has an incentive to plug and abandon Partnership wells, making the Partnerships unprofitable and take on debt, so that it could drill more horizontal wells on the Partnerships' 32-acre spacing units in Prospects. This all means that bankruptcy allows PDC the ability to acquire the Partnerships' assets at less than fair market value, including what Movants

assert include interests in acreage, and drill its own horizontal wells.

33. **Question 7:** “Isn't it a fact, sir that, if they are plugging and abandoning liabilities for which PDC acting as the managing general partner has failed to reserve enough monies for out of distributions to the limited partners and distributions to itself, PDC is jointly and severally liable for the debts and obligations of the partnership[s]?” Stump Depo., 203:20–25, 204:1–2.

34. This question is relevant for the same reason Questions 1 and 2 are relevant. PDC, as managing general partner, is responsible for the P&A liabilities of the Partnerships. However, PDC shirked its own responsibilities and failed to reserve enough cash to cover these liabilities. The Partnerships should not be in bankruptcy over P&A liabilities if PDC is the party that the terms of the Partnership Agreements provide should pay to cover these liabilities.

35. **Question 8:** “So in determining this liability for future liabilities to charge the partnerships with forecasted or projected plugging and abandoning expenses there was no timeline prepared by PDC to plug those wells?” Stump Depo., 210:21–25.

36. This question is also relevant for the same reasons Questions 1 and 2 are relevant. This question concerns PDC and Debtors' argument that the Partnerships have significant P&A liabilities for which the Partnerships themselves are responsible for. In this question, Movants are merely asking whether PDC, which is the managing general partner of the Partnerships and the operator of their wells, has an actual timeline for the wells that PDC and Debtors argue need to be plugged and abandoned. If PDC has no timeline for plugging and abandoning the Partnerships' vertical wells, and there is no legal requirement to plug and abandon the Partnerships' vertical wells at this time; it is circumstantial evidence that PDC's motive has been to create an alleged “emergency” to plug and abandon the Partnerships' vertical wells to justify Nicolaou putting the Partnerships' into bankruptcy.



37. **Question 9:** “What criteria is used by PDC to determine when it's going to plug one of the '06 or '07 partnership wells?” Stump Depo., 211:21–23.

38. This question is relevant for the same reason Question 10 is relevant. Here, Movants are simply inquiring as to how PDC determines which Partnership wells need to be plugged and abandoned. Since, according to Nicolaou, P&A liabilities are a major cause of the Partnerships’ need to file bankruptcy, facts related to how those liabilities are determined are relevant to this proceeding.

39. **Question 10:** “Did you have a discussion with Mr. Graves [Graves & Co. Consulting] where he said words to the effect of let's talk about what do these partnerships own? Is it a well bore or is it a something more? Did you have any conversations like that with him?” Stump Depo., 216:25, 217:1–4.

40. This question is relevant because it seeks information related to how Nicolaou determined what assets and claims the Partnerships own. Movants claim that, pursuant to the terms of the Partnership Agreements, PDC was required to assign 32-acre spacing units in Prospects to the Partnerships. PDC maintains that it was only required to assign a “wellbore” interest to the Partnerships. Nicolaou purportedly relied on the advice of Graves & Co. Consulting in determining what assets the Partnerships owned. This question concerns whether Nicolaou properly investigated what the Partnerships should have been assigned and what claims the Partnerships may have against PDC before Nicolaou entered into the Term Sheet with PDC— the terms of which are incorporated in Nicolaou’s proposed Plan to sell the Debtors’ oil and gas interests to PDC at less than fair value.

**C. Karen Nicolaou Must be Compelled to Provide Further Testimony.**

41. During the course of Nicolaou’s deposition, Debtors’ counsel objected to numerous

questions based on the attorney client privilege. In turn, Nicolaou refused to answer those questions, adhering to counsel's guidance. Movant submits that with regard to the questions identified below either the privilege was not applicable or otherwise has been waived.

42. The scope of discovery under the Federal Rules of Civil Procedure is broad,<sup>12</sup> and should be liberally construed in favor of full and complete discovery.<sup>13</sup> Thus, a party should be afforded its discovery unless a privilege applies, including the attorney client privilege. "The application of the attorney-client privilege is a 'question of fact, to be determined in the light of the purpose of the privilege and guided by judicial precedents.'" *EEOC*, 876 F.3d at 695. For a communication to be protected under the privilege, the proponent "must prove: (1) that he made a *confidential* communication; (2) to a lawyer or his subordinate; (3) for the primary purpose of securing either a legal opinion or legal services, or assistance in some legal proceeding." *Id.* "Determining the applicability of the privilege is a "highly fact-specific" inquiry, and the party asserting the privilege bears the burden of proof." *Id.* at 695; *see also Orchestrate HR, Inc. v. Trombetta*, 2014 WL 884742, at \*1 (N.D. Tex. Feb. 27, 2014) ("party asserting a privilege exemption from discovery bears the burden of demonstrating its applicability") (quoting *In re Santa Fe Int'l Corp.*, 272 F.3d 705, 710 (5th Cir. 2001)).

43. Because the attorney-client privilege "has the effect of withholding relevant

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<sup>12</sup> *See, e.g., Schlagenhauf*, 379 U.S. at 114–15 ("We enter upon determination of this construction with the basic premise that the deposition-discovery rules are to be accorded broad and liberal treatment to effectuate their purpose that civil trials in federal courts no longer need be carried on in the dark.") (citations and quotations omitted); *Holley*, 942 F.2d at 924 ("Courts have long recognized the broad scope of discovery....").

<sup>13</sup> *See, e.g., Hickman*, 329 U.S. at 501 ("The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of issues and facts before trial."); *McWhirter*, 376 F.2d at 106 ("The discovery provisions of the Federal Rules of Civil Procedure were designed to afford the parties the right to obtain information pertinent to the pending controversy, and to effectuate that purpose they are to be liberally construed.").

information from the fact-finder,” it is interpreted narrowly so as to “appl[y] only where necessary to achieve its purpose.” *EEOC*, 876 F.3d at 695. “There is no presumption that a company’s communications with counsel are privileged.” *Id.* at 696, citing, *TVT Records v. Island Def Jam MusicGrp.*, 214 F.R.D. 143, 148 (S.D.N.Y. 2003) and *NLRB v. Interbake Foods, LLC*, 637 F.3d 492, 502 (4th Cir. 2011)(“[I]t is true...that the attorney-client privilege does not apply simply because documents were sent to an attorney”). “Indeed, more is required. To begin, ‘[i]t is vital to a claim of [attorney-client] privilege that the communication have been made and maintained in confidence.’” *Id.* (citation omitted). Also, not everything a lawyer says to a client constitutes a privileged communication. *EEOC*, 876 F.3d at 698 (rejecting magistrate judge’s statements that “‘anything communicated to or from [c]ounsel is privileged.’”).

44. It is well established that where a party reveals privileged communications to third parties the party waives the attorney client privilege. *In re Itron, Inc.*, 883 F.3d 553, 558 (5th Cir. 2018). “By the same token, a client waives the privilege by affirmatively relying on attorney-client communications to support an element of a legal claim or defense—thereby putting those communications ‘at issue’ in the case.” *Id.*, citing, 8 Fed. Prac. & Proc. § 2016.6 (3d ed. updated Apr. 2017); 2 The New Wigmore: A Treatise on Evidence § 6.12.4(b)(2) (3d ed. 2017); 81 Am. Jur. 2d *Witnesses* § 329 (2d ed. updated Nov. 2017); 1 McCormick On Evidence § 93 (7th ed. updated June 2016). “In other words, when a party entitled to claim the attorney-client privilege uses confidential information against his adversary (the sword), he implicitly waives its use protectively (the shield) under that privilege.” *Id.*, quoting, *Willy v. Admin. Review Bd.*, 423 F.3d 483, 497 (5th Cir. 2005); *Conkling v. Turner*, 883 F.2d 431, 434 (5th Cir. 1989) (noting that the “great weight of authority holds that the attorney-client privilege is waived when a litigant ‘place[s] information protected by it in issue through some affirmative act for his own benefit, and

to allow the privilege to protect against disclosure of such information would be manifestly unfair to the opposing party.” *Charalambopoulos v. Grammer*, 2017 U.S. Dist. LEXIS 41600, at \*9-10 (N.D. Tex. Mar. 8, 2017) (recognizing implied waiver theory); *Edwards v. KB Home*, 2015 U.S. Dist. LEXIS 93584 (S.D. Tex., July 18, 2015) (finding waiver where asserted good faith defense was based on reliance of counsel).

45. Based on the foregoing authorities and the supporting facts presented below, Movants request that Nicolaou be compelled to answer the following questions:

46. **Question 1:** “Specifically, what did you ask Gray Reed to do? Did you ask Gray Reed to provide specific services in connection with your representation?” Nicolaou Deposition Transcript (“Nicolaou Depo.”), 110–11.<sup>14</sup>

47. The response to this question is not protected by attorney client privilege as it seeks the general nature of the services for which the firm was engaged. To the extent would be applicable it was waived since the subject matter of Gray Reed’s services has been disclosed through production to Movants of the firm’s engagement letter dated May 8, 2018. *See* Exhibit C.

48. **Question 2:** “Did someone [at Gray Reed] explain the basis for making the determination that all claims were derivative?” Nicolaou Depo., 121–24.

49. To the extent privilege would be applicable to the response to this inquiry the privilege has been waived in light of the Debtors’ Motion Pursuant to Section 541(a) of the Bankruptcy Code for Determination that Certain Claims and Causes of Action are Property of the Estate (Dkt. No. 137). Further, Nicolaou testified that she made that determination in consultation with her attorneys, that her attorneys assisted in that determination, and in fact they made the determination.

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<sup>14</sup> Excerpts of the Nicolaou Deposition are attached hereto as Exhibit “B.”

50. **Question 3:** “Did you rely on the advice they [Gray Reed] gave you [as to your conclusion that the claims in the Denver Litigation are derivative claims]?” Nicolaou Depo., 126.

51. This question does not elicit a response protected by the privilege. Rather, it seeks to affirm the basis of Nicolaou’s actions, conclusions and positions taken in these cases in her purported capacity as the Debtors’ Responsible Party. To the extent the privilege applies, it was waived by her testimony that the determination was made in consultation with her attorneys, that her attorneys assisted in that determination, and in fact they made the determination.

52. **Question 4:** “Did you rely on the advice of counsel [as to determination that partnership agreements do not provide a mechanism to make capital calls]?” Nicolaou Depo., 138–39.

53. A response to this question does not involve a privileged communication. Ms. Nicolaou was being asked about her sworn statements contained in her Declaration filed with the Court in support of the Debtors’ first day motions. Paragraph 21 of the Declaration contains a conclusion that the partnership agreements do not provide a mechanism to make capital calls to fund the drilling of additional wells. Nicolaou testified that this was a conclusion reached by her reading the agreements, the private placement memorandum, and consultation with her attorneys (pg. 138). In turn, she was asked the question whether she relied on the advice of counsel, to which she refused to answer based on the attorney-client privilege. The answer to this question does not divulge attorney communications, but simply asks whether she relied on the advice in formulating her conclusions as stated in her Declaration. Even assuming a privilege attaches, it has been waived since the conclusion (reached in consultation with counsel) has been public disclosed and is one upon which the Debtors rely upon in presenting these cases to the Court.

54. **Question 5:** “Did you rely on the advice of counsel as to any of the comments you

made in your declaration concerning the litigation?” Nicolaou Depo., 139.

55. This question does not elicit a response protected by the privilege. Rather, it seeks to affirm the basis of Nicolaou’s actions, conclusions, and positions taken in these cases in her purported capacity as the Debtors’ Responsible Party. To the extent the privilege applies, it was waived by the statements contained in her Declaration.

56. **Question 6:** “What was [Mr. Brookner’s and Lydia Webb’s] conclusion concerning your determination that the Partnerships were authorized to retain you as Responsible Party?” Nicolaou Depo., pgs. 26–29.

57. A response to this question is not privileged since Gray Reed did not represent Ms. Nicolaou. Upon further questioning, Nicolaou testified that attorneys at Gray Reed provided her their advice concerning her authority to serve a as responsible party in April and May, and that they were not representing her personally during this time. Nicolaou Depo., 29–31.

58. **Question 7:** “Was Gray Reed’s conclusion the same as yours as it relates to your determination that the Partnerships had authorization to retain you as Responsible Party?” Nicolaou Depo., 30–31.

59. A response to this question is not privileged since Gray Reed did not represent Ms. Nicolaou. Upon further questioning, Nicolaou testified that attorneys at Gray Reed provided her their advice concerning her authority to serve a as responsible party in April and May, and that they were not representing her personally during this time. Nicolaou Depo., 29-31.

60. **Question 8:** “Do you know what Gray Reed did to make the determination that the claims were derivative?” Nicolaou Depo., 127.

61. This question does not elicit a response that is subject to attorney client privilege as its not seeking the substance of a communication, but rather simply whether Ms. Nicolaou has

knowledge of what her attorneys did to support her conclusion and position that the claims were derivative in nature. To the extent the privilege applies, it has been waived by the pleadings and other papers filed by the Debtors in these cases.

62. For the bases set forth above, Movants request that Mr. Stump and Ms. Nicolaou be compelled to answer the foregoing questions and such other supplemental questions directly raised by their answers.

### **CONCLUSION**

Based on the foregoing, Movants respectfully requests that the Court:

- (a) Grant this Motion in its entirety;
- (b) Compel Darwin Stump to provide further testimony answering the questions identified in this Motion.
- (c) Compel Karen Nicolaou to provide further testimony answering the questions identified in this Motion.
- (d) Award Movants reasonable attorneys' fees and costs expended in bringing this Motion, and such other and further relief, and law and equity to which Movants may be entitled.

Respectfully submitted,

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THE SCHULEIN FAMILY TRUST, THE MICHAEL A. GAFFEY AND  
JOANNE M. GAFFEY LIVING TRUST, MARCH 2000,  
THE GLICKMAN FAMILY TRUST DATED AUGUST 29, 1994 AND  
THE WILLIAM J. AND JUDITH A. McDONALD LIVING TRUST  
DATED APRIL 16, 1991

### **CERTIFICATE OF CONFERENCE**

The undersigned certifies the following: On May 24, 2019, the undersigned met and conferred with James Ormiston, Lydia Webb, and Amber Carson, Debtors' counsel, and Robin Russell, Michael Morfey, and Michele Blythe, counsel for PDC. Counsel agree that the issues in this Motion cannot be resolved.

/s/ Thomas G. Foley  
Thomas G. Foley

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Motion to Compel Further Testimony Of Darwin Stump And Karen Nicolaou and Supporting Brief* was served on the party below via the Court's ECF filing system, on the 24th day of May 2019:

/s/ Thomas G. Foley  
Thomas G. Foley



# **EXHIBIT A**

# **EXHIBIT A**

12:51:20 1  
12:51:20  
12:51:20 2 Rule 30(b)(6) DEPOSITION OF: DARWIN STUMP  
12:51:20  
12:51:20 3 DATE: May 15, 2019  
12:51:20  
12:51:20 4  
12:51:20 DISCLAIMER: This uncertified rough draft transcript  
12:51:20 5 is unedited and uncertified and may contain  
12:51:20 untranslated words, a note made by the reporter, a  
12:51:20 6 misspelled proper name, and/or word combinations that  
12:51:20 do not make sense. All such entries will be corrected  
12:51:20 7 on the final certified transcript which we will  
12:51:20 deliver to you in accordance with your requested  
12:51:20 8 delivery arrangements.  
12:51:20 Due to the need to correct entries prior  
12:51:20 9 to certification, this rough draft transcript can be  
12:51:20 used only for the purposes of annotating counsel's  
12:51:20 10 notes and cannot be used or cited in any court  
12:51:20 proceedings or to distribute to other parties to the  
12:51:20 11 case who have not purchased a transcript copy.  
12:51:20  
12:51:20 12 CONSENT: By opting for this rough draft transcript,  
12:51:20 you have agreed: (1) To purchase the final transcript  
12:51:20 13 at the agreed-upon rate; (2) Not to furnish this rough  
12:51:20 draft transcript, either in whole or in part, on disk  
12:51:20 14 or hard copy, via modem or computer, or by any other  
12:51:20 means, to any party or counsel to the case.  
15  
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11:21:48 1 partnership, correct?

11:21:51 2 A. That is correct.

11:21:58 3 Q. Now, could you look, sir, at Section  
11:22:00 4 1.08(n) as in Nancy of the partnership agreement. It  
11:22:07 5 would be page A4.

11:22:22 6 A. Which section, I'm sorry?

11:22:24 7 Q. Small (n) as in Nancy. And if you read  
11:22:28 8 that to yourself quietly, I'm going to read it into  
11:22:32 9 the record, "'Drilling and Completion Costs' shall  
11:22:35 10 mean all costs, excluding Operating Costs, of  
11:22:39 11 drilling, completing, testing, equipping and bringing  
11:22:43 12 a well into production or plugging and abandoning it,  
11:22:49 13 including all labor and chemicals, drillstem tests and  
11:22:50 14 core analysis, engineering and well site geological  
11:22:50 15 expenses, electric logs, costs of plugging back,  
11:22:50 16 deepening, rework operations, repairing or performing  
11:22:50 17 remedial work of any type, costs of plugging and  
11:23:17 18 abandoning any well participated in by the  
11:23:20 19 Partnership, and reimbursements and compensation to  
11:23:24 20 well operators, including charges paid to the Managing  
11:23:27 21 General Partner as unit operator during the drilling  
11:23:31 22 and completion phase of the well, plus the costs of  
11:23:33 23 the gathering system and acquiring leasehold  
11:23:34 24 interests."

11:23:37 25 Now, sir, somebody who, as you testified

11:23:40 1 earlier, is familiar with how these partnerships were  
11:23:42 2 prepared, as an accountant for the partnerships at  
11:23:45 3 PDC, what's your understanding here of -- as whether  
11:23:49 4 plugging and abandonment costs are an Inc. tangible  
11:23:53 5 drilling cost?

11:23:55 6 MR. MORFEY: Objection, legal conclusion,  
11:23:57 7 document speaks for itself.

11:24:03 8 A. I read this as drilling completion costs  
11:24:09 9 assuming all costs excluding operating costs of  
11:24:12 10 drilling, completing, equipping, and bringing a well  
11:24:16 11 into production or plugging and abandonment. There's  
11:24:22 12 a place when you drill a well that you decide to put  
11:24:26 13 in production or you plug and abandon it right then.

11:24:30 14 Q. (BY MR. FOLEY) And those costs, both,  
11:24:33 15 are intangible drilling costs, correct?

11:24:36 16 MR. MORFEY: Same objection.

11:24:38 17 A. No.

11:24:40 18 Q. (BY MR. FOLEY) Is plugging -- well,  
11:24:41 19 under Section -- if you read together Section 1.08(n)  
11:24:48 20 as that Nancy and Section 2.01(b) which PDC pays all  
11:24:54 21 tangible costs as well as intangible drilling costs  
11:24:58 22 whose responsibility under those two sections it was  
11:25:00 23 to pay plugging and abandonment expenses for the  
11:25:03 24 partnership wells?

11:25:04 25 MR. MORFEY: Hold on a second. I'm going

11:25:06 1 to object that it calls for a legal conclusion and the  
11:25:12 2 document speaks for itself. I'm further going to  
11:25:14 3 object that this is totally outside the topics that  
11:25:17 4 you've asked for a corp rep. Your topic is the  
11:25:20 5 ability of PDC to pay for asset retirement costs. All  
11:25:27 6 right? That's very narrow. This is outside of that  
11:25:31 7 scope.

11:25:32 8 MR. FOLEY: Counsel, again, without  
11:25:33 9 getting into a long colloquy, we are also saying it's  
11:25:36 10 a bad faith bankruptcy filing and these plugging and  
11:25:39 11 abandonment costs are used as an excuse to justify the  
11:25:43 12 bankruptcy filing so the PDC could get the advantage  
11:25:47 13 of purchasing the assets of the bankruptcy fire sale,  
11:25:50 14 so it is well within the scope.

11:25:53 15 MR. MORFEY: Then you can ask him did you  
11:25:54 16 file the bankruptcy to avoid plugging and abandonment  
11:25:59 17 liability you can asks him that question. That's not  
11:26:01 18 what we're doing, we're going through here and we're  
11:26:03 19 doing merits discovery with respect to provisions of  
11:26:07 20 the contract that are nowhere in your corporate  
11:26:10 21 notice. This -- these provisions that we're talking  
11:26:13 22 aren't anywhere in here.

11:26:14 23 MR. FOLEY: Counsel, he's here as a  
11:26:16 24 percipient witness today you said you I only get him  
11:26:20 25 once.

11:26:20 1 MR. MORFEY: That's right.

11:26:21 2 MR. FOLEY: Individually and as a

11:26:22 3 30(b)(6). So this is him individually as somebody who

11:26:24 4 has who testified he was involved in the preparation

11:26:27 5 of the part partnership agreements. He was the person

11:26:29 6 at PDC who does partnership accounting not as a lawyer

11:26:33 7 just as an accountant I'm asking the question.

11:26:36 8 MR. MORFEY: You can ask him what the

11:26:37 9 basis of the bankruptcy filing was in his mind as he

11:26:41 10 understands it, all right? But we're not going to go

11:26:45 11 down the rabbit trail of full-blown merits discovery

11:26:48 12 provisions of the contract that are nowhere in your

11:26:50 13 motion to dismiss.

11:26:57 14 Q. (BY MR. FOLEY) Could you need the

11:26:57 15 question back again.

11:26:58 16 A. I think so.

11:27:33 17 (The last question was read back as

11:27:33 18 follows: "If you read together Section 1.08(n) as

11:27:33 19 that Nancy and Section 2.01(b) which PDC pays all

11:27:33 20 tangible costs as well as intangible drilling costs

11:27:33 21 whose responsibility under those two sections it was

11:27:33 22 to pay plugging and abandonment expenses for the

11:27:33 23 partnership wells?")

11:27:34 24 MR. MORFEY: And I'm going to renew my

11:27:37 25 objections and instruct up not to answer.

11:27:40 1 THE DEPONENT: Okay.

11:27:42 2 MR. FOLEY: Would you mark that as a  
11:27:43 3 question for taking up with the judge. Thank you.  
11:27:46 4 \*MARKED.

11:27:47 5 Q. (BY MR. FOLEY) Now, isn't it a fact,  
11:27:53 6 sir, that PDC before plugging and abandoning these  
11:28:00 7 wells for 2006/2007 partnerships was required to get  
11:28:03 8 the consent of the limited partners?

11:28:08 9 A. No.

11:28:10 10 Q. All right. We'll mark as our next  
11:28:24 11 exhibit, which is Exhibit 17 the drilling and  
11:28:38 12 operating agreement between PDC as the managing  
11:28:42 13 general partner of the partnerships and as PDC as the  
11:28:45 14 operator.

11:29:00 15 (Deposition Exhibit 17 was marked.)

11:29:02 16 Q. And we'll mark as Exhibit 18, the form of  
11:29:12 17 the drilling partnership agreement between PDC as the  
11:29:20 18 managing general partner of the 2007 partnership and  
11:29:22 19 PDC as the operator.

11:29:35 20 (Deposition Exhibit 18 was marked.)

11:29:37 21 Q. We'll start, sir, with Exhibit 17. Do  
11:29:53 22 you recognize that document?

11:29:56 23 A. Yes, I do.

11:29:58 24 Q. What do you recognize it to be?

11:30:01 25 A. The form of drilling and operating

11:47:14 1 Q. (BY MR. FOLEY) But my question is why  
11:47:16 2 didn't you start suspending cash distributions or  
11:47:20 3 start reserving money earlier in point of time for  
11:47:23 4 both partnerships so that the well -- the partnerships  
11:47:26 5 would have had enough money for paying plugging and  
11:47:28 6 abandonment costs rather than allow them to cumulate  
11:47:32 7 and to accumulate without withholding from  
11:47:35 8 distributions which caused Karen Nicolaou to say this  
11:47:37 9 is the reason I think we should file bankruptcy?

11:47:40 10 A. I don't know.

11:47:41 11 Q. But weren't you one of the people at PDC  
11:47:43 12 that was responsible for coming up with the schedule  
11:47:45 13 of plug you go and abandonment costs?

11:47:49 14 A. One of the people involved.

11:47:51 15 Q. Okay. So as one of the people involved,  
11:47:54 16 all wells at some point in time have to be plugged and  
11:47:57 17 abandoned, correct?

11:47:59 18 A. That would be a correct assumption.

11:48:01 19 Q. So this is not something unanticipated as  
11:48:05 20 to PDC as an experienced managing general partner of  
11:48:11 21 partnerships, correct?

11:48:13 22 A. I don't know.

11:48:14 23 Q. You don't -- how many partnerships did  
11:48:18 24 PDC act as managing general partner for that you're  
11:48:22 25 aware of?



11:48:23 1 A. In the -- it would be more than 75.

11:48:25 2 Q. Okay. So -- and one of the things that  
11:48:30 3 PDC, as a managing general partner of the partnership  
11:48:32 4 did, was determine what the reserves of the  
11:48:37 5 partnerships were, correct?

11:48:42 6 A. We had reserve reports prepared.

11:48:44 7 Q. Both internally and outside by required  
11:48:48 8 Scott, correct?

11:48:49 9 A. That is correct.

11:48:50 10 Q. So those reserve reports are supposed to  
11:48:54 11 enable PDC or investors to understand how much  
11:48:59 12 reserves oil and gas in the ground the partnerships  
11:49:02 13 have, correct?

11:49:03 14 A. That is correct.

11:49:04 15 Q. So if PDC as the managing general partner  
11:49:07 16 knows how much oil and gas these two partnerships '06  
11:49:11 17 and '07 have in the ground, it knows how much its  
11:49:16 18 operating those wells on a monthly basis, right?

11:49:18 19 A. That is correct.

11:49:19 20 Q. It's selling the product, correct, pore  
11:49:23 21 the partnerships it's selling the product?

11:49:26 22 A. Yes.

11:49:27 23 Q. So with all of that information about  
11:49:28 24 what the reserves are, what the costs are to operate,  
11:49:30 25 how was it that PDC that's managed more than 75

11:49:35 1 partnerships didn't reserve sufficiently for the '06  
11:49:39 2 and '07 partnerships to cover plugging and abandonment  
11:49:43 3 costs?

11:49:45 4 MR. MORFEY: I'm objecting. This is --  
11:49:47 5 this is clearly outside of the scope, Tom, because  
11:49:50 6 you're now attacking the witness not based on the  
11:49:53 7 existence of the fact that there wasn't sufficient  
11:49:57 8 cash to plug and abandon but the motivation or  
11:50:00 9 explanation for that. That doesn't have anything to  
11:50:02 10 do with the motion to dismiss. And I'm instructing  
11:50:06 11 him not to answer. That's a merits question.

11:50:09 12 MR. FOLEY: Well, I will say and I'll  
11:50:11 13 pull it out for you over the lunch hour, if you would  
11:50:14 14 like, your esteemed colleague Jason Brookner in a  
11:50:19 15 pleading filed in opposition to the limited  
11:50:24 16 partners -- the five limited partners' motion to  
11:50:27 17 dismiss said that in looking at what are the grounds  
11:50:30 18 for a bad faith bankruptcy filing, you look at one of  
11:50:34 19 the factors is motive and if you look at those cases  
11:50:37 20 it says you look at the actions of the general partner  
11:50:39 21 of a partnership.

11:50:40 22 MR. MORFEY: The motive for filing the  
11:50:42 23 bankruptcy, not the rationale for some fact, right?  
11:50:48 24 It's the motive for filing the bankruptcy. You're  
11:50:51 25 asking about the rationale or motive for supposedly

11:50:53 1 not reserving enough funds. Totally different thing.  
11:50:56 2 And that's why I'm instructing him not to answer.  
11:51:02 3 MR. FOLEY: For the record, so it's a  
11:51:03 4 complete record for judge to rule on, what I'm saying  
11:51:05 5 is PDC did exactly what it did with the eastern  
11:51:08 6 partnerships earlier with Karen Nicolaou. It decided  
11:51:12 7 the way to get these assets when its partnership  
11:51:14 8 buy-back plan was in impeded by the Schulein  
11:51:19 9 litigation said, Okay, let's create a scenario where  
11:51:23 10 the partnerships don't have a reserved enough money to  
11:51:27 11 pay plugging and abandonment costs and even though we  
11:51:30 12 PDC are supposed to pay the plugging and abandonment  
11:51:33 13 costs if the partnerships don't have the money, we'll  
11:51:36 14 just not reserve enough money, which would create a  
11:51:39 15 very large debt to PDC, the only creditor of the  
11:51:42 16 partnerships, and that's the rationale for Karen  
11:51:45 17 Nicolaou to file bankruptcy. That's why it's  
11:51:48 18 relevant. It goes to the motive of both PDC and Karen  
11:51:52 19 Nicolaou for entering into the agreement and  
11:51:54 20 transactions she did for the '06 and '07 partnerships.

11:51:59 21 MR. MORFEY: Way off in the weeds.

11:52:01 22 MR. FOLEY: So you're instructing him not  
11:52:03 23 to answer?

11:52:03 24 MR. MORFEY: Yes, sir.

11:52:04 25 MR. FOLEY: Would you mark that question

11:52:05 1 as well, please. \*MARKED.

11:52:36 2 Q. Our next exhibit.

11:52:50 3 (Deposition Exhibit 21 was marked.)

11:52:52 4 Q. Do you recognize Exhibit 21, sir.

11:53:15 5 A. Yes, I do.

11:53:16 6 Q. Okay. Did you have any -- in fact, you

11:53:19 7 were the name at the bottom as the person sending this

11:53:23 8 document out to the limited partners, right?

11:53:25 9 A. That is correct.

11:53:25 10 Q. ^And you're notifying them, "As of

11:53:27 11 March 31, of 2017 that PDC as the managing general

11:53:32 12 partner has determined that due to current production

11:53:35 13 rate at the partnership wells, substantially low

11:53:39 14 commodity prices and current EPA and COGIS air

11:53:43 15 regulation requirements the partnership needs to plug

11:53:46 16 and abandon between 20 to 25 of its 73 wells in the

11:53:50 17 next 9 to 12 months."

11:53:55 18 Did I accurately quote that, your letter?

11:53:57 19 A. Yes, sir.

11:53:58 20 Q. So -- and this is with respect to the

11:54:01 21 2007 partnership, correct? It said right here at the

11:54:05 22 top?

11:54:06 23 A. Yeah. '06 is behind.

11:54:09 24 Q. And there is an identical letter to the

11:54:12 25 members of the 'on 06 partnership, second page of

11:54:16 1 Exhibit 21, correct.

11:54:19 2 A. Yeah.

11:54:20 3 Q. So you're telling the limited partners of  
11:54:22 4 the partnerships that one of the reasons PDC the  
11:54:24 5 managing general partner has determined to suspend  
11:54:27 6 their deposition -- their distributions is that  
11:54:30 7 current EPA and COGIS regulation requirements, aren't  
11:54:36 8 you saying that?

11:54:40 9 A. Yes, among other reasons also.

11:54:42 10 Q. Okay. So the fact that PDC had to bring  
11:54:47 11 older wells into compliance with state and federal  
11:54:50 12 regulations and spend money to do that or plug and  
11:54:54 13 abandon the wells and not have to do that, you're  
11:54:59 14 letting the limited partners know because of those air  
11:55:01 15 quality regulations that's one of the reasons their  
11:55:04 16 distributions have been suspended, correct?

11:55:07 17 A. That would be one of the reasons,  
11:55:08 18 correct.

11:55:09 19 Q. All right. Now, going on a whose in a  
11:55:18 20 better position to decide withholding money based on  
11:55:22 21 commodity prices and low commodity prices and what's  
11:55:25 22 hang, is it the PDC or the limit partners that have  
11:55:29 23 more information on that?

11:55:30 24 A. It would be PDC as managing GP.

11:55:34 25 Q. And at some point -- well, for many

11:55:35 1 years, PDC hedged partnership's production, did it  
11:55:40 2 not?

11:55:42 3 A. That is true.

11:55:43 4 Q. And for the record, can you tell us what  
11:55:44 5 hedging for the partnership's production means to you?

11:55:52 6 A. Basically at certain points in time, we  
11:55:55 7 would enter into fixed swaps and/or collars for price  
11:56:03 8 protection of the partnerships.

11:56:05 9 Q. So that if commodity prices fell, the  
11:56:09 10 partnerships wouldn't experience as much loss because  
11:56:11 11 of hedging, there was some protection for them,  
11:56:15 12 correct?

11:56:19 13 A. That is correct.

11:56:20 14 Q. And PDC hedged all of its own protection,  
11:56:23 15 not just the partnerships, but it hedged its own  
11:56:26 16 production, did it not?

11:56:27 17 MR. MORFEY: Objection, it's outside of  
11:56:28 18 the scope of the matters that are pending.  
11:56:31 19 Instructing not to answer. What does hedging have to  
11:56:34 20 do with anything, Tom.

11:56:36 21 Q. (BY MR. FOLEY) Sir, isn't it a fact that  
11:56:38 22 PDC made a decision as managing general partner to  
11:56:40 23 stop hedging the partnership's production?

11:56:44 24 MR. MORFEY: Same objection. Hedging is  
11:56:46 25 not before the court.

11:56:48 1 MR. FOLEY: Well, since the judge is  
11:56:49 2 going to see this question, please mark it. \*MARKED.  
11:56:51 3 PDC unilaterally made the decision to stop hedging the  
11:56:55 4 partnerships while it continued to hedge its own  
11:56:59 5 production so that when prices fell partnerships had  
11:57:02 6 less protection, again, this was their discretion,  
11:57:05 7 again, it goes to creating now we've got to plug and  
11:57:09 8 abandon wells, there's not enough money because of low  
11:57:13 9 commodity prices that's where it's going and it's  
11:57:15 10 directly relevant to motive and scheme.

11:57:18 11 MR. MORFEY: Yeah. It's not before the  
11:57:19 12 court. It's totally outside the scope of what we're  
11:57:22 13 here on today and what we've agreed to be here on  
11:57:24 14 today and what this witness was prepared for here  
11:57:28 15 today so that's why it's out of bounds on what to ask  
11:57:31 16 him today.

11:57:31 17 MR. FOLEY: No, this is not out of bounds  
11:57:33 18 because the motion to dismiss says this was a bad  
11:57:36 19 faith failing to enable PDC aided and abetted by Karen  
11:57:40 20 Nicolaou to gain control of the partnership assets in  
11:57:43 21 derogation of the rights of the partnership agreement.

11:57:46 22 MR. MORFEY: I understand that's how  
11:57:47 23 you're trying to shoehorn it in.

11:57:50 24 Q. (BY MR. FOLEY) Are you going to follow  
11:57:52 25 your counsel's instruction and not answer that

11:57:54 1 question about why PDC decided to stop hedging  
11:57:57 2 partnership operations to protect them from low  
11:57:59 3 commodity prices?

11:58:01 4 A. Yes, I'm refusing to answer the question  
11:58:03 5 upon advice of counsel.

11:58:06 6 Q. Thank you.

11:58:13 7 MR. FOLEY: And by the way, my colleague  
11:58:15 8 is reminding me that in connection with our opposition  
11:58:16 9 of Karen Nicolaou's appointment this goes to whether  
11:58:22 10 Karen Nicolaou undertook any due diligence as to why  
11:58:26 11 there were large plugging and abandonment abilities  
11:58:29 12 that were not properly reserved for and looking at  
11:58:32 13 potential claims against PDC on behalf of the  
11:58:36 14 partnership derivative claims which he then you are  
11:58:40 15 purports without doing that due diligence in the term  
11:58:42 16 sheet and her proposed Chapter 11 plan to release.  
11:58:46 17 So, again, that's why it's relevant?

11:58:50 18 MR. ORMISTON: Object to the speech.

11:58:52 19 MR. MORFEY: Tom, you're more than  
11:58:54 20 welcome to ask the witness what he's aware of that  
11:58:57 21 Ms. Nicolaou did due diligence on, the data that she  
11:59:01 22 asked for, all of those are on the table.

11:59:24 23 Q. (BY MR. FOLEY) Sir, would you pull up  
11:59:26 24 your copy of the 2006 partnership agreement again for  
11:59:29 25 me.



11:59:33 1 A. Okay. Exhibit 16.

11:59:39 2 Q. And look at Section 502. And I'm going

11:59:41 3 to ask you to look particularly at 502(k) as in

11:59:56 4 kangaroo. It's on page A20. ^Do you see that it

12:00:03 5 says, "The partnership may borrow funds in furtherance

12:00:06 6 of its operations for the Managing General Partner

12:00:09 7 and/or its affiliates or third persons."

12:00:15 8 Did I read that correctly?

12:00:19 9 A. That is correct.

12:00:20 10 Q. Now, so these partnerships, '06 and '07,

12:00:24 11 unlike all of the prior partnerships that PDC were

12:00:29 12 publicly reporting, this partnership expressly could

12:00:32 13 borrow money for operations, correct?

12:00:40 14 A. No.

12:00:42 15 Q. (BY MR. FOLEY) Why -- why could it not

12:00:44 16 borrow money for operations?

12:00:46 17 A. That -- I answered no to your overall

12:00:50 18 question, sir.

12:00:51 19 Q. All right. Let me phrase it down, then.

12:00:53 20 Isn't it true that under the '06 and '07 partnership

12:00:57 21 agreements both partnerships could borrow funds

12:01:00 22 inputter answer of its operations from either PDC as a

12:01:03 23 managing general partner or from independent persons?

12:01:07 24 A. That is true.

12:01:07 25 Q. And isn't it true that none of the prior

03:10:23 1 Q. In layman's language?

03:10:25 2 MR. MORFEY: Objection, form. Asked and  
03:10:26 3 answered.

03:10:29 4 Q. (BY MR. FOLEY) I'm asking you as a man  
03:10:30 5 that prepared and wrote this, where did you get this  
03:10:33 6 understanding? Did you talk with some of the  
03:10:35 7 engineers at PDC?

03:10:36 8 A. Yes, this -- the -- I consulted with  
03:10:45 9 Mr. Roach, as I had. He worked on this -- this  
03:10:49 10 agreement. And it's a -- he says and I believe that  
03:10:53 11 it is a proven fact that once this happens, the  
03:10:56 12 vertical wells do not start off with where they were  
03:11:01 13 on production after the well -- horizontal well is  
03:11:07 14 fraced within 1500 feet of it.

03:11:09 15 Q. So if you plug and abandoned a well,  
03:11:12 16 that's permanent, you're not going to be reopen it,  
03:11:13 17 correct?

03:11:13 18 A. Correct.

03:11:14 19 Q. But if you're just shutting it in so you  
03:11:16 20 can do the drilling or fracing of the horizontal well,  
03:11:18 21 you have the opportunity to re-open that well after a  
03:11:23 22 period of time, correct?

03:11:23 23 A. Correct.

03:11:24 24 Q. And that's what this is saying when that  
03:11:27 25 happens you're not going to likely get the same

03:11:30 1 production you had before from the vertical well?

03:11:33 2 A. Correct.

03:11:33 3 MR. MORFEY: Object.

03:11:36 4 THE DEPONENT: I'm sorry.

03:11:37 5 MR. MORFEY: That's all right. I wanted  
03:11:38 6 to object to the form of that. Go ahead.

03:11:40 7 Q. (BY MR. FOLEY) Now, I know it's a big  
03:11:42 8 field, the Wattenberg Field, the PDC has many  
03:11:45 9 different horizontal wells there. But has PDC, as the  
03:12:03 10 operator, drilled any horizontal wells in the  
03:12:07 11 Wattenberg Field within 1500 feet of any of the 2006  
03:12:11 12 or 2007 partnerships' vertical wells?

03:12:14 13 A. Yes, we have.

03:12:16 14 Q. And do you know approximately how many?

03:12:19 15 A. I do not know. I can.

03:12:22 16 Q. More than five?

03:12:25 17 A. I would be speculating, but I would --

03:12:28 18 MR. MORFEY: Don't speculate.

03:12:30 19 A. I do not want to speculate.

03:12:32 20 Q. (BY MR. FOLEY) Well, without  
03:12:32 21 speculating, based on what you've actually been told  
03:12:35 22 by people, what is your understanding of approximately  
03:12:48 23 how many wells -- horizontal wells PDC has drilled  
03:12:52 24 within the Wattenberg Field within 1500 feet of the  
03:12:56 25 partnerships' vertical wells?

03:12:58 1 MR. MORFEY: Holes on a second. Tom I'm  
03:12:59 2 going to object. We are outside and have been outside  
03:13:02 3 the scope of what discovery is supposed to be about  
03:13:06 4 pursuant to our agreement. And these issues don't  
03:13:10 5 relate to the motions pending for hearing.

03:13:13 6 MR. FOLEY: I respectfully disagree, sir.  
03:13:16 7 Again, we believe that PDC, as the managing general  
03:13:20 8 partner, took advantage of horizontal drilling  
03:13:24 9 opportunities, and the result of that, when they  
03:13:28 10 drilled within 1500 feet of partnership wells was the  
03:13:31 11 partnership wells had to be plugged abandoned or had  
03:13:35 12 to be shut in and when they were plugged and abandoned  
03:13:41 13 that was charged to the partnerships if they were shut  
03:13:43 14 in if they were ever to be re-opened they would not  
03:13:46 15 have the same production and it's a reason that PDC  
03:13:48 16 said we want to get rid of these partnerships and just  
03:13:52 17 focus on our horizontal drilling. And that's why they  
03:13:56 18 did this whole bankruptcy plan with Karen Nicolaou  
03:13:59 19 because they knew they could trust her to do what they  
03:14:02 20 wanted because she did exactly that for the eastern  
03:14:05 21 partnerships. So it is within showing the motive of  
03:14:08 22 PDC and it's accomplice Ms. Nicolaou.

03:14:13 23 MR. MORFEY: I appreciate that conspiracy  
03:14:16 24 theory and you're welcome to ask him if that was the  
03:14:18 25 motivation for filing the bankruptcy case or hiring

03:14:21 1 the responsible party; but we're not going to get off  
03:14:24 2 into the weeds of your merits case.

03:14:28 3 MR. FOLEY: Are you instructing him not  
03:14:29 4 to answer the question?

03:14:30 5 MR. MORFEY: I don't think there's a  
03:14:31 6 question on the table. I'm giving you a preview of  
03:14:33 7 coming attractions.

03:14:35 8 MR. FOLEY: I believe there is a question  
03:14:36 9 on the table I'll ask the reporter to read it back,  
03:14:39 10 please.

03:15:03 11 (The last question was read back as  
03:15:03 12 follows: "Well, without speculating, based on what  
03:15:03 13 you've actually been told by people, what is your  
03:15:03 14 understanding of approximately how many wells --  
03:15:03 15 horizontal wells PDC has drilled within the Wattenberg  
03:15:03 16 Field within 1500 feet of the partnerships' vertical  
03:15:03 17 wells?")

03:15:05 18 MR. MORFEY: I'm going to instruct him  
03:15:06 19 not to answer. We've answered too many questions  
03:15:08 20 already that are out of bounds on that topic.

03:15:13 21 MR. FOLEY:

03:15:28 22 (Deposition Exhibit 38 was marked.)

03:15:29 23 MR. FOLEY: Would you cite that question  
03:15:30 24 for me, please, mark that question to take it to the  
03:15:33 25 court. \*MARKED.

03:15:40 1 Q. (BY MR. FOLEY) For the record,  
03:15:41 2 Exhibit 38 is an email from Darwin stump to Karen  
03:15:45 3 Nicolaou, John graze, and Joseph Rovira dated  
03:15:50 4 October 1, 2018. Bears Bates numbers 1599. And the  
03:15:57 5 second page does not appear to have a bait number on  
03:16:01 6 it. Do you recognize this email?  
03:16:05 7 A. Yes, sir.  
03:16:06 8 Q. Did you prepare this email?  
03:16:11 9 A. Yes.  
03:16:12 10 Q. And do you know what the second page of  
03:16:14 11 this attached to the email, what is that?  
03:16:23 12 A. It's a -- I'm just looking at the -- it  
03:16:46 13 is a map of the Wattenberg Field with partnership  
03:16:54 14 wells marked and horizontal wells within 460 feet, as  
03:17:04 15 it says, within an '06 or '07 well.  
03:17:10 16 Q. That's a PDC horizontal well drilled  
03:17:13 17 within 460 feet?  
03:17:15 18 A. PDC or noble energy.  
03:17:17 19 Q. Okay?  
03:17:17 20 A. There's two different on there.  
03:17:19 21 Q. And focusing just on PDC, you continue in  
03:17:22 22 your email, you say, "If you pick a horizontal well  
03:17:25 23 drilled on acreage where the partnerships have a  
03:17:29 24 vertical well, we can do an analysis of what working  
03:17:33 25 interest the partnership would have had in the

03:29:50 1 facilities associated with the four wells require  
03:29:54 2 upgrades pursuant to PDC's Clean Air Act Consent  
03:29:58 3 Decree in order to continue to operate. These wells  
03:30:01 4 are low producers and facility upgrades are  
03:30:04 5 uneconomic; therefore the wells have been shut in and  
03:30:07 6 not allowed to produce without additional retrofits.  
03:30:10 7 The same methodology as applied to PDC wells has been  
03:30:17 8 used to evaluate these partnership wells; based on  
03:30:21 9 evaluation these wells are recommended for P&A." And  
03:30:24 10 then there's four wells.

03:30:27 11 Does this look like an official business  
03:30:29 12 record of PDC?

03:30:30 13 A. Yes.

03:30:30 14 Q. Now, PDC stopped fracing its vertical  
03:30:34 15 wells in 2013, correct?

03:30:41 16 A. I don't believe we drilled any vertical  
03:30:44 17 wells in 2013.

03:30:45 18 Q. I said fraced. PDC stopped fracing its  
03:30:48 19 vertical wells in the Wattenberg Field in 2013,  
03:30:52 20 correct?

03:30:57 21 A. I don't believe that's true.

03:31:04 22 MR. FOLEY: PDC in 2013 adopted a policy  
03:31:07 23 not refracing its own vertical wells in the Wattenberg  
03:31:09 24 Field, correct.

03:31:20 25 A. Claire -- please narrow your question.

03:31:22 1 Q. (BY MR. FOLEY) Okay. In the year 2013,  
03:31:27 2 PDC stopped refracing PDC's own vertical wells in the  
03:31:36 3 Wattenberg Field?  
03:31:42 4 A. We did a few refracs in 2013.  
03:31:46 5 Q. Did you do any more in 2014 on PDC's own  
03:31:50 6 wells?  
03:31:50 7 A. We did not.  
03:31:51 8 Q. In 2015?  
03:31:52 9 A. We did not.  
03:31:53 10 Q. In 2016?  
03:31:54 11 A. Not to my knowledge.  
03:31:55 12 Q. In 2017?  
03:31:57 13 A. Not to my knowledge.  
03:31:58 14 Q. 2018?  
03:31:58 15 A. Not to my knowledge.  
03:32:00 16 Q. Now, isn't it a fact, sir, that PDC  
03:32:05 17 stopped that program because it got a better return on  
03:32:08 18 investments by drilling horizontal wells rather than  
03:32:11 19 refracing on its own vertical wells because the  
03:32:15 20 vertical wells had the problems with high line  
03:32:19 21 pressure and the problems with the consent decree with  
03:32:22 22 the EPA?  
03:32:24 23 MR. MORFEY: Objection, outside the  
03:32:25 24 scope. Instruct you not to answer.  
03:32:28 25 MR. FOLEY: Would you mark that question,



03:32:29 1 please. \*MARKED.

03:32:31 2 Q. (BY MR. FOLEY) Why did PDC stop

03:32:33 3 refracing its vertical wells in the Wattenberg Field

03:32:38 4 in -- sometime in 2013?

03:32:41 5 MR. MORFEY: Same objection and

03:32:41 6 instruction.

03:32:44 7 MR. FOLEY: You're instructing him not to

03:32:46 8 answer.

03:32:47 9 MR. MORFEY: Yes, sir.

03:32:50 10 Q. (BY MR. FOLEY) Isn't the reason PDC did

03:32:51 11 that, sir, is because it got a better return on

03:32:56 12 investment on a horizontal well and decided to put its

03:33:00 13 money there instead of fracing its vertical wells?

03:33:04 14 MR. MORFEY: Same objection, same

03:33:05 15 instruction. Outside the scope of the agreed bounds

03:33:08 16 of discovery.

03:33:10 17 Q. (BY MR. FOLEY) And isn't that the same

03:33:12 18 reason that PDC decided to stop refracing partnership

03:33:15 19 wells in 2013 was if it was going to refrac a

03:33:20 20 partnership well, it was kind of counter productive

03:33:25 21 because you had to take into account if you wanted to

03:33:29 22 put a -- a horizontal well in proximity to it, you

03:33:33 23 might have to plug and abandon that well or replace

03:33:36 24 the well head?

03:33:38 25 MR. MORFEY: Same objection and same

03:33:39 1 instruction.

03:33:43 2 MR. FOLEY: Would you that question for  
03:33:44 3 me, please. \*MARKED.

03:33:50 4 Q. (BY MR. FOLEY) The next document we'll  
03:34:20 5 look at, sir, is Exhibit 26. For the record,  
03:34:34 6 Exhibit 26 is entitled Declaration Of Karen Nicolaou  
03:34:38 7 In Support Of Chapter 11 Petitions And First Day  
03:34:41 8 Motions. Have you ever seen this document before,  
03:34:44 9 sir?

03:35:04 10 A. Yes, I have.

03:35:05 11 Q. All right. Now, if you could look at  
03:35:06 12 Exhibit A to this document, it says Term Sheet. Do  
03:35:10 13 you see that? What, if any, involvement did you have  
03:35:25 14 on behalf of PDC in the negotiation of this term sheet  
03:35:28 15 with Ms. Nicolaou?

03:35:44 16 A. I was involved in gathering numbers that  
03:35:48 17 we put in here. This -- this was written by our  
03:35:55 18 counsel. And I added comments to it as did -- at PDC  
03:36:03 19 Mr. Am doll.

03:36:09 20 Q. So you're familiar with this term sheet?

03:36:11 21 A. Yes.

03:36:12 22 Q. All right. So if we look at the second  
03:36:16 23 page there's something that says purchase price. It  
03:36:20 24 says purchaser to pay \$304,000 for the oil and gas  
03:36:24 25 properties in the Rockies Region 2006 partnership.

03:36:27 1 How was that number arrived at?

03:36:32 2 MR. MORFEY: And, Darwin, as with all of  
03:36:33 3 these questions about this term sheet, since you said  
03:36:37 4 it was drafted by your lawyers, I want you to be  
03:36:40 5 cautious when answering Mr. Foley's questions to not  
03:36:43 6 disclose attorney-client information all right? If  
03:36:48 7 you know the answer without going into attorney-client  
03:36:50 8 communications you can provide it, but I want you to  
03:36:52 9 be sensitive to that.

03:36:58 10 THE DEPONENT: Okay.

03:37:00 11 MR. MORFEY: So his question is how of  
03:37:02 12 the \$304,000 calculated.

03:37:09 13 A. We had our reserve engineering department  
03:37:12 14 run a -- a reserve report on the wells that was  
03:37:20 15 derived from a -- I believe it was 7/31/18 reserve  
03:37:36 16 report that was rolled forward from 12/31/17 at  
03:37:41 17 current pricing.

03:37:41 18 Q. (BY MR. FOLEY) And was this only on the  
03:37:43 19 well bores themselves?

03:37:45 20 A. It was on the well bores and the number  
03:37:50 21 that we offered Ms. Nicolaou for on behalf of the  
03:37:56 22 partnerships reserve report showed that the wells were  
03:37:59 23 worth \$304,000 if you exclude their plugging  
03:38:05 24 liabilities.

03:38:05 25 Q. And was there any consideration to the

05:06:14 1 reconcile that with Section 2.01(b) which says the  
05:06:18 2 managing general partner shall pay all lease and  
05:06:21 3 drilling costs as well as intangible drilling costs  
05:06:25 4 and they get an increase in the profit distribution  
05:06:27 5 for doing that. Isn't that what this says?

05:06:30 6 MR. MORFEY: Same objections.

05:06:35 7 A. I'm not a lawyer. I will not try to  
05:06:37 8 interpret -- I will not try to interpret that --

05:06:40 9 Q. (BY MR. FOLEY) Well --

05:06:41 10 A. -- paragraph.

05:06:41 11 Q. -- if PDC puts up more money than it says  
05:06:47 12 in the additional capital contributions, PDC's shares  
05:06:50 13 of the profits go up, correct?

05:06:52 14 MR. MORFEY: Same objections.

05:07:01 15 A. I refuse to answer.

05:07:03 16 MR. FOLEY: Would you cite that one.

05:07:04 17 Thank you. \*MARKED.

05:07:06 18 Q. (BY MR. FOLEY) Let's look at Section  
05:07:07 19 7.12, liability of partners. It's on page A34, sir.

05:07:23 20 A. Okay.

05:07:25 21 Q. It says, "Except as otherwise provided in  
05:07:29 22 this Agreement or as otherwise provided by the Act,  
05:07:33 23 each General Partner shall be jointly and severally  
05:07:35 24 liable for the debts and obligations of the  
05:07:38 25 Partnership. In addition, each Additional General

05:07:42 1 Partner shall be jointly and severally liable for any  
05:07:45 2 wrongful acts or omissions of the Managing General  
05:07:47 3 Partner and/or the misapplication of money or property  
05:07:51 4 to a third party by the Managing General Partner  
05:07:55 5 acting within the scope of its apparent authority to  
05:07:58 6 the extent such acts or omissions are chargeable to  
05:08:02 7 the Partnership."

05:08:06 8 So I'd like you, sir, as the person most  
05:08:08 9 knowledge I can't believe from PDC on these  
05:08:11 10 partnerships to give me your understanding of whether  
05:08:14 11 under Section 7.12, PDC, as the managing general  
05:08:19 12 partner is joint really and several liable for all  
05:08:22 13 deaths of the '06 and '07 partnerships?

05:08:28 14 MR. MORFEY: I object. You don't even  
05:08:30 15 have a topic with respect to this provision of the  
05:08:32 16 partnership agreement. So he's not being put up as a  
05:08:35 17 corporate representative much less the person most  
05:08:37 18 knowledgeable about that. So I'd ask that you  
05:08:39 19 rephrase your question.

05:08:40 20 Q. (BY MR. FOLEY) Isn't it a fact, sir  
05:08:42 21 that, if they are plugging and abandoning liabilities  
05:08:47 22 for which PDC acting as the managing general partner  
05:08:52 23 has failed to reserve enough monies for out of  
05:08:54 24 distributions to the limited partners and  
05:08:56 25 distributions to itself, PDC is jointly and severally

05:09:03 1 liable for the debts and obligations of the  
05:09:05 2 partnership?

05:09:06 3 MR. MORFEY: I'm going to object that it  
05:09:07 4 calls for a legal conclusion and it's also outside of  
05:09:10 5 the scope of what we have agreed that's appropriate  
05:09:13 6 for today and I'm instructing him not to answer.

05:09:16 7 MR. FOLEY: Would you mark that question,  
05:09:17 8 Madam Reporter. \*MARKED.

05:09:23 9 Q. (BY MR. FOLEY) I just have a few  
05:09:30 10 clean-up questions, and we're almost done. One  
05:09:40 11 clean-up question is -- let's look at Exhibit 25.  
05:10:00 12 Exhibit 25 for the record is produced by the debtors  
05:10:04 13 with Bates stamps 1342 through 1350. And it's a bank  
05:10:20 14 account statement for the Rockies Region 2006  
05:10:26 15 partnership for the period ending October 31, 2018.  
05:10:37 16 Do you recognize this document, sir?

05:10:38 17 A. Yes, I do.

05:10:39 18 Q. Does it appear to be a true and correct  
05:10:41 19 copy of the Rocky Regions 2006 checking account or  
05:10:46 20 bank accounts at Texas Capital Bank for the period  
05:10:49 21 ending August 31, 2018?

05:10:56 22 A. That is correct.

05:10:56 23 Q. Okay. And so at the end of the -- the  
05:11:00 24 month there, this would be about two months before the  
05:11:09 25 partnership filed for bankruptcy on October 30 of

05:11:15 1 2018. How much money did PDC put into the -- how much  
05:11:20 2 money remained in the 2006 partnership's account as of  
05:11:24 3 October 31, 2018?

05:11:32 4 A. Okay. This statement is from period 8 --  
05:11:35 5 this statement is in period 8 at the end of August?

05:11:39 6 Q. Yes.

05:11:40 7 A. So I don't have the number off the top of  
05:11:42 8 my head how much they had in when they filed  
05:11:44 9 bankruptcy.

05:11:45 10 Q. No, I know, as of August of 31?

05:11:49 11 A. August. Okay.

05:11:50 12 Q. Did didn't they only have \$436.55?

05:11:54 13 A. Yes, that is correct.

05:11:55 14 Q. And, in fact, if you go on to the page  
05:11:57 15 that's debtor's 1345, someone wrote a hot check, a bad  
05:12:02 16 check on this account to Graves & Company for \$5,500.  
05:12:10 17 Do you recognize who wrote that check that was  
05:12:12 18 returned for non-payment of funds?

05:12:17 19 MR. MORFEY: I'm going to object to the  
05:12:18 20 characterization of the check.

05:12:29 21 A. Definitely Karen. Myself and Karen.

05:12:32 22 Q. Yourself and Karen both wrote the check?

05:12:35 23 A. Well, she sign the check. I did also.

05:12:38 24 Q. Okay. So both of you together wrote a  
05:12:40 25 bad check, John Graves & Company, on the 2006

05:19:29 1 and '07 partnerships a monthly operating fee for wells  
05:19:33 2 which PDC has shut in?

05:19:38 3 A. The answer.

05:19:40 4 MR. MORFEY: You can go ahead.

05:19:41 5 A. The answer to that is no. That -- no.

05:19:47 6 Q. (BY MR. FOLEY) Did you -- were you going  
05:19:48 7 to say something more?

05:19:51 8 A. I choose not to.

05:19:52 9 Q. Okay. And does PDC charge any monthly  
05:19:58 10 operating fees for wells that have been plugged and  
05:20:02 11 abandoned?

05:20:02 12 A. No. Can you define monthly operating  
05:20:12 13 fees?

05:20:13 14 Q. I'm using the definition in the  
05:20:15 15 partnership agreement that says PDC will operate the  
05:20:17 16 wells and --

05:20:18 17 A. And charge a monthly fee.

05:20:21 18 Q. Charges a monthly fee.

05:20:23 19 A. Okay.

05:20:23 20 Q. So with that definition, PDC, you're  
05:20:25 21 saying, does not charge a monthly fee for the '06 and  
05:20:28 22 '07 partnership wells that have been shut in?

05:20:33 23 A. That is correct.

05:20:33 24 Q. And it does not charge a monthly  
05:20:35 25 operating fee for the '07 vertical wells which have



05:20:40 1 been shut in?

05:20:40 2 A. That is correct.

05:20:41 3 Q. And the same for plugging and abandoning?

05:20:43 4 A. Correct.

05:20:44 5 Q. Okay. Now, is there a timeline that PDC  
05:20:47 6 has come up with to plug all of the remaining wells of  
05:20:50 7 the 2006 partnership?

05:20:59 8 A. Can you clarify the question for -- give  
05:21:01 9 me a time period?

05:21:03 10 Q. Well, sure. As of October 30, 2018, had  
05:21:08 11 PDC come up with a timeline when it planned to plug  
05:21:15 12 all of the remaining wells of the 2006 partnership?

05:21:19 13 MR. MORFEY: Objection outside the scope  
05:21:20 14 of what we agreed is appropriate and I instruct you  
05:21:23 15 not to answer.

05:21:24 16 Q. (BY MR. FOLEY) As of October 30, 2018,  
05:21:26 17 had PDC came up with a timeline to plug all of the  
05:21:29 18 remaining operational wells of the 2007 partnership?

05:21:34 19 MR. MORFEY: Same objection and  
05:21:35 20 instruction.

05:21:38 21 Q. (BY MR. FOLEY) So in determining this  
05:21:43 22 liability for future liabilities to charge the  
05:21:51 23 partnerships with forecasted or projected plugging and  
05:21:54 24 abandoning expenses there was no timeline prepared by  
05:21:57 25 PDC to plug those wells?

05:21:59 1 MR. MORFEY: Same obstruction -- same  
05:22:01 2 instruction and objection.

05:22:04 3 MR. FOLEY: Would you mark that last  
05:22:05 4 series of questions, please. \*MARKED.

05:22:08 5 Q. (BY MR. FOLEY) Sir, what criteria was  
05:22:10 6 used by PDC from 2013 to date for determining when to  
05:22:16 7 shut in a partnership vertical well?

05:22:19 8 MR. MORFEY: Same instruction and  
05:22:20 9 objection.it's outside the scope of what we've agreed  
05:22:25 10 is appropriate in terms of the bred of these topics.

05:22:28 11 MR. FOLEY: Well, I don't agree, sir,  
05:22:30 12 because if there's no criteria and PDC can just plug a  
05:22:34 13 well whenever it wants, it can run up the costs to  
05:22:38 14 plugging wells when they were still protective because  
05:22:40 15 it doesn't want to interfere with the production of  
05:22:43 16 its horizontal wells. It goes again to the motive of  
05:22:46 17 PDC in entering into this bankruptcy arrangement with  
05:22:49 18 Ms. Nicolaou.

05:22:52 19 MR. MORFEY: I disagree. But I  
05:22:54 20 understand your position.

05:22:56 21 Q. (BY MR. FOLEY) What criteria is used by  
05:22:59 22 PDC to determine when it's going to plug one of the  
05:23:02 23 '06 or '07 partnership wells?

05:23:06 24 MR. MORFEY: Same instruction and  
05:23:13 25 objection.

05:31:28 1 Question: "Do you understand my  
05:31:30 2 question?"  
05:31:31 3 Answer: "No."  
05:31:33 4 Question: "Okay. You had final  
05:31:35 5 authority to make all material decisions on behalf of  
05:31:38 6 the partnership, is that correct?"  
05:31:41 7 Answer: "Yes."  
05:31:43 8 Do you agree with that testimony of  
05:31:44 9 Ms. Nicolaou that she had final authority to make all  
05:31:47 10 material decisions on behalf of the '06 and '07  
05:31:51 11 partnerships?  
05:31:52 12 A. I do.  
05:31:54 13 Q. All right. So she has unlimited  
05:31:59 14 authority --  
05:31:59 15 MR. MORFEY: Objection, form.  
05:32:01 16 MR. ORMISTON: Objection.  
05:32:02 17 Q. (BY MR. FOLEY) -- to make all  
05:32:03 18 material decisions for the partnership?  
05:32:04 19 MR. MORFEY: Objection, form. It  
05:32:07 20 mischaracterizes his answer in the context of the  
05:32:09 21 deposition testimony that you read.  
05:32:12 22 MR. ORMISTON: And it mischaracterizes  
05:32:13 23 the engagement agreement that he just answered a  
05:32:16 24 question about.  
05:32:17 25 MR. FOLEY: Thank you, coaches.

05:32:21 1 MR. ORMISTON: Just trying to be helpful.

05:32:24 2 Q. (BY MR. FOLEY) Now, what discussions did

05:32:26 3 you have directly with anybody from the Graves

05:32:29 4 consulting firm, Graves & Company, regarding the oil

05:32:32 5 and gas assets of the 2006 and 2007 partnerships?

05:32:41 6 A. I've talked to Mr. Graves a few times,

05:32:44 7 along with some of his staff. Most of it was in the

05:32:47 8 July through August time period when they would ask

05:32:51 9 questions either on wells or the reserve report. I

05:32:56 10 could answer -- I would answer what questions that I

05:32:58 11 knew the answers to, and I would get to my land or

05:33:02 12 engineering departments, ask them the questions, and

05:33:04 13 then get back to Mr. Graves or his staff.

05:33:07 14 Q. Did you and Mr. Graves have any

05:33:10 15 discussion about what interests the '06 and '07

05:33:16 16 partnerships had in terms of either a well bore or an

05:33:20 17 interest in a lease or spacing unit?

05:33:26 18 A. We provided him information showing him

05:33:29 19 what each partnership -- what the well -- each

05:33:32 20 partnership's well bore interest was in the

05:33:34 21 partnership.

05:33:35 22 Q. I understand but perhaps you didn't

05:33:37 23 understand my question?

05:33:38 24 A. Okay.

05:33:38 25 Q. Did you have a discussion with Mr. Graves

05:33:40 1 where he said words to the effect of let's talk about  
05:33:45 2 what do these partnerships own? Is it a well bore or  
05:33:49 3 is it a something more? Did you have any  
05:33:52 4 conversations like that with him?

05:33:54 5 MR. MORFEY: I'm going to object. This  
05:33:55 6 is outside the scope of the deposition and I instruct  
05:33:59 7 him not to answer.

05:34:00 8 MR. FOLEY: Counsel, it goes to whether  
05:34:03 9 Ms. Nicolaou did an adequate job of investigating the  
05:34:06 10 claims of the partnership. And this is clear that you  
05:34:08 11 are just trying to obstruct the inquiry into that.

05:34:14 12 Would you please mark that question,  
05:34:16 13 Madam Reporter. \*MARKED.

05:34:20 14 Q. (BY MR. FOLEY) With respect to the 2007  
05:34:23 15 partnership's wells since the filing of the  
05:34:25 16 bankruptcies, what expenses have been incurred by PDC  
05:34:29 17 and the operation of those wells?

05:34:33 18 A. That is a very broad question. On the  
05:34:38 19 '07 wells, under our authority, our well tenders  
05:34:44 20 operate the wells our production engineers operate the  
05:34:47 21 wells if they were our wells, they have the authority  
05:34:51 22 to shut in wells if they are not capable of production  
05:34:55 23 or for DHS or any other reasons just as if they were a  
05:35:00 24 normal PDC well.

05:35:05 25 Q. And so have expenses been incurred since

05:44:48 1 talking about.

05:44:49 2 MR. FOLEY: Well, we have an exhibit.

05:44:51 3 Let's put the exhibit -- I think it's already marked

05:44:53 4 as an exhibit that the deposition of Mr. Stump was

05:44:57 5 mailed to you. No changes were mailed back according

05:44:59 6 to the court reporter's affidavit nor was his

05:45:01 7 signature. We could go on the many depositions in the

05:45:05 8 Schulein case none of your clients ever signed it but

05:45:09 9 as I said the federal rooms provide for that.

05:45:11 10 Okay. Thank you for your patience,

05:45:13 11 Mr. Stump.

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# **EXHIBIT B**

# **EXHIBIT B**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: )  
) CASE NO. 18-33513  
ROCKIES REGION 2006 ) CHAPTER 11  
LIMITED PARTNERSHIP and )  
ROCKIES REGION 2007 )  
LIMITED PARTNERSHIP ) (Jointly Administered)  
)  
DEBTORS )

-----  
ORAL DEPOSITION OF  
KAREN NICOLAOU  
MAY 7, 2019  
-----

ORAL DEPOSITION OF KAREN NICOLAOU, produced as a witness at the instance of The Dufresne Family Trust, The Schulein Family Trust, The Michael A. Gaffey and Joanne M. Gaffey Living Trust, March 2000, and The Glickman Family Trust dated August 29, 1994, The William J. and Judith A. McDonald Living Trust dated April 16, 1991, and duly sworn, was taken in the above-styled and -numbered cause on May 7, 2019, from 9:07 a.m. to 6:04 p.m., before Mercedes Arellano, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Gray, Reed & McGraw, LLP, 1601 Elm Street Suite 4600, Dallas, Texas, pursuant to the Federal Rules of Civil Procedure.

Page 3

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## REPORTER'S NOTE

Uh-huh = Yes - Affirmative response  
Huh-uh = No - Negative response  
Quotation marks are used for clarity and do not necessarily indicate a direct quote.

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## APPEARANCES

FOR THE DUFRESNE FAMILY TRUST, THE SCHULEIN FAMILY TRUST, THE MICHAEL A. GAFFEY AND JOANNE M. GAFFEY LIVING TRUST, MARCH 2000, AND THE GLICKMAN FAMILY TRUST DATED AUGUST 29, 1994, THE WILLIAM J. AND JUDITH A. McDONALD LIVING TRUST DATED APRIL 16, 1991:

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## PROCEEDINGS

**THE COURT REPORTER:** We are now on the record. The case is in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in re: Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership, Debtors; Case Number 18-33513, Chapter 11.

This is the deposition of Karen Nicolaou.

Would all parties please announce themselves on the record.

**MR. WEISBART:** Mark Weisbart for certain limited partners in both bankruptcy cases.

**MR. BROUNER:** Jim Brouner with Mark's office.

**MR. FOLEY:** Thomas Foley; Foley, Bezek, Behle & Curtis; co-counsel with Mr. Weisbart and Mr. Brouner.

**MR. ELDER:** Charles Elder from Irell & Manella on behalf of PDC Energy.

**MR. MORFEY:** Mike Morfey with Hunton Andrews for PDC Energy.

**MR. BROOKNER:** Jason Brookner for the debtors.

**MR. ORMISTON:** Jim Ormiston for the debtors.

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**THE COURT REPORTER:** Are there any agreements on the record?

**MR. WEISBART:** No. I would like to make a statement. But I'm sure this is subject to the Federal Rules, right?

**MR. ORMISTON:** Yes.

**THE COURT REPORTER:** The time is now 9:08 a.m.

(Witness sworn.)

**MR. WEISBART:** All right. And just my statement is that -- my understanding is that we are here for a seven-hour deposition today. Mr. Brookner and I have had conversations about whether I am limited to seven hours, given the fact that there are two bankruptcy cases and two contested motions filed in each case.

So if we do not finish in the seven hours, I'm not waiving my right to continue the deposition, and I understand you're not waiving your right to oppose any further time for the deposition. Having said all of that, I'm comfortable or confident that we can get this done in one day.

So I'd rather not address any discussion or issues, not until we see that it becomes a problem.

**MR. ORMISTON:** Understood.

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1 **assets.**

2 Q. And as it says, "including overseeing all  
3 actions in connection with the potential bankruptcy  
4 filing or auction sale," correct?

5 **A. Yes.**

6 Q. Okay. Did you review any documents in  
7 connection with whether you had authority to serve as a  
8 responsible party for the partnerships?

9 **A. I'm sorry?**

10 Q. Did you review any documents to determine  
11 whether you had authority to serve as responsible party  
12 for the partnerships?

13 **A. Yes.**

14 Q. What documents did you review?

15 **A. Partnership agreements.**

16 **(Exhibits 3 and 4 marked.)**

17 Q. (BY MR. WEISBART) Let me hand you Exhibits 3  
18 and 4, and ask you to identify those documents if you  
19 can, please.

20 **A. I'm sorry.**

21 Q. Which is -- what is Exhibit 3?

22 **A. The Form of Limited Partnership Agreement of**  
23 **Rockies Region 2006 Limited Partnership.**

24 Q. And Exhibit 4?

25 **A. Is Form of Limited Partnership Agreement of**

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1 **Rockies Region 2007 Limited Partnership.**

2 Q. And I'll represent to you these are documents  
3 that are Bates stamped that were produced as part of the  
4 production.

5 All right. Are these the form of  
6 agreements that you reviewed?

7 **A. Yes.**

8 Q. Now, I notice in the engagement agreement that  
9 there are certain representations made by PDC. Do you  
10 see that on the second page?

11 **A. I do.**

12 Q. Okay. And PDC, as managing general partner,  
13 the partnership represents that it is authorized to  
14 retain you as responsible party and references various  
15 provisions of the partnership agreements?

16 **A. Yes.**

17 Q. Okay. And by the way, to your knowledge, are  
18 the partnership agreements generally the same? Is there  
19 any deviation between these two partnership agreements,  
20 to your knowledge?

21 **A. I don't know.**

22 Q. Aside from the representation made by PDC and  
23 your statement that you reviewed the partnership  
24 agreements, did anyone else review documents on your  
25 behalf in connection with the determination that you had

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1 authority to serve as responsible party?

2 **A. Counsel would have.**

3 Q. Which counsel?

4 **A. Jason Brookner and Lydia Webb.**

5 Q. What was your conclusion as to whether or not  
6 you had authority?

7 **A. As to whether I had the authority?**

8 Q. Let me rephrase that.

9 What was your conclusion as to whether or  
10 not PDC had authority to retain you on behalf of the  
11 partnerships as responsible party?

12 **A. That they did.**

13 Q. Okay. And what provisions did you rely on?

14 **A. "5.01: Managing general partner shall conduct**  
15 **direct and exercise full and exclusive control over the**  
16 **activities of the partnership. Investor partner shall**  
17 **have no power over the conduct of the affairs of the**  
18 **partnership or otherwise commit or bind the partnership**  
19 **in any manner."**

20 Give me a second. I'll find the rest of  
21 the provisions here.

22 **MR. ORMISTON: Just identify the**  
23 **provisions. You don't need to read it.**

24 **THE WITNESS: I don't need to read them?**  
25 **Okay.**

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1 **MR. ORMISTON: He's just asking you which**  
2 **provisions you relied on.**

3 **A. 5 and then 6.02. 6.02 M, G, J. And there are**  
4 **referenced here C.**

5 Q. (BY MR. WEISBART) Essentially, the same  
6 provisions that were identified in the PDC  
7 representations on Page 2, the same sections?

8 **A. Yes.**

9 Q. All right. Did you look at any West Virginia  
10 statutes in connection with your determination that PDC  
11 had authority to employ you as responsible party?

12 **A. No.**

13 Q. You said that Mr. Brookner and Lydia  
14 Webb -- Ms. Webb, assisted you in analyzing this issue;  
15 is that correct?

16 **A. I consulted with them, yes.**

17 Q. And what was their conclusion?

18 **MR. ORMISTON: Objection, calls for**  
19 **disclosure of attorney-client privilege information.**

20 **Instruct the witness not to answer the**  
21 **question.**

22 Q. (BY MR. WEISBART) Are you refusing to answer?

23 **A. I'm following -- I'm sorry.**

24 Q. You did not waive the privilege at this time?

25 **A. May I be excused for one minute?**

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1 Q. Yes.

2 **MR. WEISBART: Off the record.**

3 **(Break taken from 9:41 a.m. to 9:43 a.m.)**

4 **THE COURT REPORTER: Back on the record.**

5 Q. (BY MR. WEISBART) I think where we left off is  
6 that you were -- your client -- or excuse me -- your  
7 counsel had asserted the attorney-client privilege.

8 Do you adopt his privilege --

9 **A. I do.**

10 Q. -- you're not waiving it?

11 **MR. WEISBART: Would you certify the**  
12 **question, please.**

13 Q. (BY MR. WEISBART) Was -- when did Gray Reed,  
14 Jason Brookner, and Lydia Webb provide you their advice  
15 concerning your authority to serve as responsible party?

16 **A. Over the period of time, we were -- you know,**  
17 **this document was being circulated, which circulated for**  
18 **a while, April to May.**

19 Q. All right. So was it before the document  
20 was -- the final document was executed?

21 **A. Yes.**

22 Q. Were they representing you at that time? Were  
23 they representing Bridgestone Consulting at that time?

24 **MR. ORMISTON: Objection, form. There's**  
25 **two questions in there.**

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1 Q. (BY MR. WEISBART) All right. Well, fair  
2 enough. Were they representing you personally during  
3 this time period?

4 **A. They don't represent me personally.**

5 Q. Okay. Were they representing Bridgepoint  
6 Consulting during this time period?

7 **A. I don't know.**

8 Q. Okay. So I'm -- but from the period of time  
9 from January through April, they gave you this advice or  
10 they looked into this issue?

11 **A. Yes.**

12 Q. So what is the basis of asserting the  
13 attorney-client privilege if they weren't representing  
14 you?

15 **MR. ORMISTON: Because she has been named**  
16 **the responsible party, appointed as a responsible party**  
17 **for the debtors. We represent the debtors, so she is an**  
18 **agent of the debtors.**

19 Q. (BY MR. WEISBART) At the time leading up to  
20 the employment of this -- or the execution of this  
21 agreement, you were not employed as responsible party;  
22 is that correct?

23 **A. That's correct.**

24 Q. Did they tell you the basis of their  
25 conclusion -- did Gray Reed tell you the basis of their

Page 31

1 conclusion?

2 **A. Could you repeat.**

3 Q. That you had authority to service responsible  
4 party?

5 **A. They're --**

6 **MR. ORMISTON: He's just asking you yes or**  
7 **no, did the lawyers at Gray Reed inform you of the basis**  
8 **of their conclusion?**

9 **A. Yes.**

10 Q. (BY MR. WEISBART) And was their conclusion the  
11 same as yours?

12 **MR. ORMISTON: Objection, calls for the**  
13 **disclosure of attorney-client privilege information.**  
14 **Instruct the witness not to answer the question.**

15 Q. (BY MR. WEISBART) Did you rely on the advice  
16 of Gray Reed in connection with your engagement?

17 **A. I listened to what they had to say and made my**  
18 **own decision.**

19 Q. Did you obtain a legal opinion concerning your  
20 ability to be employed as responsible party?

21 **A. No.**

22 Q. Did you have any conversations with anyone at  
23 PDC concerning your role as responsible party?

24 **A. No.**

25 Q. Did you express any concerns to PDC or anyone

Page 32

1 at PDC related to your authority to serve as responsible  
2 party?

3 **A. No.**

4 Q. Did you have any conversations -- I'm sorry.

5 Did you have any conversations with  
6 anyone -- with PD -- with anyone at any firm  
7 representing PDC concerning the engagement agreement?

8 **A. I'm sorry. Would you repeat that.**

9 Q. All right. Did you understand that PDC was  
10 being represented by counsel at the time -- around the  
11 time that you were being employed as a responsible  
12 party?

13 **A. Hunton AK, yes.**

14 Q. Did you have any conversations with anyone at  
15 Hunton AK concerning the engagement agreement?

16 **A. No.**

17 Q. And AK refers to Andrews Kurth?

18 **A. Yes.**

19 Q. Did you run into any issues regarding the terms  
20 of the engagement agreement during the time frame that  
21 you've been serving as responsible party?

22 **MR. ORMISTON: I'm sorry. Can we have that**  
23 **again?**

24 Q. (BY MR. ORMISTON) Did you run into any issues  
25 regarding the terms of your engagement as responsible

1 services that you performed, if any, between June and  
2 May of 2018?

3           **MR. ORMISTON:** Objection, form. The  
4           attorney-client privilege applies when you are talking  
5           to a lawyer about retaining their services. It's not  
6           just when you sign an engagement letter.

7 Q. (BY MR. WEISBART) Did Bridge -- did Bridgeport  
8 Consulting employ Gray Reed?

9      **A. I don't know.**

10 Q. Before you were employed as responsible party  
11 while you were working at Bridgeport Consulting and  
12 seeking employment or having discussions concerning the  
13 employment of Bridgeport Consulting, did you consult  
14 Gray Reed attorneys?

15 MR. ORMISTON: Objection, form.

16 A. I'm very -- I don't understand your question.  
17 I'm sorry.

18 Q. (BY MR. WEISBART) Did you or anyone at  
19 Bridgeport consulting engage in any discussions with  
20 Gray Reed prior to April 15, 2018, concerning your  
21 eventual employment as responsible party?

22       **A. I'm sure that there were conversations and**  
23       **consultations. When, by whom, and to the extent, I**  
24       **don't know.**

25 Q. Were you personally involved in those

1 consultations?

2      **A. Potentially.**

3 Q. Potentially?

4 **A. Well, probably.**

5 Q. Do you recall?

6 **A. Specific conversations? No, sir.**

7 Q. All right. As -- in your capacity as a  
8 responsible party, who at Gray Reed provided services  
9 for you since your employment?

10 **MR. ORMISTON:** Objection, form.

11 **A. The attorneys?**

12 Q. (BY MR. WEISBART) Yes, the names.

13 **A. Jason Brookner, Amber Carson, Lydia Webb, Jim**  
14 **Ormiston -- James. Sorry. Beyond that, I don't know.**

15 Q. Okay. What did you ask them to do?

16 **A. Provide legal counsel and interpretation.**

17 Q. Specifically?

18 **MR. ORMISTON: Object. Calls for**  
19 **attorney-client privilege. Instruct the witness not to**  
20 **answer.**

21 Q. (BY MR. WEISBART) Are you refusing to answer  
22 the question as to what type of services they performed  
23 for you in your capacity as responsible party?

24 **MR. ORMISTON:** No. She answered that  
25 **question. Then you asked her specifically, and I**

Page 121

1 attorneys who have experience in -- extensive experience  
2 involving oil and gas properties in Colorado?

3 **A. I didn't hear the first part of that.**

4 Q. Do you know if they consulted with any  
5 attorneys who have extensive experience involving oil  
6 and gas properties in Colorado?

7 **A. I do not.**

8 Q. Do you know if they consulted with any West  
9 Virginia attorneys or attorneys that have familiarity  
10 with West Virginia partnership law in connection with  
11 the lawsuit?

12 **A. I do not.**

13 Q. Okay. As you stated, you -- at the time the  
14 bankruptcy cases were filed, you determined that all the  
15 claims were derivative claims, correct?

16 **A. Please -- please ask me that again.**

17 Q. Okay. At the time the bankruptcy cases were  
18 filed, you made the determination that all of the claims  
19 asserted in the lawsuit were derivative claims; is that  
20 correct?

21 **A. It was my understanding at that time, yes.**

22 Q. Who made that determination?

23 **A. Made that determination in consultation with my  
24 attorneys.**

25 Q. Okay.

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1 **A. Not a lawyer.**

2 Q. So Gray Reed assisted in that determination; is  
3 that correct?

4 **A. Yes.**

5 Q. And in fact, they would have made the  
6 determination, correct?

7 **MR. ORMISTON: Objection, form.**

8 **A. Yes.**

9 Q. (BY MR. WEISBART) Do you know what Gray Reed  
10 did to make that determination?

11 **A. I do not.**

12 Q. Did they provide you a written analysis?

13 **A. No.**

14 Q. Did someone explain the basis for making the  
15 determination?

16 **MR. ORMISTON: You're talking about  
17 separate and apart from the motion that's been filed in  
18 this case?**

19 **MR. WEISBART: Yes.**

20 **A. I'm sorry?**

21 **MR. BROOKNER: I'm going to object in lieu  
22 of Jim. That's subject to attorney-client privilege.**

23 **And I'm going to direct you not to answer  
24 anything that you talked about with your lawyers is not  
25 fair game.**

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1 **MR. ORMISTON: Well, and that's really not  
2 the question. But there is a pending motion in this  
3 proceeding to have those claims determined to be  
4 derivative and therefore, owned by the estate. And so  
5 Ms. Nicolaou obviously has knowledge of that motion, and  
6 that's going to be determined by the Judge at some  
7 point.**

8 Q. (BY MR. WEISBART) Okay. My question is: Did  
9 someone explain the basis for making the determination  
10 that all the claims are assertedly derivative claims to  
11 you?

12 **MR. ORMISTON: And I'm going to object to  
13 the extent it calls for the disclosure of  
14 attorney-client communications.**

15 **You can ask her if she's read the motion  
16 that's on file, but I'm going to object to any  
17 communications with her and her lawyers explaining to  
18 her anything.**

19 Q. (BY MR. WEISBART) My question is very simple.  
20 I'll ask it again for the third time.

21 Did someone at Gray Reed explain the basis  
22 for making a determination that all of the claims are  
23 derivative claims?

24 **MR. ORMISTON: I'm going to object to that  
25 question as calling for attorney-client communications**

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1 **and instruct the witness not to answer.**

2 Q. (BY MR. WEISBART) Are you refusing to answer  
3 the question?

4 **A. Yes.**

5 Q. Will you waive the attorney-client privilege?

6 **A. I will not.**

7 **MR. WEISBART: Please certify the question.**

8 Q. (BY MR. WEISBART) When were you advised that  
9 all of the claims were derivative claims?

10 **MR. ORMISTON: Objection, form.**

11 **MR. BROOKNER: Object.**

12 **MR. ORMISTON: It just mischaracterizes her  
13 testimony. She wasn't advised. She made a  
14 determination herself. She's already established that.**

15 **MR. BROOKNER: To the extent she was  
16 advised, when she was advised is subject to the  
17 attorney-client privilege.**

18 Q. (BY MR. WEISBART) Maybe I misunderstood. Let  
19 me go back.

20 **MR. FOLEY: Before you do, I take it**

21 **there's a rule in Texas that two attorneys --**

22 **MR. ORMISTON: No.**

23 **MR. FOLEY: -- representing the same client  
24 can make objections and direct witnesses, and that's the  
25 way we're going to conduct ourself in this proceeding?**

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1 **MR. ORMISTON: There is not.**

2 **MR. FOLEY: Okay. Then since you're the**

3 **lead attorney...**

4 **MR. BROOKNER: I'll take it from here.**

5 **MR. FOLEY: Thank you, sir.**

6 Q. (BY MR. WEISBART) Did you on your own make the

7 determination that all of the claims asserted in the

8 Denver litigation are derivative claims?

9 **MR. ORMISTON: Objection, form.**

10 **A. I'm not a lawyer. This is a hotly contested**

11 **point. I don't know that anybody has decided whether**

12 **they are derivative or direct or not.**

13 **MR. ORMISTON: Nobody's adjudicated it.**

14 **THE WITNESS: Thank you.**

15 **A. Thank you. Adjudicated it.**

16 Q. (BY MR. WEISBART) I understand that, and I

17 appreciate it.

18 But I'm just going to ask a question

19 because you're -- is it correct to say that you relied

20 on your attorney's advice in determining that the claims

21 asserted in the Denver litigation are derivative claims?

22 **MR. ORMISTON: Objection, to the extent it**

23 **calls for attorney-client privilege communications.**

24 **You can ask her what she did to reach her**

25 **conclusion, but I'm not going to let you ask her about**

Page 126

1 **what advice she received from her lawyers.**

2 Q. (BY MR. WEISBART) I'm not asking what advice

3 you received. I'm asking you if you relied on the

4 advice you received.

5 **MR. ORMISTON: Well, the question implies**

6 **by answering the question what the advice was. So we're**

7 **not going to answer that question.**

8 **Ask her what she did to arrive at her**

9 **conclusion that there are derivative claims.**

10 Q. (BY MR. WEISBART) What did you do to arrive at

11 your conclusion that the claims asserted in the Denver

12 litigation are derivative claims?

13 **MR. ORMISTON: Asked and answered.**

14 **But you can tell him again.**

15 **A. I consulted with my attorneys.**

16 Q. (BY MR. WEISBART) And did you rely on the

17 advice they gave you?

18 **MR. ORMISTON: Objection, calls for**

19 **attorney-client communication. Instruct the witness not**

20 **to answer.**

21 Q. (BY MR. WEISBART) Are you refusing to answer?

22 **A. I am.**

23 **MR. WEISBART: Please certify the question.**

24 Q. (BY MR. WEISBART) Did you make the

25 determination or did you make the conclusion that the

Page 127

1 claims were derivative before the bankruptcy case was

2 filed?

3 **A. No.**

4 Q. It was after the case was filed?

5 **A. They weren't on the statements of schedules.**

6 **MR. ORMISTON: Objection to the form of the**

7 **question.**

8 Q. (BY MR. WEISBART) Do you know what Gray Reed

9 did to make the determination that the claims were

10 derivative?

11 **MR. ORMISTON: Objection. She's not going**

12 **to testify about what her lawyers did. That's**

13 **attorney-client privilege communication.**

14 **Instruct the witness not to answer.**

15 Q. (BY MR. WEISBART) Are you refusing to answer

16 the question?

17 **A. I am.**

18 Q. You mentioned spacing units being one of the

19 issues in the lawsuit; is that correct?

20 **A. Yes.**

21 Q. Okay. And you understand that one of the

22 issues in the lawsuit is whether the partnerships were

23 entitled to an assignment of spacing units or prospects

24 surrounding the wellbores drilled by the partnership; is

25 that correct?

Page 128

1 **A. I'm sorry?**

2 Q. You understand that one of the issues in the

3 Denver litigation is whether the partnerships were

4 entitled to assignments of spacing units or prospects

5 surrounding the wellbores drilled by the partnerships?

6 **A. That's one of the assertions, yes.**

7 Q. At the time the bankruptcy case was filed, did

8 you have an opinion related to that issue?

9 **A. No.**

10 Q. Do you have an opinion now?

11 **A. No.**

12 Q. Did you personally evaluate this issue?

13 **A. No.**

14 Q. Have you consulted -- without telling me the

15 substance of your consultation, but did you consult with

16 Gray Reed concerning this issue?

17 **A. Yes.**

18 Q. Again, without telling me the substance of any

19 work they did, do you know if Gray Reed evaluated the

20 decision?

21 **A. Yes.**

22 Q. Do you know what they did?

23 **A. No.**

24 Q. How do you know they evaluated the issue?

25 **MR. ORMISTON: Don't talk about what we**

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1 memorandum, I believe, that indicates there will be no  
2 further wells drilled.

3 Q. Is it your opinion that the placement  
4 memorandum is the governing document?

5 **MR. ORMISTON: Object to the extent it**  
6 **calls for a legal conclusion.**

7 **You can give him your understanding if you**  
8 **have one.**

9 **A. My understanding is they work in tandem.**

10 Q. (BY MR. WEISBART) Work in tandem with what?

11 **A. Each other.**

12 Q. The partnership agreement and the private  
13 placement memorandum?

14 **A. (Moving head up and down.)**

15 Q. So you've made the conclusion that those two  
16 agreements must be read in conjunction in reaching the  
17 conclusion I just read?

18 **MR. ORMISTON: Object to the extent it**  
19 **calls for a legal conclusion.**

20 **You can give him your understanding if you**  
21 **have one.**

22 **A. Please repeat the question.**

23 Q. (BY MR. WEISBART) Okay. It was a bad  
24 question.

25 Is there a restriction in the partnership

Page 138

1 agreement on the partnerships drilling additional wells?

2 **MR. ORMISTON: Same objection.**

3 **A. As I sit here, I can't point to it.**

4 **(Discussion off the record.)**

5 Q. (BY MR. WEISBART) All right. You go on to  
6 say, "The limited partnership agreements do not provide  
7 a mechanism for PDC to make capital calls to drill  
8 additional wells, which could reach into the millions of  
9 the dollars -- into millions of dollars."

10 Do you see that?

11 **A. I'm sorry. Which paragraph?**

12 Q. It's the same paragraph, 21, last sentence.

13 "In addition, limited partnership agreements do not  
14 provide a mechanism for PDC to make capital calls to  
15 fund the drilling of additional wells, which could reach  
16 into the millions of dollars."

17 **A. Yes.**

18 Q. Is that a conclusion that you reached?

19 **A. Yes.**

20 Q. And how did you reach that decision?

21 **A. Reading the partnership agreement, the private**  
22 **placement memorandum, and consultation with my**  
23 **attorneys.**

24 Q. And did you rely on the advice of counsel?

25 **MR. ORMISTON: Object to the extent it**

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1 **calls for attorney-client privilege communications, and**  
2 **instruct the witness not to answer.**

3 Q. (BY MR. WEISBART) Do you waive the privilege?

4 **A. No, sir.**

5 **MR. WEISBART: Would you please certify the**  
6 **question.**

7 Q. (BY MR. WEISBART) Did you rely on the advice  
8 of counsel in connection with any of the comments you  
9 made in your declaration concerning the litigation?

10 **MR. ORMISTON: Object to the form as being**  
11 **way overly broad, and also object to the extent it calls**  
12 **for attorney-client privilege communications.**

13 **Instruct the witness not to answer.**

14 Q. (BY MR. WEISBART) Do you refuse to answer?

15 **A. I do.**

16 **MR. WEISBART: Please certify the question.**

17 Q. (BY MR. WEISBART) Did you ever consider hiring  
18 special counsel to prosecute the lawsuit?

19 **A. Yes.**

20 Q. And what did you do in connection with  
21 considering making this consideration?

22 **A. Haven't done anything yet.**

23 Q. Did you consider hiring special counsel before  
24 the bankruptcy case was filed?

25 **A. No.**

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1 Q. Did you speak to anyone in particular about  
2 employment of special counsel?

3 **A. No.**

4 **(Exhibit 19 marked)**

5 Q. (BY MR. WEISBART) Let me hand you what's been  
6 marked as Exhibit 19. It's a letter from Tom Foley to  
7 Jason Brookner, dated February 21, 2019.

8 Have you seen that letter before?

9 **A. I think so.**

10 Q. Okay. And is it a letter stating that the  
11 Foley firm would represent you and the debtors with  
12 appropriate waivers in prosecuting the claims largely  
13 contained in the Denver litigation?

14 **A. I'm sorry. I haven't -- haven't read it in a**  
15 **while, so I have to read it.**

16 Q. Okay.

17 **A. Is that all right? Can I read it?**

18 Q. Go ahead.

19 **MR. ORMISTON: Well, hang on. This is a**  
20 **19-page single spaced letter. Do you want her to read**  
21 **it all right now, or do you want to point her to a**  
22 **specific --**

23 Q. (BY MR. WEISBART) If you look to the last  
24 page --

25 **MR. WEISBART: Thank you, Counsel.**

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1 **MR. WEISBART: Not that I'm aware of**  
 2 **either.**  
 3 **If you'll follow-up on that text messages,**  
 4 **and I'll confer with your counsel, and then that one**  
 5 **e-mail that I couldn't locate.**  
 6 **THE COURT REPORTER: Okay. We are off the**  
 7 **record.**  
 8 **(Deposition concluded at 6:04 p.m.)**

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1 Mr. Mark Weisbart 06 HOURS:08 MINUTES  
 2  
 3 That \$\_\_\_\_\_ is the deposition officer's  
 4 charges to the Party for preparing the original  
 5 deposition transcript and any copies of exhibits;  
 6 That pursuant to information given to the  
 7 deposition officer at the time said testimony was taken,  
 8 the following includes all parties of record:  
 9  
 10 Mr. Mark A. Weisbart, Mr. James S. Brouner, and Mr.  
 11 Thomas G. Foley, Attorneys for The Dufresne Family  
 12 Trust, The Schulein Family Trust, The Michael A. Gaffey  
 13 and Joanne M. Gaffey Living Trust, March 2000, and The  
 14 Glickman Family Trust dated August 29, 1994, The William  
 15 J. and Judith A. McDonald Living Trust dated April 16,  
 16 1991  
 17  
 18 Mr. James Ormiston and Mr. Jason Brookner,  
 19 Attorneys for Debtors  
 20 Mr. Michael D. Morfey, Ms. Robin Russell, and Mr.  
 21 Charles E. Elder, Attorneys for PDC Energy  
 22  
 23 That a copy of this certificate was served on all  
 24 parties shown herein on \_\_\_\_\_ and filed  
 25 with the Clerk pursuant to Rule 203.3.  
 26  
 27 I further certify that I am neither counsel for,  
 28 related to, nor employed by any of the parties or  
 29 attorneys in the action in which this proceeding was  
 30 taken, and further that I am not financially or  
 31 otherwise interested in the outcome of the action.

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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF TEXAS  
 3 DALLAS DIVISION  
 4 **IN RE: )**  
 5 **) CASE NO. 18-33513**  
 6 **ROCKIES REGION 2006 ) CHAPTER 11**  
 7 **LIMITED PARTNERSHIP and )**  
 8 **ROCKIES REGION 2007 )**  
 9 **LIMITED PARTNERSHIP ) (Jointly Administered)**  
 10 **)**  
 11 **DEBTORS )**

10 REPORTER'S CERTIFICATION  
 11 DEPOSITION OF KAREN NICOLAOU  
 12 MAY 7, 2019

13 I, Mercedes Arellano, Certified Shorthand Reporter  
 14 in and for the State of Texas, hereby certify to the  
 15 following:  
 16 That the witness, KAREN NICOLAOU, was duly sworn by  
 17 the officer and that the transcript of the oral  
 18 deposition is a true record of the testimony given by  
 19 the witness;  
 20 That examination and signature of the witness to  
 21 the deposition transcript was waived by the witness and  
 22 agreement of the parties at the time of the deposition;  
 23 That the original deposition was delivered to  
 24 Mr. Mark A. Weisbart;  
 25 That the amount of time used by each party at the  
 deposition is as follows:

Page 240

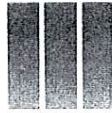
1 Certified to by me this \_\_\_\_ day \_\_\_\_\_, 2019.

2  
 3    
 4 Mercedes Arellano, Texas CSR 8395  
 5 Expiration Date: December 31, 2018  
 6 Bradford Court Reporting, LLC  
 7 BradfordReporting.com, Firm No. 38  
 8 7015 Mumford Street  
 9 Dallas, Texas 75252  
 10 P: (972) 931-2799 F: (972) 931-1199



# **EXHIBIT C**

# **EXHIBIT C**



## GRAY REED

ATTORNEYS & COUNSELORS

LYDIA R. WEBB  
DIRECT DIAL: 469.320.6111  
[LYDIA@GRAYREED.COM](mailto:LYDIA@GRAYREED.COM)

May 8, 2018

*Email to: [knicolaou@bridgepointconsulting.com](mailto:knicolaou@bridgepointconsulting.com)*

Karen Nicolaou, Director  
Bridgepoint Consulting  
2 Riverway Dr., Suite 1750  
Houston, TX 77056

Re: Resolution and Wind-Down of Rockies Region 2006 LP and Rockies Region  
2007 LP (collectively, the "Partnerships").

Dear Ms. Nicolaou:

Gray Reed & McGraw LLP ("**we**" or "**Gray Reed**") is honored to have the opportunity to represent the above-referenced Partnerships (collectively, the "**Clients**" or the "**Partnerships**," with each being a "**Partnership**"). Gray Reed's goal for this and every client relationship is to provide high quality legal services in an efficient, effective and streamlined manner. We want our clients to be pleased they made the decision to engage Gray Reed to assist them with their legal needs. Our commitment to all our clients includes the promise to communicate as clearly and concisely as possible, starting with this engagement agreement.

You have asked Gray Reed to represent the Partnerships in connection with evaluating strategic alternatives, a potential wind-down and a potential chapter 11 filing, including performing all necessary work in preparation for, and leading up to, a potential chapter 11 filing (the "**Matter**"). This letter and the enclosed "Standard Terms and Conditions" (collectively referred to as the "**Agreement**") set forth the terms of Gray Reed's engagement to represent the Partnerships in the Matter. Please note the Standard Terms and Conditions are an integral part of the Agreement.

The primary purpose of the Agreement is to set forth a clear, mutual understanding of the services we will provide and the terms under which those services are to be performed. If you ever have any questions regarding any aspect of the Agreement or the services being provided, please contact me at your earliest convenience so that such questions can be promptly resolved to our mutual satisfaction. Teamwork and a candid, open and honest line of communication

4705702.1

Karen Nicolaou  
May 8, 2018  
Page 2

between the Partnerships and Gray Reed is a critical component of the representation and/or relationship.

Based on our experience, deposits and advances are a necessary component of ensuring that we are able to control costs and hourly rates to the maximum extent possible and thereby minimize the total cost of our representation for clients. The enclosed Standard Terms and Conditions include the terms under which deposits and advances are held. We request an initial advance in the amount of \$140,000.00 (or \$70,000.00 from each Partnership).

The Standard Terms and Conditions also set forth details about how Gray Reed charges fees and general information about hourly rates. The fee to compensate Gray Reed for services rendered in this Matter will be determined by the estimated time expended by each attorney, paralegal or law clerk, multiplied by his or her hourly rate. I will be primarily responsible for the Matter, assisted by other attorneys and non-lawyer staff members as necessary or appropriate. The current hourly rates for the individuals expected to be involved in the Matter are as follows:

<u>Attorney</u>	<u>Hourly Rate</u>
Jason S. Brookner	\$685
Micheal W. Bishop	\$575
Lydia R. Webb	\$455
Amber M. Carson	\$375

The Firm's billing rates are reviewed annually and are subject to adjustment on a periodic basis. Unless otherwise agreed in writing, monthly invoices will be sent to the Partnerships as attachments to an e-mail in PDF format to the following e-mail address: [knicolaou@bridgepointconsulting.com](mailto:knicolaou@bridgepointconsulting.com).

We wish to again express our thanks and enthusiasm about the opportunity to serve the Partnerships. If this letter and the enclosed Standard Terms and Conditions accurately reflect your understanding of the scope, terms and conditions of the Firm's representation of the Partnerships with respect to the Matter, please acknowledge your receipt of the Standard Terms and Conditions, and indicate acceptance, by executing the enclosed duplicate of this letter and returning the signed copy to me. Many thanks, and we look forward to working with you.

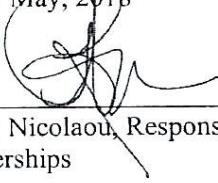
Sincerely,

/s/ Lydia R. Webb  
Lydia R. Webb

4705702.1

Karen Nicolaou  
May 8, 2018  
Page 3

AGREED TO AND ACCEPTED this 8th  
day of May, 2018



Karen Nicolaou, Responsible Person for the  
Partnerships

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