

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

In re:	§	Chapter 11
	§	
ROCKIES REGION 2006 LIMITED	§	Case No. 18-33513-sgj-11
PARTNERSHIP and ROCKIES REGION	§	
2007 LIMITED PARTNERSHIP, ¹	§	(Jointly Administered)
	§	
Debtors.	§	

**DEBTORS' PRETRIAL BRIEF (A) IN SUPPORT OF DEBTORS' APPLICATION TO
(i) RETAIN HARNEY MANAGEMENT PARTNERS TO PROVIDE THE DEBTORS
WITH A RESPONSIBLE PARTY, (ii) DESIGNATING KAREN NICOLAOU AS
RESPONSIBLE PARTY EFFECTIVE AS OF THE PETITION DATE, AND
(iii) GRANTING RELATED RELIEF AND (B) IN OPPOSITION TO THE LP
PLAINTIFFS' AMENDED MOTION FOR DISMISSAL OF CHAPTER 11 CASE**

Jason S. Brookner
Texas Bar No. 24033684
Lydia R. Webb
Texas Bar No. 24083758
Amber M. Carson
Texas Bar No. 24075610
GRAY REED & McGRAW LLP
1601 Elm Street, Suite 4600
Dallas, TX 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332

James J. Ormiston
Texas Bar No. 15307500
GRAY REED & McGRAW LLP
1300 Post Oak Blvd., Suite 2000
Houston, Texas 77056
Telephone: (713) 986-7000
Facsimile: (713) 986-7100

COUNSEL TO THE DEBTORS

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership (collectively, the “Debtors”), for their Pretrial Brief (i) in Support of the Debtors’ *Application to (i) Retain Harney Management Partners to Provide the Debtors with a Responsible Party, (ii) Designating Karen Nicolaou as Responsible Party Effective as of the Petition Date, and (iii) Granting Related Relief* [Docket No. 12] (the “Harney Application”), and (ii) in Opposition to the LP Plaintiffs’² *Amended Motion for Dismissal of Chapter 11 Case* [Docket No. 140] (the “Motion to Dismiss”), respectfully represent:

PRELIMINARY STATEMENT

1. In the Joint Pretrial Order (“JPTO”) submitted by the parties in connection with the hearing on the Harney Application and the Motion to Dismiss, the LP Plaintiffs allege nine (9) contested issues of law. The Debtors have extensively briefed the majority of these issues, and rather than repeat those arguments at length herein, the Debtors will simply (i) point the Court to the Debtors’ arguments and authorities in their Response to the Harney Objection [Docket No. 142] (the “Harney Response”) and their Objection to the Motion to Dismiss [Docket No. 141] (the “MTD Objection”) and (ii) supplement those arguments and authorities with testimony that has been adduced since the filing of the Harney Response and the MTD Objection.

2. At the pretrial status conference held on May 29, 2019, the Court squarely exposed the deficiencies in the LP Plaintiffs’ case when ruling on their request to seek privileged documents and communications:

² The LP Plaintiffs are (i) Robert R. Dufresne, as Trustee of the Dufresne Family Trust; (ii) Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; (iii) Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; (iv) Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and (v) William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991.

THE COURT: Okay. I'm going to interject. What makes this situation different from pretty much every other Chapter 11 case we have? What makes this different? Because we know that many Chapter 11s are filed in response to burdensome litigation, right? Happens every day, right?

COUNSEL TO THE LP PLAINTIFFS: Yes, ma'am. Yes, Your Honor.

THE COURT: We know that there is technically no requirement of insolvency to file Chapter 11. We know that people file Chapter 11s with pre-negotiated term sheets. Restructuring support agreements has even become a buzz term in recent years. What makes this case different?

* * *

COUNSEL TO THE LP PLAINTIFFS: So we have, as you know, and I've made the assertion previously and it's in our pleadings, that this is a bad faith filing. The Gray Reed firm was involved over a several-month period in the process, and then continued the representation post-bankruptcy. It wasn't, you know, they came, within a month's time period decided to file Chapter 11, and then filed the 11 and then are proposing a settlement post-petition. This --

THE COURT: Okay. Not -- again, not unusual.

COUNSEL TO THE LP PLAINTIFFS: Not --

THE COURT: Right?

COUNSEL TO THE LP PLAINTIFFS: Not -- not completely unusual. Correct, Your Honor. Yes.

Tr. of May 29, 2019 Hrg. at 15:16 – 16:1; 17:-6-18.³

3. As will be shown at trial, there is nothing unusual about these chapter 11 cases, and thus, the LP Plaintiffs cannot meet their burden to establish a *prima facie* case that the Debtors' chapter 11 cases should be dismissed. Moreover, the LP Plaintiffs' Objection to the Harney

³ The relevant portions of the hearing transcript are attached as Exhibit A.

Application should be overruled, and the Court should approve the employment of Harney and Ms. Nicolaou as proposed in the Harney Application and as modified by the Harney Response.

ARGUMENT

A. The bankruptcy petitions filed on behalf of the Debtors were properly authorized under applicable West Virginia law.

4. As the movant, the LP Plaintiffs bear the burden of proving the Debtors lacked authority to file these chapter 11 cases. *See In re Quad-C Funding LLC*, 496 B.R. 135, 141-42 (Bankr. S.D.N.Y. 2013) (“Because the Court does not take the issue of dismissal lightly, the Court will place the burden of proof entirely on the Movants to demonstrate by a preponderance of the evidence that the Debtors’ bankruptcy cases were unauthorized”) (quoting *In re ComScape Telecomms., Inc.*, 423 B.R. 816, 830 (Bankr. S.D. Ohio 2010)).

5. If the Debtors were authorized to file their bankruptcy petitions under the partnership agreements, then they are necessarily authorized to file under West Virginia law, as the partnership agreement is the governing contract, and courts only look to guidance from the statutory default rules, applicable common law, or other extrinsic evidence, when the partnership agreement is silent or ambiguous. *See, e.g., Sonet v. Timber Co., L.P.*, 722 A.2d 319, 323-24 (Del. Ch. 1998); *Park Cities Corp. v. Byrd*, 534 S.W.2d 668, 672 (Tex. 1976) (“When the relationship between alleged partners is governed by a written partnership agreement, then, in the absence of some clear violation of public policy, it is the agreement which governs the rights of the parties; the statute will be consulted only where the agreement is silent”). There are no provisions of the Uniform Limited Partnership Act, as adopted by the West Virginia legislature, that otherwise restrict the Debtors’ ability to file bankruptcy. The fact that West Virginia has statutes relating to the *wind down* and *dissolution* procedures for limited partnerships does not foreclose the Debtors’ access to the bankruptcy process. MTD Objection ¶¶ 75-77.

6. The Debtors additionally cite the Court to the arguments and authorities set forth in the MTD Objection at ¶¶ 60-70. For the reasons set forth therein, the Debtors submit that the LP Plaintiffs cannot meet their burden to show that the Debtors' bankruptcy cases were unauthorized under West Virginia law.

B. The Court has subject matter jurisdiction over these bankruptcy cases because the bankruptcy petitions were properly authorized under applicable West Virginia law.

7. There is no question that the Court has subject matter jurisdiction to consider whether these chapter 11 cases were authorized. If the Court finds that these cases were not authorized, then the remedy is dismissal, and subject matter jurisdiction is a nonissue. If the Court finds, however, that these chapter 11 cases were authorized, then the Court clearly has subject matter jurisdiction. Because Ms. Nicolau, as Responsible Party, had the requisite authority to file bankruptcy petitions for the Debtors, the Court has subject matter jurisdiction over the Debtors and all matters relating to the administration of their estates (including the Harney Application).

C. Venue of the bankruptcy cases in this Court is proper.

8. Bankruptcy venue for a limited partnership is proper (i) where the limited partnership has its principal place of business or (ii) where its principal assets are located. *Puerto Rico v. Commonwealth Oil Refining Co. (In re Commonwealth Oil Ref. Co.)*, 596 F.2d 1239, 1244-45 (5th Cir. 1979). Since the test is in the alternative, venue may properly lie in more than one district. *Id.* Here, while the Debtors' current headquarters and oil and gas wells are located in Colorado,⁴ the Debtors' principal and only assets of positive value is their cash, which has been located in bank accounts at Texas Capital Bank in Dallas, Texas since 2015.

⁴ It is undisputed that the Debtors' wells have negative value. See Graves Preliminary Report (Debtors Exhibit 310); Declaration of Edwin C. Moritz in Support of Motion for Dismissal of Chapter 11 Case [Docket No. 87].

9. The Fifth Circuit has emphasized that venue is most appropriate where the people who would handle the bankruptcy are located. *Id.* at 1242-43 (recognizing that the people in charge of operations were not necessarily the people in charge of the bankruptcy). Here, all of the Debtors' professionals are located in either Houston or Dallas, Texas.

10. As a result, venue is proper in either Colorado or Texas. A debtor's selection of a proper venue is entitled to great weight and deference. *In re ERG Intermediate Holdings, LLC*, No. 15-31858-HDH-11, 2015 WL 6521607, at *4 (Bankr. N.D. Tex. Oct. 27, 2015). The fact that the Debtors selected Texas as the venue for these bankruptcy proceedings is not indicative of bad faith or otherwise constitute cause to dismiss these chapter 11 cases.

D. PDC, as managing general partner of the Debtors, had the power under the Partnership Agreements to delegate to Ms. Nicolaou the authority to file bankruptcy petitions for the Debtors.

11. Again, it is the LP Plaintiffs' burden to prove that PDC lacked the power or authority to appoint Ms. Nicolaou as Responsible Party and thus, establish their theory that the filing of these chapter 11 cases was unauthorized. *See Quad-C Funding LLC*, 496 B.R. at 141-42. Because, as discussed above, PDC had authority to file bankruptcy petitions for the Debtors under the partnership agreements and West Virginia law, the partnership agreements authorized PDC to delegate that authority to Ms. Nicolaou. The Debtors cite the Court to the arguments and authorities set forth in the MTD Objection at ¶¶ 73-74. For the reasons set forth therein, the Debtors submit that the LP Plaintiffs cannot meet their burden to show that PDC lacked the power and authority under the partnership agreements to delegate to Ms. Nicolaou the authority to file bankruptcy petitions for the Debtors.

E. PDC, as managing general partner of the Debtors, had authority under applicable West Virginia partnership law to delegate to Ms. Nicolaou the authority to file bankruptcy petitions for the Debtors.

12. The LP Plaintiffs' contested issue of law "e" in the JPTO is identical to their contested issue of law "d," except the issue is presented as whether PDC had authority under West Virginia partnership law as opposed to pursuant to the partnership agreements. As discussed above, if PDC could delegate authority to file bankruptcy petitions for the Debtors to Ms. Nicolaou under the partnership agreements, then they were necessarily authorized to do so under West Virginia law, as West Virginia law does not otherwise restrict a managing general partner's broad authority to, among other things, "employ or retain personnel" for the Debtors or otherwise "enter into agreement to hire services of any kind or nature." *See* Partnership Agreement §§ 5.01, 6.02, 6.02(c), and 6.02(j). As a result, the Debtors submit that the LP Plaintiffs cannot meet their burden to show that PDC lacked the power and authority under West Virginia law to delegate to Ms. Nicolaou the authority to file bankruptcy petitions for the Debtors.

F. A corporate resolution by the board of directors of PDC, the managing general partner of the Debtors, was not required under Delaware law to (a) approve and enter into the engagement letter with Bridgeport to utilize the services of Ms. Nicolaou as Responsible Party for the Debtors, and (b) authorize Ms. Nicolaou to execute and file the bankruptcy petitions on behalf of the Debtors.

13. This contested issue of law is being raised for the first time by the LP Plaintiffs in the JPTO. The Debtors anticipate that the LP Plaintiffs will attempt to address this new argument in their pretrial brief. However, a pretrial brief (which, in this case, is effectively a reply to the MTD Objection and the Harney Response) filed 7 days before trial is not an appropriate vehicle to raise new arguments, and courts will generally either strike or ignore arguments raised for the first time in a reply. *See, e.g., Cavazos v. JP Morgan Chase Bank, N.A.*, 388 F. App'x 398, 399 (5th Cir. 2010) ("[a]rguments raised for the first time in a reply brief, even by pro se litigants . . .

are waived” (quoting *United States v. Jackson*, 426 F.3d 301, 304 n.2 (5th Cir. 2005)); *Blundell v. Lassiter*, 2018 WL 6738046, at *14 (N.D. Tex. May 21, 2018) (ignoring new arguments made in reply to motion to dismiss that were not raised in the underlying motion); *Digital Generation, Inc. v. Boring*, 869 F. Supp. 2d 761, 771 (N.D. Tex. 2012) (declining to consider new arguments raised in reply brief); *Mid-Continent Cas. Co. v. Eland Energy, Inc.*, No. 3:06-cv-1576-D, 2008 WL 80760, at *3 n. 4 (N.D. Tex. Jan. 8, 2008) (explaining that “this court has repeatedly held that it will not consider arguments raised for the first time in reply”). See generally *Penn. Gen. Ins. Co. v. Story*, No. 3:03-cv-330-G, 2003 WL 21435511, at *1 (N.D. Tex. June 10, 2003) (quoting *Springs Indus., Inc. v. Am. Motorists Ins. Co.*, 137 F.R.D. 238, 239-240 (N.D. Tex. 1991) (“The purpose of a reply brief under local rule 7.1(f), ‘is to rebut the nonmovant[s]’ response, thereby persuading the court that the movant is entitled to the relief requested by the motion”). As a result, the Court should either strike or ignore any and all of the LP Plaintiffs’ new arguments about whether a PDC board resolution was required for any purpose relating to the pending motions (JPTO contested issue of law “F”).

14. Without waiving the forgoing, the Debtors submit that a resolution by PDC’s board of directors was not required with respect to Ms. Nicolaou’s appointment as Responsible Party for the Debtors. PDC is a large, publicly traded company that, upon information and belief, retains consultants and advisors all the time without the need for board approval or resolution. Plus, PDC retained Ms. Nicolaou to serve as Responsible Party *for the Debtors*, not PDC.

15. In addition, PDC’s board of directors would have no reason to consider or approve Ms. Nicolaou’s actions on behalf of the Debtors, including her decision to file bankruptcy petitions on behalf of the Debtors. PDC’s board of directors is one step removed from decision making on behalf of the Debtors: PDC (acting through its officers) can carry out PDC’s duties as the Debtors’

managing general partner; once PDC appointed Ms. Nicolaou as Responsible Party for the Debtors, Ms. Nicolaou was authorized to take appropriate action for the Debtors, including filing bankruptcy, without seeking or obtaining a resolution from PDC's board of directors.

G. The resolutions signed by Ms. Nicolaou in her capacity as Responsible Party for the Debtors and attached to the Debtors' respective bankruptcy petitions are sufficient as a matter of bankruptcy law for purposes of properly authorizing the filing of the petitions.

16. In their contested issue of law "g" in the JPTO, the LP Plaintiffs contend (for the first time) that the resolutions executed by Ms. Nicolaou as Responsible Party for the Debtors and attached to their bankruptcy petitions, were insufficient to authorize the chapter 11 filings. Because this issue was raised for the first time by the LP Plaintiffs in the JPTO, and for the reasons set forth above, the Court should either strike or ignore the LP Plaintiffs' new argument related to contested issue of law "g" in the JPTO. Alternatively, to the extent the Court considers this new legal issue, the Debtors submit that the resolutions Ms. Nicolaou executed in connection with the decision to file these chapter 11 cases are the same or substantially similar to resolutions executed by the authorized representative of other limited partnership debtors, and thus, properly authorized the filing of the Debtors' chapter 11 petitions.

H. There is no "cause" to dismiss the bankruptcy cases pursuant to 11 U.S.C. §1112(b).

17. It is the movant's burden to establish whether cause exists to dismiss a bankruptcy case pursuant to 11 U.S.C. § 1112(b). *In re TMT Procurement Corp.*, 534 B.R. 912, 918 (Bankr. S.D. Tex. 2015); *In re Page*, 118 B.R. 456, 459 (Bankr. N.D. Tex. 1990). If a debtor's good faith in filing for chapter 11 is attacked, the "movant must establish a prima facie case, after which the [d]ebtor has the burden of proving that the petition was filed in good faith." *In re Sherwood Enters.*, 112 B.R. 165, 170-71 (Bankr. S.D. Tex. 1989) (citations omitted). The Debtors cite the Court to the arguments and authorities set forth in the MTD Objection at ¶¶ 29-57. For the reasons

set forth therein, the Debtors submit that the LP Plaintiffs have failed to present a *prima facie* case of bad faith.

18. Moreover, in the event that the Court finds that the LP Plaintiffs established a *prima facie* case of bad faith, and the burden shifts to the Debtors to show that the bankruptcy petitions were filed in good faith, the Debtors can and will make such a showing. On May 7, 2019, the LP Plaintiffs had the opportunity to depose Karen Nicolaou, the Debtors' Responsible Party, for over 6 hours regarding her role in these chapter 11 cases and her decision to file bankruptcy for the Debtors. Ms. Nicolaou provided thorough testimony regarding what she did, what documents she reviewed, and with whom she consulted in arriving at her decision to file these chapter 11 cases. *See* Dep. of K. Nicolaou at 11:9-17:25; 25:6-34:17; 44:7-25; 49:8-51:25; 63:13-67:5; 69:6-20; 71:8-72:25; 80:17-81:22; 117:2-119:19; 128:6-130:10; 142:3-144:15; 146:25-149:25; 152:18-155:24; 173:4-176:15; 181:22-183:22; 186:7-191:11; 193:2-198:25; 200:2-14; 205:16-208:7).⁵ Based on the weight of the evidence, including but not limited to Ms. Nicolaou's testimony, the Debtors will meet their burden to show that the bankruptcy petitions were filed in good faith, in the event that Movants first meet their burden and prove a *prima facie* case.

I. Harney Management Partners and Ms. Nicolaou were properly engaged by the Debtors under 11 U.S.C. §§ 105 and 363.

19. In support of the Debtors' request to retain Ms. Nicolaou and Harney pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors cite the Court to the arguments and authorities set forth in the Harney Response at ¶¶ 10-13. Moreover, if the Court is not inclined to approve Ms. Nicolaou's retention pursuant to section 363(b) of the Bankruptcy Code, the Debtors submit that the standards for retention under section 327 and 328 of the Bankruptcy Code have nonetheless been met. *See id.* ¶¶ 19-29.

⁵ The relevant portions of Ms. Nicolaou's deposition transcript are attached as **Exhibit B**.

WHEREFORE, the Debtors respectfully request that this Court (i) grant the Harney Application (ii) deny the Motion to Dismiss, and (iii) grant the Debtors such other and further relief as may be just and proper.

Respectfully submitted this 13th day of June, 2019.

GRAY REED & McGRAW LLP

By: /s/ Jason S. Brookner

Jason S. Brookner
Texas Bar No. 24033684
Lydia R. Webb
Texas Bar No. 24083758
Amber M. Carson
Texas Bar No. 24075610
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
lwebb@grayreed.com
acarson@grayreed.com

-and-

James J. Ormiston
Texas Bar No. 15307500
1300 Post Oak Blvd., Suite 2000
Houston, Texas 77056
Telephone: (713) 986-7000
Facsimile: (713) 986-7100
Email: jormiston@grayreed.com

COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of June, 2019, she caused a true and correct copy of the foregoing document to be served on the parties appearing on the Limited Service List maintained in these cases via first class United States mail, postage prepaid and, where possible, via electronic mail.

/s/ Lydia R. Webb

Lydia R. Webb

Exhibit A

Transcript of May 29, 2019 Hearing Excerpts

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In Re:) **Case No. 18-33513-sgj-11**
)
ROCKIES REGION 2006 LIMITED) Dallas, Texas
PARTNERSHIP and ROCKIES) May 29, 2019
REGION 2007 LIMITED) 1:30 p.m.
PARTNERSHIP,)
) MOTIONS
Debtors.)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor: Lydia Rogers Webb
Jason S. Brookner
GRAY, REED & MCGRAW, LLP
1601 Main Street, Suite 4600
Dallas, TX 75201
(469) 320-6132

For the Debtor: James J. Ormiston
GRAY, REED & MCGRAW, LLP
1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
(713) 986-7107

For PDC Energy, Inc.,
Interested Party: Michael Morfey
Robin Russell
HUNTON ANDREWS KURTH, LLP
600 Travis Street, Suite 4200
Houston, TX 77002
(713) 220-4086

For Certain Limited
Partner Plaintiffs: Mark A. Weisbart
James Sanford Brouner
THE LAW OFFICE OF MARK A. WEISBART
12770 Coit Road, Suite 541
Dallas, TX 75251
(972) 628-4903

1 is they were not looking out for the interests of the Limited
2 Partner and it's all about protecting and benefitting PDC.

3 Key aspects of this information is not available through
4 Ms. Nicolaou, and we are now forced to turn to the attorneys
5 to get some basic information -- this basic information. If
6 given the opportunity to take Mr. Brookner's deposition, I
7 assume it would be relatively short, an hour or two at most,
8 and he hopefully could fill in the blanks and explain the
9 numbers. Maybe he can't. I don't know. But it's simply not
10 fair to put us in a position at trial where Ms. Nicolaou takes
11 the stand and says, I based my -- in my business judgment,
12 this is a good deal based on two or three elements and
13 conversations I've had with attorneys that supposedly analyzed
14 the lawsuit, and not know what the analysis is or how these
15 numbers came about.

16 THE COURT: Okay. I'm going to interject. What
17 makes this situation different from pretty much every other
18 Chapter 11 case we have? What makes this different? Because
19 we know that many Chapter 11s are filed in response to
20 burdensome litigation, right? Happens every day, right?

21 MR. WEISBART: Yes, ma'am. Yes, Your Honor.

22 THE COURT: We know that there is technically no
23 requirement of insolvency to file Chapter 11. We know that
24 people file Chapter 11s with pre-negotiated term sheets.
25 Restructuring support agreements has even become a buzz term

1 in recent years. What makes this case different? Why do we
2 get to probe into Debtors' bankruptcy counsel's mental
3 impressions here? If we can do it here, can't we do it
4 everywhere?

5 MR. WEISBART: Because Ms. Nicolaou can't explain the
6 basis for the numbers that support the filing of the case.

7 And --

8 THE COURT: Well, wait. I mean, you --

9 MR. WEISBART: Or she can't recall them, let's put it
10 that way, at the time of her deposition.

11 THE COURT: Well, isn't that -- if she gets on the
12 witness stand and can't recall very relevant, important
13 information, isn't that going to go to, you know, how much
14 credibility, how much weight I put into her business judgment,
15 decision-making? It doesn't mean you can go to the attorney
16 who she was consulting with, does it?

17 This seems extraordinary to me. Tell me why it's not
18 extraordinary.

19 MR. WEISBART: This is an extraordinary case, Your
20 Honor. But I --

21 THE COURT: Why is this an extraordinary case? How
22 is this -- if I can do it here, can't I do it in every case?

23 MR. WEISBART: This is a case --

24 THE COURT: Boards of directors rely on outside
25 bankruptcy counsel when they're in distress. Generally,

1 they're not all experts about bankruptcy law. Right?

2 MR. WEISBART: Correct, Your Honor. This is a case
3 where there was a -- and our contention is that this whole
4 process was not done of taking into account the position of
5 the Limited Partners and the Limited Partners' interests.

6 So we have, as you know, and I've made the assertion
7 previously and it's in our pleadings, that this is a bad faith
8 filing. The Gray Reed firm was involved over a several-month
9 period in the process, and then continued the representation
10 post-bankruptcy. It wasn't, you know, they came, within a
11 month's time period decided to file Chapter 11, and then filed
12 the 11 and then are proposing a settlement postpetition. This
13 --

14 THE COURT: Okay. Not -- again, not unusual.

15 MR. WEISBART: Not --

16 THE COURT: Right?

17 MR. WEISBART: Not -- not completely unusual.

18 Correct, Your Honor. Yes.

19 But, again, I can only say this, that if Ms. Nicolaou
20 takes the witness stand and says something different than she
21 said in her deposition -- and she said, I just read it, my
22 attorneys didn't do an analysis -- but if all of a sudden she
23 starts saying, well, I relied on conversations with Mr.
24 Brookner in evaluating the lawsuit, and you look at the
25 responses, and the statement in her declaration that it has a

1 MR. BROUNER: No, Your Honor. Nothing further.

2 THE COURT: All right. I deny the motion to compel.
3 I do, now that these deposition transcript portions have been
4 pointed out to me, I do believe all of these questions we're
5 down to with regard to Ms. Nicolaou -- Questions 2, 3, 4, 5,
6 and 8 -- have been sufficiently asked and answered. So the
7 motion to compel is denied.

8 All right. I'll ask Ms. Webb to upload a form of order on
9 that particular motion.

10 If there's nothing else, we stand adjourned. Okay. Thank
11 you.

12 THE CLERK: All rise.

13 (Proceedings concluded at 4:38 p.m.)

14 --oOo--

15

16

17

18

19

20

CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the digital sound recording of the proceedings in the above-
entitled matter.

23 **/s/ Kathy Rehling**

05/31/2019

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

25

Exhibit B

Nicolaou Deposition Excerpts

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.

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:

Mr. Mark A. Weisbart
Texas Bar No. 21102650
Mr. James S. Brouner
Texas Bar No. 03087285
THE LAW OFFICE OF MARK A. WEISBART
12770 Coit Rd., Suite 541
Dallas, Texas 75251
Telephone: (972) 628-4903
mark@weisbartlaw.net
jbrouner@weisbartlaw.net

and

Mr. Thomas G. Foley
California Bar No. 65812
FOLEY BEZEK BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, California 93101
Telephone: (805) 962-9495
Facsimile: (805) 962-0722
tfoley@foleybezek.com

FOR THE DEBTORS:

Mr. James Ormiston
Mr. Jason Brookner
GRAY REED
1300 Post Oak Boulevard
Suite 2000
Houston, Texas 77056
Telephone: (713) 986-7000
Fax: (713) 986-7100
Jormiston@grayreed.com
Jbrookner@grayreed.com

1 FOR PDC ENERGY:
2 Mr. Michael D. Morfey
3 Ms. Robin Russell (Via telephone)
4 HUNTON, ANDREWS & KURTH, LLP
5 600 Travis Street
6 Houston, Texas 77002
7 Telephone: (713) 220-4163
8 Michaelmorfey@huntonak.com
9 Rrussell@huntonak.com

and

11 Mr. Charles E. Elder
12 IRELL & MANELLA, LLP
13 1800 Avenue of the Stars
14 Suite 900
15 Los Angeles, California 90067-4276
16 Telephone: (310) 277-7199
17 Fax: (310) 203-7924
18 Celder@irell.com

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.

INDEX

	PAGE
Appearances.....	2, 3
Stipulations.....	8

KAREN NICOLAOU

Examination by Mr. Mark A. Weisbart.....	9
Reporter's Certificate.....	238

EXHIBITS

NO.	DESCRIPTION	PAGE
1	Bates DEBTORS005916 through 20	11
2	Bates DEBTORS000602 through 608	17
3	Bates DEBTORS000376 through 422	25
4	Bates DEBTORS000172 through 220	25
5	Bates DEBTORS000673 and 674	54
6	Bates DEBTORS000733 and 734	55
7	Bates DEBTORS000863 and 867	57
8	Bates DEBTORS005921 through 5923	58
9	Bates DEBTORS005916 through 5942	59
10	Bates DEBTORS006084 through 2499	75
11	Bates DEBTORS001290 through 1297	79
12	Bates DEBTORS004727 through 4747	81
13	Bates DEBTORS001599 with attached map printout	89
14	Bates DEBTORS005933	93

Page 5

1	15	Bates DEBTORS006100 through 6110	105
2	16	Bates DEBTORS000001 through 38	115
3	17	Verified Second Amended Complaint	115
4	18	Declaration of Karen Nicolaou in Support of Chapter 11 Petitions and First Day Motions	134
5			
6	19	February 21, 2019 letter from Tom Foley to Jason Brookner	140
7	20	Disclosure Statement for Debtors' Joint Chapter 11 Plan	158
8			
9	21	Debtor's Joint Chapter 11 Plan	158
10			
11	22	Bates DEBTORS001329 through 1332	162
12	23	Bates DEBTORS001614 and 1615	169
13	24	Bates DEBTORS001962 through 1967	170
14	25	Bates DEBTORS001624 and 1625	181
15			
16	26	Bates DEBTORS002036 and 2037 and 2042 through 2053	184
17			
18			
19			
20			
21			
22			
23			
24			
25			

Page 7

P R O C E E D I N G S

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.

Page 6

C E R T I F I E D Q U E S T I O N S

NO.	PAGE:LINE
1	
2	
3	
4	1 "And what was their conclusion?" 28:17
5	2 "Are you refusing to answer the question as to the specific services Gray Reed provided you?" 111:1
6	
7	3 "Did you ask Gray Reed to provide specific services in connection with your representation?" 111:10
8	4 "And they have not been provided in connection with the request for production of documents. Why not?" 112:19
9	
10	5 "Did someone at Gray Reed explain the basis for making a determination that all of the claims are derivative claims?" 123:20
11	
12	6 "And did you rely on the advice they gave you?" 126:15
13	
14	7 "And did you rely on the advice of counsel?" 138:23
15	
16	8 "Did you rely on the advice of counsel in connection with any of the comments you made in your declaration concerning the litigation?" 139:6
17	
18	9 "Are you refusing to answer the question based on attorney-client privilege?" 143:12
19	
20	
21	
22	
23	
24	
25	

Page 8

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.

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**

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

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.**

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?**

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.**

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

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

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**

1 **objected on the basis of the privilege.**

2 Q. (BY MR. WEISBART) Are you refusing to answer
3 the question as to the specific services Gray Reed
4 provided you?

5 **A. I am.**

6 Q. You will not waive the attorney-client
7 privilege?

8 **A. I will not.**

9 **MR. WEISBART: Will you please certify the**
10 **question.**

11 Q. (BY MR. WEISBART) Did you ask Gray Reed to
12 provide specific services in connection with your
13 representation?

14 **MR. ORMISTON: Objection, calls for the**
15 **disclosure of attorney-client privilege communications,**
16 **and instruct the witness not to answer.**

17 Q. (BY MR. WEISBART) Are you -- will you agree to
18 waive the yes or no answer to that question?

19 **A. I will not waive -- I will not waive**
20 **attorney-client privilege.**

21 **MR. WEISBART: Will you please certify the**
22 **question.**

23 Q. (BY MR. WEISBART) Did Gray Reed have the
24 leeway to perform services as they deemed appropriate or
25 did they have to get instruction from you?

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

2 **A. Gray Reed and I discussed services to be**
3 **provided.**

4 Q. (BY MR. WEISBART) Did they take direction from
5 you?

6 **A. Yes.**

7 Q. Okay. Did they have the leeway to perform
8 their services without first consulting with you?

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

10 **A. No.**

11 Q. (BY MR. WEISBART) Okay. Did they bill for
12 their services?

13 **A. Yes.**

14 Q. Did they send you copies of the billings?

15 **A. Yes.**

16 Q. Were they sent monthly?

17 **A. Yes.**

18 Q. Okay. So you would have copies of those bills?

19 **A. I believe so.**

20 Q. Okay. And they have not been provided in
21 connection with the request for production of documents.
22 Why not?

23 **MR. ORMISTON: Objection. We're not going**
24 **to do document production in a deposition. If you have**
25 **issues with the document production, let's have a meet**

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.

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**

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.**

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?**

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**

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

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?

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**

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

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.**

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**

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 --**

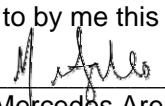

23 Q. (BY MR. WEISBART) If you look to the last
24 page --

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

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.)**

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.
 I further certify that I am neither counsel for,
 related to, nor employed by any of the parties or
 attorneys in the action in which this proceeding was
 taken, and further that I am not financially or
 otherwise interested in the outcome of the action.

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)**

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

1 REPORTER'S CERTIFICATION
 2 DEPOSITION OF KAREN NICOLAOU
 3 MAY 7, 2019
 4
 5 I, Mercedes Arellano, Certified Shorthand Reporter
 6 in and for the State of Texas, hereby certify to the
 7 following:
 8 That the witness, KAREN NICOLAOU, was duly sworn by
 9 the officer and that the transcript of the oral
 10 deposition is a true record of the testimony given by
 11 the witness;
 12 That examination and signature of the witness to
 13 the deposition transcript was waived by the witness and
 14 agreement of the parties at the time of the deposition;
 15 That the original deposition was delivered to
 16 Mr. Mark A. Weisbart;
 17 That the amount of time used by each party at the
 18 deposition is as follows: