Appeal Docket Sheet **Superior Court of Pennsylvania**

Docket Number: 394 WDA 2005

March 3, 2005

03-1598-CD

394 WDA 2005

Larry F. Smyers
v.
Mid-East Oil Company, Appellant
v.
Devonian Resources Inc., And Van Hampton Gas & Oil Co., Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 3, 2005 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Trespass

Consolidated Docket Nos.: **Related Docket Nos.:**

SCHEDULED EVENT

Next Event Type: Case Initiation	Next Event Due Date: March 3, 2005
Next Event Type: Docketing Statement Received	Next Event Due Date: March 17, 2005
Next Event Type: Original Record Received	Next Event Due Date: April 12, 2005

FILED
APR 1
FITTS... SUPERIOR COURT

Record (3 Pages)
, Deposition
, Transcript

FILED 10 cc
m/12:39 Kert
MAR 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

#84

Superior Court of Pennsylvania

COUNSEL INFORMATION

Appellant Mid-East Oil Company
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
Attorney: Parker, Nathaniel Carlton
Bar No.: 90993 Law Firm:
Address: P.O. Box 667
Clarion, PA 16214
Phone No.: (814)226-6853 Fax No.: (814)226-4951
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Smyers, Larry F
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:
Attorney: Taladay, Matthew B.
Bar No.: 49663 Law Firm: Hanak, Guido & Taladay
Address: 498 Jeffers St
PO Box 487
DuBois, PA 15801
Phone No.: (814)371-7768 Fax No.: (814)371-1974
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Devonian Resources Inc
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:
Attorney: McFate, Robert W.
Bar No.: 18528 Law Firm: McFate, McFate & McFate
Address: 3178 State Route 257 Suite B
PO Box 407
Seneca, PA 16346
Phone No.: (814)676-3933 Fax No.: (814)676-6900
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Van Hampton Gas & Oil Co
Pro Se: Appoint Counsel Status:
IFP Status:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 394 WDA 2005

March 3, 2005

Appellee Attorney Information:

Attorney: McFate, Robert W.
Bar No.: 18528 Law Firm: McFate, McFate & McFate
Address: 3178 State Route 257 Suite B
PO Box 407
Seneca, PA 16346
Phone No.: (814)676-3933 Fax No.: (814)676-6900
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/3/05	Notice of Appeal	60.00	60.00	2005SPRWD000275

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield Division: Civil
Date of Order Appealed From: January 31, 2005 Judicial District: 46
Date Documents Received: March 3, 2005 Date Notice of Appeal Filed: February 28, 2005
Order Type: Order OTN:
Judge: Ammerman, Fredric J.
President Judge
Lower Court Docket No.: No. 03-1598-CD

ORIGINAL RECORD CONTENTS

Original Record Item **Filed Date** **Content/Description**

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 3, 2005	Notice of Appeal Filed	Appellant	Mid-East Oil Company
March 3, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

03-1598-CD

Larry F. Smyers
VS.
Mid-East Oil Company

Devonian Resources, Inc. and
Van Hampton Gas & Oil Co., Inc.
Additional Defendants

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No.** 87, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is April 8, 2005.

Prothonotary/Clerk of Courts

(seal)

Civil Other

Date		Judge
10/27/2003	Filing: Civil Complaint Paid by: Taladay, Mathew B. (attorney for Smyers, Larry F.) Receipt number: 1868100 Dated: 10/27/2003 Amount: $85.00 (Check) 1 CC to Shff.	No Judge
11/20/2003	Defendant's Preliminary Objections to Complaint. filed by, s/Dom W. Greco, Esquire no cc	No Judge
	Certificate of Service, Preliminary Objections to Complaint upon: Matthew B. Taladay, Esquire filed by, s/Dom W.. Greco, Esquire no cc	No Judge
11/24/2003	Certificate of Service, Defendant's November 19, 2003, Request for Admissions, Interrogatories & Requested Production of Documents, upon: MATTHEW B. TALADAY, ESQ. filed by, s/Dom W. Greco, Esquire no cc	No Judge
12/17/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
12/31/2003	Amended Complaint. filed by, s/Matthew B. Taladay, Esquire no cc	No Judge
	Response To Request For Admissions: Answers To Interrogatories; and Response To Request For Production Of Documents. filed no cc	No Judge
	Certificate of Service, Notice of Deposition of Party Larry F. Smyers upon: MATTHEW B. TALADAY, ESQ. filed by, s/Dom W. Greco, Esquire no cc	No Judge
01/22/2004	Defendant's Preliminary Objections to Amended Complaint. filed by, s/Dom W. Greco, Esq. s/Nathaniel C. Parker, Esq. 1 cc Atty Greco	No Judge
	Certificate of Service, Defendant's Preliminary Objections to Amended Complaint upon Matthew B. Taladay, Esquire s/Nathaniel C. Parker, Esq. 1 cc Atty Greco	No Judge
01/27/2004	Defendant's Rule 4014 (c) Motion To Determine Sufficiency of Plaintiff's Answers to Defendant's Nov. 19, 2003 Requests For Admission. filed by, s/Dom W. Greco, Esq. s/Nathaniel C. Parker, Esq. 1 cc Atty Parker	No Judge
	Certificate of Service, Defendant's Rule 4014 (c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions upon Matthew B. Taladay, Esq. filed by, s/Nathaniel C. Parker, Esquire 1 cc Atty Parket	No Judge
02/02/2004	Rule, Now this 30th day of Jan. 2004, issued upon Plaintiff. Rule Returnable the 20th day of February, 2004, for filing Written Response. by the Court, s/FJA,P.J. 2 cc Atty Greco	Fredric Joseph Ammerman
02/12/2004	Objection to Plaintiff's Response To Defendant's Rule 4007.1(D)(1) Notice of Deposition Request For Production of Documents. filed by, s/Dom W. Grecco, Esq. s/Nathaniel C. Parker, Esq. no cc	Fredric Joseph Ammerman
	Certificate of Service, Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents upon Matthew B. Taladay, Esq. s/Nathaniel C. Parker, Esq. no cc	Fredric Joseph Ammerman
02/17/2004	ORDER, NOW, this 13th day of February, 2004, Rule issued upon Plaintiff. Argument is scheduled for the 3rd day of March, 2004, at 2:30 p.m. in Courtroom No.1. by the Court, s/FJA, P.J. 2 cc Atty Greco w/service memo	Fredric Joseph Ammerman
02/18/2004	First Amendment To Amended Complaint. filed by, s/Matthew B. Taladay, Esquire Verification s/Matthew B. Taladay, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
	Response To Preliminary Objections To Amended Complaint. filed by, s/Matthew B. Taladay, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
	Notice of Service, Plaintiff's Request For Production Of Documents upon Dom W. Greco, Esquire s/Matthew B. Taladay, Esquire no cc	Fredric Joseph Ammerman

I hereby certify this to be a true and attested copy of the original statement filed in this case.

APR 07 2005

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

Civil Other

Date		Judge
02/25/2004	Affidavit of Service, Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order upon, Matthew B. Taladay, Esq. and David S. Meholick, CA. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
	Affidavit of Service, Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order upon Matthew B. Taladay, Esq. and David S. Meholick, Court Administrator. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
02/26/2004	Praecipe to Place Defendant's Motion To Determine Sufficiency of Plaintiff's Answers To Defendant's November 19, 2003 Requests For Admissions on Next Available Argument List. filed by, s/Nathaniel C. Parker, Esquire no cc Copy to CA Certificate of Service	Fredric Joseph Ammerman
03/01/2004	Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents. filed by, s/Dom W. Greco, Esquire no cc	Fredric Joseph Ammerman
	Response To Request For Admissions: Answers To Interrogatories: and Response To Request For Productions Of Documents. s/Larry Smyers Certificate of Service no cc	Fredric Joseph Ammerman
	ORDER, AND NOW, this 1st day of March, 2004, re: Argument on Defendant's Preliminary Objections to Amended Complaint has been RESCHEDULED from March 3, 2004, to Thursday, March 11, 2004 at 2:30 p.m., in Courtroom No. 1. Additionally, argument on Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Request for Admissions will also be heard at this time. by the Court, s/FJA, P.J. 1 cc Attys Parker, Taladay	Fredric Joseph Ammerman
03/08/2004	Plaintiff's Response to Defendant's Notice of Deposition. filed by, s/Matthew B. Taladay, Esquire no cc	Fredric Joseph Ammerman
	Response to Defendant's Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents. filed by, s/Matthew B. Taladay, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendant's March 2004 Request For Admissions & Interrogatories upon Matthew B. Taladay, Esquire. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
03/11/2004	Motion for Protective Order, filed by s/Matthew B. Taladay No CC	Fredric Joseph Ammerman
	Outline of Defendant's Argument in Support of Preliminary Objections to Complaint. filed by, s/Dom W. Greco, Esq. no cc	Fredric Joseph Ammerman
	Outline for Argument of Remaining Defendant's Rule 4014 (C) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003, Requests for Admissions. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Outline for Argument of Remaining Defendant's Rule 4014 (c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions upon Matthew B. Taladay, Esq. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Outline of Defendant's Argument in Support of Preliminary Objections to Complaint upon Matthew B. Taladay, Esquire. filed by, s/Dom W. Greco, Esquire no cc	Fredric Joseph Ammerman
03/12/2004	ORDER, AND NOW, this 11th day of March, 2004, Re: Plaintiff is excused from responding to the Request for Admissions submitted by the Defendant. It is further ordered that a Hearing shall be heard on the 1st day of April, 2004, at 1:30 p.m. at which time individual Request for Admissions propounded by Defendant to Plaintiff may be considered for exception to this Protective Order. by the Court, s/FJA, J. 3 cc Atty Taladay	Fredric Joseph Ammerman

Civil Other

Date		Judge
03/19/2004	ORDER, AND NOW, this 18th day of March, 2004, Re: Defendant's Preliminary Objections. by the Court, s/FJA, P.J. 1 cc Atty Taladay, 2 cc Atty Greco	Fredric Joseph Ammerman
	ORDER, AND NOW, this 19th day of March, 2004, Re: Argument on Plaintiff's Motion for Protective Order has been RESCHEDULED from April 1, 2004 to Monday, April 19, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc & Memo for Service to Atty Taladay	Fredric Joseph Ammerman
03/24/2004	Certificate of Service, Order of Court dated March 19, 2004 upon Dom W. Greco, Esq. and Nathaniel C. Parker, Esq. filed by, s/Matthew B. Taladay, Esquire no cc	Fredric Joseph Ammerman
04/05/2004	Filing: Praecipe for Writ of Summons to Join Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. as Additional Defendants Paid by: Greco, Dom W. (attorney for Mid East Oil Company) Receipt number: 1876591 Dated: 04/05/2004 Amount: $85.00 (Check) Two Writs to Attorney Parker	Fredric Joseph Ammerman
	Rule 1007.1(a) Demand for Jury Trial, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
04/08/2004	Answer, New Matter & Counterclaims to Plaintiff's Amended Complaint. filed by, s/Nathaniel C. Parker, Esquire Verification s/Mark Thompson no cc	Fredric Joseph Ammerman
	Certificate of Service, Answer, New Matter & Counterclaims of Plaintiff's Amended Complaint upon Matthew B. Taladay, Esq. and Robert McFate, Esq. 1 cc to Atty	Fredric Joseph Ammerman
04/19/2004	Acceptance of Service, I hereby accept service of the Writ of Summons to join Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. as additional defendants, on behalf of both Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc., and hereby certify that I am Devonian Resources, Inc.'s and Van Hampton Gas & Oil Co., Inc.'s counsel and I am authorized to do so, filed by s/Robert W. McFate, Esq. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty Parker no cert. copies Served copy of Defendant's Brief in Opposition to Plaintiff's Motion for Protective Order to Atty. Taladay.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 19th day of April, 2004, Re: Plaintiff's Motion for Protective Order is hereby GRANTED. Protective Order issued and Plaintiff not required to respond to any of the items as described within the Motion for Protective Order. by the Court, s/FJA, P.J. 1 cc to Attys Taladay, Creco and McFate	Fredric Joseph Ammerman
05/10/2004	Certificate of Service, Defendant Mid-East's May 2004 Request for Admissions Served Upon Plaintiff Smyers, upon: Matthew B. Taladay, Esq. and Robert W. McFate, Esq. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
05/17/2004	Preliminary Objections To Defendant's New Matter And Counterclaims To Plaintiff's Amended Complaint. filed by, s/Matthew B. Taladay, Esq. no cc	Fredric Joseph Ammerman
06/17/2004	Defendant Mid-East's May 2004 Request for Admissions served on Plaintiff Smyers, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
	Certificate of Service, Defendant Mid-East's May 2004 Request for Admissions served upon Plaintiff Smyers, served upon Matthew B. Taladay, Esq. and Robert W. McFate, Esq., filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
	Defendant Mid-East's Rule 4014(b) Judicial Admissions for Failure to Timely Answer or Object, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman

Civil Other

Date		Judge
06/17/2004	Certificate of Service, Defendant Mid-East's Rule 4014(b) Judicial Admissions for Failure to Timely Answer or Object, served upon Matthew B. Taladay, Esq. and Robert W. McFate, Esq., filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
06/22/2004	Response to May 2004 Request for Admissions filed by Atty. Taladay No cc.	Fredric Joseph Ammerman
	Response to Defendant's Rule for 4014(b) Judicial Admissions and Plaintiff's Petition for Enlargement of Time to Respond to Request for Admission filed by Atty. Taladay. No cc.	Fredric Joseph Ammerman
06/29/2004	Order, NOW, this 28th day of June, 2004, upon consideration of Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint, a Rule is issued upon Defendant to Appear and Show Cause why the Objections should not be granted. Argument is scheduled the 23 day of July, 2004, at 9:00 a.m. in Courtroom No. 1. bY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC with service memo to Attorney Taladay	Fredric Joseph Ammerman
07/09/2004	Certificate of Service, Order of Court dated June 28, 2004 served upon Dom W. Greco, Esq. and Robert W. McFate, Esq., filed by s/Matthew B. Taladay No CC	Fredric Joseph Ammerman
07/13/2004	Order, NOW, this 12 day of July, 2004, Order that argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint has been rescheduled from July 23, 2004 to Monday, August 23, 2004 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: McFate, Greco, Taladay	Fredric Joseph Ammerman
07/26/2004	Defendant Mid-East's Preliminary Objections to Plaintiff Smyers' Preliminary Objections to Mid-East's Answer, New Matter, and Counterclaim, filed by s/Nathaniel C. Parker, Esq. One CC Attorney Parker	Fredric Joseph Ammerman
07/27/2004	ORDER, AND NOW, this 26th day of July, 2004, it is the ORDER of the Court the argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaim to Plaintiff's Amended Complaint in the above matter has been rescheduled from August 23, 2004 to Wednesday, September 1, 2004 at 9:00 A.M. in Courtroom No. 1. By the Court, Fredric J Ammerman. One cc Attys: Taladay, Parker, McFare.	Fredric Joseph Ammerman
	ORDER, AND NOW, this 27 day of July, 2004, ORDER that argument on Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaims has been scheduled for WEednesday, Septmeber 1, 2004 at 9:00 a.m. By the Court, Judge Fredric Ammerman. 1 cc Attys: Taladay, Parker, Mcfate.	Fredric Joseph Ammerman
07/28/2004	Complaint Against Additional Defendants. Filed by s/Dom W. Greco, Esq.	Fredric Joseph Ammerman
	Certificate of Service, Complaint Against Additional Defendants, was sent by US Mail, postage pre-paid, to: Matthew B. Taladay, Esq. and Robert W. McFate, Esq. No cc.	Fredric Joseph Ammerman
09/17/2004	Motion to Compel Discovery filed by Atty. Taladay. Cert. of Service of Motion to Compel Discovery also. 1 CC to Atty.	Fredric Joseph Ammerman
09/22/2004	Order AND NOW, this 22 day of Sept. 2004, Rule is hereby issued upon Def.to show cause why the Plff's Motion should not be granted. Rule Returnable Oct. 13, 2004. S/FJA 1 CC to Atty. Taladay.	Fredric Joseph Ammerman
09/29/2004	Certificate of Service, Order of Court dated September, 28, 2004, mailed by U.S. First Class Mail to: Dom W. Greco, Esq., and Robert W. McFate, Esq. filed by s/ Matthew B. Taladay, Esquire.	Fredric Joseph Ammerman
10/13/2004	Defendant Mid-East's Response to Plaintiff Smyers' Motion to Compel Discovery , filed by s/Nathaniel C. Parker, Esq. 2 CC Atty. Parker. Certificate of Service, delivered on October 13, 2004, to other counsel of record.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Larry F. Smyers vs. Mid East Oil Company, Devonian Resources, Inc., Van Hampton Gas && Oil Co., Inc.

Civil Other

Date		Judge
10/18/2004	Order NOW, this 13th day of October, 2004, following argument on Plaintiff's Preliminary Objections to Mid-East Oil Company's Answer, New Matter and Counterclaim and Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaim, the Court Finds as follows: 1. That Plaintiff's Preliminary Objections are hereby denied. 2. Pursuant to the Court's ruling in paragraph 1 above, Defendant's Preliminary Objections are dismissed as the Court finds them to be moot. s/FJA 1 CC Atty. Greco, 2 CC to Atty. McFate, 2 CC to Atty. Taladay.	Fredric Joseph Ammerman
10/20/2004	Notice of Intent to File Praecipe to Enter Judgment by Default filed by Atty. Parker. No cc.	Fredric Joseph Ammerman
	Certificate of Service of Notice of Intent to File Praecipe to Enter Judgment by Default. No cc.	Fredric Joseph Ammerman
10/27/2004	Answer to Complaint to Join Additional Defendants and New Matter filed by Atty. McFate. No cc.	Fredric Joseph Ammerman
	Certificate of Service of Answer to Complaint to Join Additional Defendant and New Matter filed by Atty. McFate No cc.	Fredric Joseph Ammerman
11/17/2004	Reply to New Matter and Answer to Counterclaim, filed by Atty. Taladay no cert. copies.	Fredric Joseph Ammerman
	Reply to New Matter Alleged by Devonian and Van Hampton, filed by Atty. Greco no cert. copies.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Parker Served copy of Reply to New Matter Alleged by Devonian and Van Hampton on Atty's Taladay & McFate.	Fredric Joseph Ammerman
12/01/2004	Transcript of Proceedings, Plaintiff's Motion to Compel Discovery, filed. Held before Honorable Fredric J. Ammerman, President Judge, on Oct. 13, 2004 at Clearfield County Courtroom, before Thomas D. Snyder, RPR Official Court Reporter.	Fredric Joseph Ammerman
12/13/2004	Mid-East's Motion for Partial Judgment on the Pleadings against Devonian & Van Hampton, filed by s/Nathaniel C. Parker, Esq. One CC Attorney Parker	Fredric Joseph Ammerman
12/17/2004	Order, now, this 17th day of Dec., 2004, upon consideration of the attached Motion for Partial Judgment on the Pleadings, a Rule is hereby issued upon the Additional Defendants to show cause why the motion should not be granted. Rule Returnable the 7th day of Jan. for filing written response. Argument is scheduled the 24th day of Jan., 2005 at 9:30 a.m. in Courtroom No. 1, Clfd. Co. Courthouse.	Fredric Joseph Ammerman
01/07/2005	Additional Defendants' Answer To Defendant's Motion For Partial Judgment on the Pleadings, filed by s/ Robert W. McFate. 1CC to Atty.	Fredric Joseph Ammerman
	Certificate of Service, copy of the Additional Defendants' Answer to Defendant's Motion for Partial Judgment on the Pleadings, on Jan. 5, 2005, sent to Nathaniel C. Parker, Esq., and Matthew B. Taladay, Esq. Filed by s/ Robert W. McFate, Esquire. 1CC to Atty	Fredric Joseph Ammerman
01/24/2005	Certificate of Service, copy of Order of Court dated Dec., 17, 2004, on Dec. 24, 2004 to Matthew B.Taladay, Esquire, and Robert W. McFate, Esquire. Filed by s/ Nathaniel C. Parker, Esquire. No CC	Fredric Joseph Ammerman
	Order, NOW, this 24th day of Jan., 2005, following argument on Motion for Partial Judgment on the Pleadings filed by Def., it is the ORDER of this Court that Mid-East Oil Co. have 15 days from date hereof to submit a letter brief to the Court, with Additional Def. to respond within 15 days after receipt of the same. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys Taladay, D. Greco, McFaye	Fredric Joseph Ammerman

Civil Other

Date		Judge
02/01/2005	Order, AND NOW, this 31st day of Jan., 2005, it is ORDERED that Plaintiff's Motion to Compel Discovery is granted. (see orginal). BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty Taladay	Fredric Joseph Ammerman
02/04/2005	Certificate of Service, Letter Brief in Support of Mid-East's Motion for Partial Judgment on the Pleadings Against Devonian and Van Hampton upon Matthew B. Taladay, Esq., and Robert W. McFate, Esq., filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
02/07/2005	Certificate of Service, copy of certified copy of Order of Court, on the 4th of Feb., 2005, mailed to Dom W. Greco, Esquire., copy to Robert W. McFate, Esquire. Filed by s/ Matthew B. Taladay, Esquire. No CC	Fredric Joseph Ammerman
02/11/2005	Application For Reconsideration, filed by s/ Dom W. Greco, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, copy of the Application For Reconsideration, sent to Matthew B. Taladay, Esquire, and Robert W. McFate, Esquire., on Feb. 11, 2005. Filed by s/ Nathaniel C. Parker, Esquire. No CC	Fredric Joseph Ammerman
02/22/2005	Response To Application For Reconsideration, filed by s/ Matthew B. Taladay, Esquire. No CC	Fredric Joseph Ammerman
02/24/2005	Certificate of Service, copy of the Additional Defendants' Brief in Response to Defendant's Motion for Partial Judgment on the Pleadings , on Feb. 22, 2005, to Nathaniel C. Parker, Esquire, and Matthew B. Taladay, Esquire. Filed by s/ Robert W. McFate, Esquire. No CC	Fredric Joseph Ammerman
02/28/2005	Praecipe to File Deposition Transcript of Record Pursuant to Pa. R.C.P. 4002.1, filed by Atty. Greco no Cert. Copies. Deposition of Larry F. Smyers dated January 19, 2004 attached.	Fredric Joseph Ammerman
	Filing: Appeal to High Court Paid by: Greco, Dom W. (attorney for Mid East Oil Company) Receipt number: 1896465 Dated: 02/28/2005 Amount: $45.00 (Check) 1 Cert. to Atty. and 1 Cert. with $60.00 check to Superior Court.	Fredric Joseph Ammerman
	Reply of Defendant to Plaintiff's Response to Defendant's Application for Reconsideration, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
03/01/2005	Order, NOW, this 1st day of March, 2005, the Court having been notified of Appeal to the Superior Court of Pa. it is the ORDER of this Court that Mid-East Oil, appellant, file a concise statement of the matters complained of on said Appeal no later than 14 days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure. By the Court: /s/ Fredric J. Ammerman, Judge. CC to Taladay, Greco, McFate,	Fredric Joseph Ammerman
03/02/2005	Certificate of Service, copy of the "Additional Defendants' Brief in Response to Defendant's Motion for Partial Judgment on the Pleadings" : sent to Nathaniel C. Parker, Esquire, and Matthew b. Taladay, Esquire. NoCC	Fredric Joseph Ammerman
03/03/2005	Order, NOW, this 2nd day of March, 2005, following argument and receipt of briefs; it is the ORDER of this Court that the Motion for Partial Judgment filed on behalf of Defendant Mid-East Oil be and is hereby DISMISSED. BY THE COURT, Fredric J. Ammerman, President Judge. 1CC Attys: Greco, Taladay, McFate	Fredric Joseph Ammerman
03/07/2005	Appeal Docket Sheet filed. no cc	Fredric Joseph Ammerman
03/09/2005	Defendant Mid-East's Rule 1925(b) Concise Statement of Matters Complained of on Appeal, filed by s/ Dom W. Greco, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, Copy of the true and correct copy of the foregoing Defendant Mid-East's Rule 1925(b) Concise Statement of Matters Complained of on Appeal, sent on March 7, 2005	Fredric Joseph Ammerman
04/04/2005	Opinion, April 4, 2005, BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: Taladay, Greco, McFate, D. Mikesell	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-1598-CD
Larry F. Smyers
VS.
Mid-East Oil Company

Devonian Resources, Inc. and
Van Hampton Gas & Oil Co., Inc.
Additional Defendants

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
01	10/27/03	Civil Complaint	45
02	11/20/03	Defendant's Preliminary Objections to Complaint	47
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04	11/24/03	Certificate of Service, Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents	01
05	12/17/03	Sheriff Return	02
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08	01/22/04	Defendant's Preliminary Objections to Amended Complaint	40
09	01/22/04	Certificate of Service, Defendant's Preliminary Objections to Amended Complaint	01
10	01/27/04	Defendant's Rule 4014(c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's Nov. 19, 2003, Requests for Admission	15
11	01/27/04	Certificate of Service, Defendant's Rule 4014(c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003, Requests for Admissions	01
12	02/02/04	Rule issued upon Plaintiff for filing written response	01
13	02/12/04	Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents	06
14	02/12/04	Certificate of Service, Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents	01
15	02/17/04	Order, Re: Rule issued upon Plaintiff. Argument scheduled	01
16	02/18/04	First Amendment to Amended Complaint	05
17	02/18/04	Response to Preliminary Objections to Amended Complaint	05
18	02/18/04	Notice of Service, Plaintiff's Request for Production of Documents	02
19	02/25/04	Affidavit of Service, Defendants' Preliminary Objections to Amended Complaint and February 13, 2004 Order	01
20	02/25/04	Affidavit of Service, Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order	01
21	02/26/04	Praecipe to Place Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests for Admissions on next available argument list	03
22	03/01/04	Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents	17
23	03/01/04	Response to Request for Admissions, Answers to Interrogatories and Response to Request for Production of Documents	28
24	03/01/04	Order, Re: Argument on Defendant's Preliminary Objections to Amended Complaint rescheduled. Argument on Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003, Request for Admissions heard at that time.	01
25	03/08/04	Plaintiff's Response to Defendant's Notice of Deposition	09
26	03/08/04	Response to Defendant's Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents	04
27	03/08/04	Certificate of Service, Defendant's March 2004 Request for Admissions & Interrogatories	01
28	03/11/04	Motion for Protective Order	90
29	03/11/04	Outline of Defendant's Argument in Support of Preliminary Objections to Complaint	08
30	03/11/04	Outline for Argument of Remaining Defendant's Rule 4014(c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003, Requests for	06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-1598-CD
Larry F. Smyers
VS.
Mid-East Oil Company

Devonian Resources, Inc. and
Van Hampton Gas & Oil Co., Inc.
Additional Defendants

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
		Admissions	
31	03/11/04	Certificate of Service, Outline for Argument of Remaining Defendant's Rule 4014(c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003, Request for Admissions	01
32	03/11/04	Certificate of Service, Outline of Defendant's Argument in Support of Preliminary Objections to Complaint	01
33	03/12/04	Order, Re: Plaintiff excused from responding to the Request for Admissions submitted by Defendant; further order that hearing scheduled	01
34	03/19/04	Order, Re: Defendant's Preliminary Objections	02
35	03/19/04	Order, Re: Argument on Plaintiff's Motion for Protective Order rescheduled	01
36	03/24/04	Certificate of Service, Order of Court dated March 19, 2004	02
37	04/05/04	Praecipe for Writ of Summons to Join Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. as Additional Defendants	03
38	04/05/04	Rule 1007.1(a) Demand for Jury Trial	02
39	04/08/04	Answer, New Matter & Counterclaims to Plaintiff's Amended Complaint	47
40	04/08/04	Certificate of Service, Answer, New Matter & Counterclaims of Plaintiff's Amended Complaint	01
41	04/19/04	Acceptance of Service, Re: Writ of Summons to join additional defendants	01
42	04/19/04	Certificate of Service, Defendant's Brief in Opposition to Plaintiff's Motion for Protective Order	01
43	04/20/04	Order, Re: Plaintiff's Motion for Protective Order	01
44	05/10/04	Certificate of Service, Defendant Mid East's May 2004 Request for Admissions served upon Plaintiff Smyers	01
45	05/17/04	Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint	05
46	06/17/04	Defendant Mid-East's May 2004 Request for Admissions served on Plaintiff Smyers	06
47	06/17/04	Certificate of Service, Defendant Mid-East's May 2004 Request for Admissions served upon Plaintiff Smyers	01
48	06/17/04	Defendant Mid-East's Rule 4014(b) Judicial Admissions for Failure to Timely Answer or Object	05
49	06/17/04	Certificate of Service, Defendant Mid-East's Rule 4014(b) Judicial Admissions for Failure to Timely Answer or Object	01
50	06/22/04	Response to May 2004 Request for Admissions	08
51	06/22/04	Response to Defendant's Rule for 4014(b) Judicial Admissions and Plaintiff's Petition for Enlargement of Time to Respond to Request for Admission	05
52	06/29/04	Order-Rule issued, Re: Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint	01
53	07/09/04	Certificate of Service, Order of Court dated June 28, 2004	02
54	07/13/04	Order, Re: Order that argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint rescheduled	01
55	07/26/04	Defendant Mid-East's Preliminary Objections to Plaintiff Smyers' Preliminary Objections to Mid-East's Answer, New Matter, and Counterclaim	07
56	07/27/04	Order, Re: argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaim to Plaintiff's Amended Complaint	01
57	07/27/04	Order, Re: argument on Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaims	01
58	07/28/04	Complaint against Additional Defendants	20

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-1598-CD
Larry F. Smyers
VS.
Mid-East Oil Company

Devonian Resources, Inc. and
Van Hampton Gas & Oil Co., Inc.
Additional Defendants

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
59	07/28/04	Certificate of Service, Complaint against Additional Defendants	01
60	09/17/04	Motion to Compel Discovery with Order issuing rule filed September 22, 2004	44
61	09/29/04	Certificate of Service, Order of Court dated September 28, 2004	02
62	10/13/04	Defendant Mid-East's Response to Plaintiff Smyers' Motion to Compel Discovery	09
63	10/18/04	Order, Re: following argument on Plaintiff's Preliminary Objections to Mid-East Oil Company's Answer, New Matter and Counterclaim and Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaim	01
64a	10/20/04	Notice of Intent to File Praecipe to Enter Judgment by Default	03
64b	10/20/04	Certificate of Service, Notice of Intent to File Praecipe to Enter Judgment by Default	01
65a	10/27/04	Answer to Complaint to Join Additional Defendants and New Matter	15
65b	10/27/04	Certificate of Service of Answer to Complaint to Join Additional Defendants and New Matter	01
66a	11/17/04	Reply to New Matter and Answer to Counterclaim	28
66b	11/17/04	Reply to New Matter Alleged by Devonian and Van Hampton	13
66c	11/17/04	Certificate of Service, Reply to New Matter Alleged by Devonian and Van Hampton	01
67	12/01/04	Transcript of Proceedings, Plaintiff's Motion to Compel Discovery, held before Honorable Fredric J. Ammerman, President Judge, on October 13, 2004	Separate Cover
68	12/13/04	Mid-East's Motion for Partial Judgment on the Pleadings against Devonian and Van Hampton with Order filed December 17, 2004, issuing rule for written response and scheduling argument	22
69a	01/07/05	Additional Defendants' Answer to Defendant's Motion for Partial Judgment on the Pleadings	04
69b	01/07/05	Certificate of Service, Additional Defendants' Answer to Defendant's Motion for Partial Judgment on the Pleadings	01
70a	01/24/05	Certificate of Service, Order of Court dated December 17, 2004	01
70b	01/24/05	Order, Re: argument on Motion for Partial Judgment on the Pleadings	01
71	02/01/05	Order, Re: Plaintiff's Motion to Compel Discovery	03
72	02/04/05	Certificate of Service, Letter Brief in Support of Mid-East's Motion for Partial Judgment on the Pleadings Against Devonian and Van Hampton	01
73	02/07/05	Certificate of Service, Order of Court	02
74	02/11/05	Application for Reconsideration	07
75	02/11/05	Certificate of Service, Application for Reconsideration	01
76	02/22/05	Response to Application for Reconsideration	04
77	02/24/05	Certificate of Service, Additional Defendants' Brief in Response to Defendant's Motion for Partial Judgment on the Pleadings	01
78	02/28/05	Praecipe to File Deposition Transcript of Record Pursuant to Pa.R.C.P. 4002.1	Separate Cover
79	02/28/05	Appeal to High Court	10
80	02/28/05	Reply of Defendant to Plaintiff's Response to Defendant's Application for Reconsideration	09
81	03/01/05	Order, Re: concise statement to be filed	01
82	03/02/05	Certificate of Service, Additional Defendants' Brief in Response to Defendant's Motion for Partial Judgment on the Pleadings	01
83	03/03/05	Order, Re: Motion for Partial Judgment filed on behalf of Defendant Mid-East Oil	01
84	03/07/05	Appeal Docket Sheet	04
85	03/09/05	Defendant Mid-East's Rule 1925(b) Concise Statement	03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 03-1598-CD
Larry F. Smyers
VS.
Mid-East Oil Company

Devonian Resources, Inc. and
Van Hampton Gas & Oil Co., Inc.
Additional Defendants

ITEM NO.	*DATE OF FILING*	*NAME OF DOCUMENT*	*NO. OF PAGES*
86	03/09/05	Certificate of Service, Defendant Mid-East's Rule 1925(b) Concise Statement of Matters Complained of on Appeal	01
87	04/04/05	Opinion	04

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Larry F. Smyers
VS.
Mid-East Oil Company

Devonian Resources, Inc. and
Van Hampton Gas & Oil Co., Inc.
Additional Defendants

03-1598-CD

So full and entire as the same remains of record before the said Court, at **No. 03-1598-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 7th Day of April, 2005.

Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman,** President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 8th day of April, 2005

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS, Plaintiff,	*	
vs.	*	NO. 03-1598-CD
MID-EAST OIL COMPANY, Defendant	*	
vs.	*	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	*	

FILED
01/4:00/BY
APR 04 2005
William A. Shaw
Prothonotary/Clerk of Courts
1CC Attys: Taladay, Greco,
1CC Atty D. Mikesell McFate

OPINION

Larry F. Smyers ("Plaintiff") brought a breach of contract action against Mid-East Oil Company relative the development of oil and gas wells. Plaintiff alleges that in 1999 he entered into an agreement with Van Hampton Gas & Oil Company ("Van Hampton") for the development of oil and gas prospects. As part of the agreement the Plaintiff was to be paid a one sixty-fourth over-riding royalty interest from the sale of all natural gas from wells which would be located in an area proposed by the Plaintiff. Plaintiff is a professional geologist who claims that he invested his time and expertise in his profession to develop a drilling prospect in areas located in Centre and Clearfield counties referred to as the area of mutual interest (AMI). Plaintiff further contends that in 2000 a further agreement was entered into between him and Devonian Resources, Inc. ("Devonian") a related company of Van Hampton which further identifies the general area of the AMI.

Thereafter Devonian began exploration and development of the natural resources contained within the AMI, and also entered into a joint venture agreement with Mid-East Oil

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Company ("Defendant") to mutually develop the AMI. In 2002, Devonian conveyed and transferred all of its interests in the AMI to Defendant. Plaintiff alleges that based upon information he received from the Department of Environmental Protection multiple gas and/or oil wells have been established in the AMI but that Defendant, as successor and assignee of Devonian, has failed and refused to make royalty payments due and owing to him. As part of Plaintiff's claim, it is alleged that there may be many other wells developed by the Defendant within the AMI which "are currently not known to Plaintiff." Plaintiff's Amended Complaint, paragraph 20.

As part of the Plaintiff's request for relief, he demands an immediate accounting of oil and gas production for all oil and gas wells located within the AMI as well as money damages for breach of contract and unjust enrichment. In April of 2004, Defendant joined Devonian and Van Hampton as Additional Defendants. Following the filing of various other pleadings, on September 17, 2004 the Plaintiff filed a Motion to Compel Discovery, claiming that the Defendant had failed to make available documents requested pursuant to a request for production of documents. Following a period of delay, the Defendant forwarded a confidentiality agreement to counsel for the Plaintiff and made it a condition of review of any of the requested documents that the Plaintiff sign the proposed confidentiality agreement. Plaintiff refused to do so, and the matter proceeded to argument before the Court. In essence, Plaintiff is requesting production records and various other documents, memoranda and maps related to any gas wells located within the AMI in which the Defendant had an interest from January 1, 2000 to the present. Defendant's position is that they would only allow inspection of the documents by Matthew Taladay, Esquire, Plaintiff's Attorney, and that Mr. Taladay be precluded from disclosing any information within the documents to the Plaintiff.

The Court delayed ruling on the Plaintiff's Petition to Compel for a period of time in order to give counsel for both Plaintiff and Defendant an opportunity to attempt to resolve the matter. Apparently all such efforts were unsuccessful and the Court was requested to rule on the Motion. The Court then issued its Order of January 31, 2005 granting the Plaintiff's Motion to Compel and placing within the Order confidentiality provisions permitting access to the information only by the parties to the litigation, their attorneys and any experts or consultants which would have to be hired. Although the Court did have some concerns with permitting the Plaintiff to review the records, the request for the documents relates to information on development within the AMI, which is the crux of Plaintiff's case. In addition, Plaintiff's Attorney is not an oil and gas expert and this Court believes that the Plaintiff cannot adequately prepare his case and analyze the documents for litigation purposes without access to the same. Defendant filed a timely Notice of Appeal on February 28, 2005 to the Court's Discovery Order.

The Court notes that discovery orders are non-final and interlocutory and as such not normally subject to an appeal. Jacksonian v. Temple University Health System Foundation, 862 A.2d 1275 (Pa.Super. 2004). An exception to this general rule is the Collateral Order Rule, Rule of Appellate Procedure 313. Under the Collateral Order Rule, an order is considered final and appealable if:

1. It is separable from and collateral to the main cause of action;
2. The right involved is too important to be denied relief; and
3. The question presented is such that if review is postponed until final judgement in the case, the claimed right will be irreparably lost.

Fried v. Fried, 509 Pa. 89, 501 A.2d 211 (1985), adopting the rationale as set forth in

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).

In the Jacksonian case, Temple University Health System appealed the Trial Court's Discovery Order directing it to answer Plaintiff's Interrogatories in a medical malpractice lawsuit. The Superior Court held that the Collateral Order Rule must be interpreted narrowly and that all three elements must be satisfied to permit review of an otherwise interlocutory appeal. Jacksonian, 862 A.2d, page 1279. The Superior Court determined that the information that was requested was not privileged and did not go beyond the particular litigation in the case.

In the case of Jones v. Faust, 852 A.2d 1201 (Pa.Super. 2004), the Trial Court granted a discovery request and required the defendant to turn over certain medical records to the plaintiff. The Superior Court determined that the Collateral Order Rule was applicable and permitted the appeal, where the discovery order involved non-party defense experts and compelled production of private and confidential medical records of non-parties.

The case at bar can easily be distinguished from the rationale as set forth in Jones. The Discovery Order issued by this Court involves documentation relative the establishment and production of gas wells located only within the specific area of litigation, being the AMI, and as previously noted goes to the crux of the Plaintiff's claim. The documents to be produced are only those belonging to the Defendant and not those of any third party. The Court also included strict confidentiality provisions in order to protect Defendant's interest in gas well exploration and production. Therefore, the Order is not subject to the Collateral Order Rule and is interlocutory in nature.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

Date: April 4, 2005

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Defendant Mid-East's Rule 1925(b) Concise Statement of Matters Complained of on Appeal"** was sent by U.S. mail, postage prepaid, on March 7, 2005, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

FILED 2cc
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MAR 09 2005

William A. Shaw
Prothonotary/Clerk of Courts

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case:
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant Mid-East's Rule 1925(b)***
Defendant	:	***Concise Statement of Matters***
	:	***Complained of on Appeal***
vs.	:	
	:	Filed on behalf of Defendant
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Mid-East Oil Company
	:	
	:	Counsel of Record for This Party:
Additional Defendants	:	
	:	Dom W. Greco, Esq.
	:	Supreme Court Id. No. 16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
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	:	

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MAR 09 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

DEFENDANT MID-EAST'S RULE 1925(b) CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

In response to the Court's Order dated March 1, 2005, Defendant Mid-East Oil Company ("Mid-East"), by and through its attorneys the Law Offices of Greco & Lander, P.C., hereby submits the following concise statement of matters complained of on appeal:

The Court in issuing its January 31, 2005, Order requiring Mid-East to disclose Trade Secret Documents to Plaintiff Smyers personally:

a. did not permit Defendant to have the evidentiary hearing that Defendant had requested to permit an evidentiary record to be created showing:

   i. that Plaintiff had previously misused the Trade Secret Documents of Defendant; and

   ii. Defendant's good cause for the *limited* protection that Defendant seeks for the Trade Secret Documents, namely, that the Trade Secret Documents be disclosed only to Plaintiff's attorney and an expert retained by Plaintiff's attorney, and not to the Plaintiff himself.

b. did not issue any opinion of the Court in support of the Order;

c. did not make any findings of fact;

d. did not make any reference to any competent evidence of record in support of the Order;

e. did not explain why the Court determined to order Defendant to disclose further Trade Secret Documents ***personally*** to Plaintiff, when Plaintiff's own previous sworn deposition testimony established that Plaintiff had previously misused other Trade Secret Documents of Defendant; and

f. did not explain why the Court issued its January 31, 2005, Order contradicting what the Court said on the record during argument on the Plaintiff's motion as to the Court's discomfort with allowing Plaintiff the relief Plaintiff's motion requested:

   i. "*You know, the problem is I'm not real comfortable taking the Plaintiff and literally turning him loose in the defendant's company offices so [plaintiff] can basically look at whatever he wants to look at.*" Motion to Compel: Page 16 Line 10 to Page 16 Line 13; and

   ii. "*I hesitate to provide carte blanche to the plaintiff and just start digging through all [defendant's] files.*" Motion to Compel: Page 18 Line 2 to Page 4 Line 13.

Respectfully submitted:



Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Greco & Lander, P.C.
P. O. Box 667
Clarion, PA 16214-0667
(814) 226-6853

Appeal Docket Sheet

Docket Number: 394 WDA 2005

March 3, 2005

Superior Court of Pennsylvania

03-1598-CD

Larry F. Smyers
v.
Mid-East Oil Company, Appellant
v.
Devonian Resources Inc., And Van Hampton Gas & Oil Co., Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 3, 2005 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation	Next Event Due Date: March 3, 2005
Next Event Type: Docketing Statement Received	Next Event Due Date: March 17, 2005
Next Event Type: Original Record Received	Next Event Due Date: April 12, 2005

FILED
MAR 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

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COUNSEL INFORMATION

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Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:
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Address: P.O. Box 667
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Phone No.: (814)226-6853 Fax No.: (814)226-4951
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Smyers, Larry F
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IFP Status:

Appellee Attorney Information:
Attorney: Taladay, Matthew B.
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Phone No.: (814)371-7768 Fax No.: (814)371-1974
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Appellee Devonian Resources Inc
Pro Se: Appoint Counsel Status:
IFP Status:

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E-Mail Address:
Receive E-Mail: No

Appellee Van Hampton Gas & Oil Co
Pro Se: Appoint Counsel Status:
IFP Status:

Superior Court of Pennsylvania

Appellee Attorney Information:

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Bar No.: 18528 Law Firm: McFate, McFate & McFate
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Seneca, PA 16346
Phone No.: (814)676-3933 Fax No.: (814)676-6900
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/3/05	Notice of Appeal	60.00	60.00	2005SPRWD000275

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield Division: Civil
Date of Order Appealed From: January 31, 2005 Judicial District: 46
Date Documents Received: March 3, 2005 Date Notice of Appeal Filed: February 28, 2005
Order Type: Order OTN:
Judge: Ammerman, Fredric J.
President Judge
Lower Court Docket No.: No. 03-1598-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 3, 2005	Notice of Appeal Filed	Appellant	Mid-East Oil Company
March 3, 2005	Docketing Statement Exited (Civil)		Western District Filing Office



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS, Plaintiff	*	
vs.	*	NO. 03-1598-CD
MID-EAST OIL COMPANY, Defendant	*	
vs.	*	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL, Defendant	*	

ORDER

NOW, this 2nd day of March, 2005, following argument and receipt of briefs; it is the ORDER of this Court that the Motion for Partial Judgment filed on behalf of Defendant Mid-East Oil be and is hereby DISMISSED.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

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MAR 03 2005
William A. Shaw
Prothonotary Clerk of Courts

Attys: Greco
Talacko
McFate

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

FILED
MAR 02 2005
William A. Shaw
Prothonotary/Clerk of Courts
No C/C
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CERTIFICATE OF SERVICE

I, Robert W. McFate, Esq., hereby certify that a true and correct copy of the "**Additional Defendants' Brief in Response to Defendant's Motion for Partial Judgment on the Pleadings**" was sent by U. S. mail, postage prepaid, on February 22, 2005, to the following other counsel of record:

Nathaniel C. Parker, Esq.
Greco & Lander, P. C.
P. O. Box 667
1390 East Main St., Suite 2
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Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
P. O. Box 487
498 Jeffers Street
Dubois, PA 15801

LAW OFFICE OF ROBERT W. McFATE

By: _____
Robert W. McFate, Esquire

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS, Plaintiff	*	
vs.	*	No. 03-1598-CD
MID-EAST OIL COMPANY, Defendant	*	
vs.	*	
DEVONIAN RESOURCES, INC., and HAMPTON GAS & OIL CO., INC., Defendant	*	

O R D E R

NOW, this 1ST day of March, 2005, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Mid-East Oil, Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

By the Court:

Fredric J. Ammerman

FREDRIC J. AMMERMAN, JUDGE

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3:30 pc
William A. Shaw
Prothonotary/Clerk of Courts

CERT TO TALADAY
GRECO, Don
MCFATE, Rob

#81

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Reply of Defendant to Plaintiff's***
Defendant	:	***Response to Defendant's***
	:	***Application for Reconsideration***
vs.	:	
	:	Filed on behalf of Defendant
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Mid-East Oil Company
	:	
	:	Counsel of Record for This Party:
Additional Defendants	:	
	:	Dom W. Greco, Esq.
	:	Supreme Court Id. No. 16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853
	:	

FILED
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William A. Shaw
Prothonotary/Clerk of Courts
No C/C

#80

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

REPLY TO PLAINTIFF'S RESPONSE TO APPLICATION FOR RECONSIDERATION

AND NOW comes the Defendant, Mid-East Oil Company ("Mid-East"), who by and through their undersigned counsel, the Law Offices of Greco & Lander, P.C., files this Reply of Defendants to Plaintiff's Response to Defendant's Application for Reconsideration and states as follows:

Plaintiff's response falsely stated to the Court that plaintiff is not a competitor of defendant. Plaintiff made that false statement to persuade the Court not to reconsider its January 31, 2005 Order ordering defendant to disclose its trade secrets to plaintiff.

The purpose of this reply is:

- To point out this false statement by the plaintiff to the Court;

- To furnish the Court with evidence of the falsity of that plaintiff statement, and
- To show that, in fact, plaintiff has admitted in writing and to the Court that plaintiff is a competitor of defendant and has been a competitor.

Attached to this reply is the following documentation evidencing such admissions by the plaintiff that plaintiff is a competitor of defendant:

1. **Plaintiff refused to agree not to compete with defendant in the future.**

June 2, 2004 correspondence (Exhibit A) from defendant's legal counsel to plaintiff's legal counsel in which defendant stated its offer to make the plaintiff requested disclosures to plaintiff -- if plaintiff would:

> *"...agree to the issuance of a court order prohibiting [plaintiff] from, not now or at any time hereafter directly or indirectly in any capacity participating in, or assisting or encouraging anyone else from participating in, the drilling, development, and/or transportation of natural gas or oil, in Centre or Clearfield Counties..."*

Plaintiff by June 8, 2004 letter (Exhibit B) from his legal counsel immediately ***rejected*** agreeing to be subjected to any restriction that would prohibit plaintiff from competing with defendant in the future. Plaintiff's rejection of being prohibited from competing with plaintiff in the future stated:

> *"My client cannot agree .... Certainly a proposal that Mr. Smyers be forever precluded from providing geological services in Clearfield and Centre Counties is not within our contemplation."*

Therefore, plaintiff's June 8, 2004 letter is a plaintiff admission that plaintiff intends to compete with defendant as a competitor in the future.

2. **Plaintiff's history as a competitor of plaintiff shown by Court transcript.**

Plaintiff's legal counsel then subsequently made the following important statement to the Court on October 13, 2004 admitting that plaintiff has a 30 year history of working in the geological areas of Pennsylvania which areas are pertinent to the trade secret information that the Court has Ordered defendant to disclose to plaintiff.

> "... *Mr. Smyers has a 30 year history of doing geological work in this area of Centre and Clearfield County.*" Exhibit C- court reporter notes of testimony page 8, line 22-25.

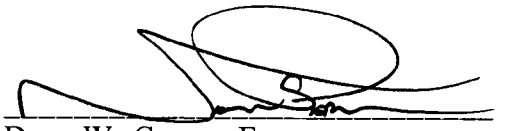
Therefore, this admission by plaintiff that plaintiff has worked in the same geological area for 30 years that is the same geological area for which the subject Order now requires defendant to disclose its trade secrets to plaintiff, is an admission that Mr. Smyers, the plaintiff, has in the past been a competitor of defendant.

Conclusion

Therefore, the record clearly evidences that plaintiff's statement in its reply denying that plaintiff is a competitor of defendant is false. The record clearly shows that plaintiff ***is*** a competitor of defendant, ***and*** that plaintiff ***has been*** a competitor of defendant in the past.

WHEREFORE, Defendant Mid-East Oil Company respectfully requests that the Court reconsider its Order dated January 31, 2004, because the said Order requires Mid-East to disclose confidential information to a competitor who has previously admitted to diverting and misusing the same confidential information.

Respectfully submitted:



Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Greco & Lander, P.C.
P. O. Box 667
Clarion, PA 16214-0667
(814) 226-6853

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
1390 East Main Street, Suite 2
Clarion, Pennsylvania 16214-0667

DOM W. GRECO
AL LANDER

Telephone ..... (814) 226-6853
FAX ..... (814) 226-4951
e-mail ..... nparker@usachoice.net

file

June 2, 2004

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Re: Smyers v. Mid-East: Confidentiality Agreement

Dear Attorney Taladay:

Thank you for your correspondence dated May 28, 2004. In your letter you state that you are in favor of "*a simple agreement of confidentiality whereby all parties agree to hold discovery information confidential and for use at trial only*".

Based on your assertion, if Mid-East agrees to make available to Mr. Smyers all of the requested documents, will Mr. Smyers in turn agree to, and agree to the issuance of a court order prohibiting him from, not now or at any time hereafter directly or indirectly in any capacity participating in, or assisting or encouraging anyone else from participating in, the drilling, development, and/or transportation of natural gas or oil, in Centre or Clearfield Counties in any way, whether individually, or through or with or for or on behalf of any other person or entity, so that in the event that Mr. Smyers would breach any of the above covenants he would then:

- be liable to Mid-East for contract damages, and
- be in violation of a Court order, and in contempt of Court?

Please provide me with your answer so that my client and I may consider your proposal.

Sincerely,

Nathaniel C. Parker, Esq.

NCP:ktc

HANAK, GUIDO and TALADAY

Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Nicole Hanak Bankovich
S. Casey Bowers

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

June 8, 2004

Nathaniel C. Parker, Esq.
Greco & Lander
P.O. Box 667
Clarion, PA 16214-0667

Re: Smyers vs. Mid-East Oil Company

Dear Attorney Parker:

I am in receipt of your letter dated June 2, 2004. As stated previously, the agreement of Mr. Smyers pertaining to any information revealed during discovery would limit the use of this information for purposes of ascertaining liability and damages for the claims asserted.

My client cannot agree to the interpretation of this proposal as set forth in your letter. Certainly a proposal that Mr. Smyers be forever precluded from providing geological services in Clearfield and Centre Counties is not within our contemplation. However, any violation of this confidentiality provision would be subject to a civil sanction for contempt of court.

Quite frankly, I do not see how an accounting of gas well development and provision of revenue figures from these wells stands to jeopardize any proprietary information or trade secret of your client, except as to the amount of revenue for which Mr. Smyers believes he is entitled to overriding royalty interests.

Please advise if your client will provide the requested discovery under these terms. I am hopeful that we can resolve this issue without input from the Judge.

Sincerely,

Matthew B. Taladay

Matthew B. Taladay

MBT:kam

cc: Larry Smyers

EXHIBIT B

and to evaluate what he believes that he is owed, and if he misuses that, if he breaches that order, not only is he liable and in breach of contract, but he's subject to contempt of court. We think it's --

THE COURT: Can you prove it, though?

ATTORNEY PARKER: Exactly, Your Honor. That's the problem. This is intellectual property. This is intellectual data that either geologist -- what you do when you evaluate a prospect is you look at the production of the neighboring properties and you use your training and your knowledge of geology in the area and you try and patten it based on what wells have been successful, what wells haven't and in what area, and you try and predict where it's going to be successful in the future.

Once he sees where it's going to be successful, we couldn't prove later on, well, you're using what you saw from us to do that, because he would already know. He could go work for somebody else, and there would be no way for us to come to you, Your Honor, and satisfy our preponderance of the evidence, burden of proof, and show that he used our information.

ATTORNEY TALADAY: Your Honor, if you look at the whole basis of the suit, Mr. Smyers has a 30-year history of doing geological work in this area of Centre and Clearfield County.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Reply of Defendant to Plaintiff's Response to Defendant's Application for Reconsideration"** was sent by U.S. mail, postage prepaid, on FEBRUARY 28, 2005, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers, Plaintiff vs. Mid-East Oil Company, Defendant vs. Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc., Additional Defendants	:	No. 03-1598-CD Type of Case Civil Action – Law Type of Pleading: ***Notice of Appeal*** Filed on behalf of Defendant Mid-East Oil Company Counsel of Record for This Party: Dom W. Greco, Esq. Supreme Court Id. No. 16829 Fax: (240) 465-7135 Nathaniel C. Parker, Esq. Supreme Court Id. No. 90993 Fax: (814) 226-4951 Greco & Lander, P.C. P.O. Box 667 Clarion, PA 16214 (814) 226-6853

FILED

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William A. Shaw
Prothonotary/Clerk of Courts
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1 CERT to SUP. CT.
W/60.- CK.

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

NOTICE OF APPEAL

Notice is hereby given that Defendant, Mid-East Oil Company, hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on January 31, 2005. This Order has been entered in the docket as evidenced by the attached copy of the docket entry. The transcript of the October 14, 2004 oral argument before the Court pertinent to this appeal has already been obtained and filed of record.

Respectfully submitted:

Dom W. Greco, Esq.
Pa.Id. # 16829
Nathaniel C. Parker, Esq.
Pa.Id. # 90993
Greco & Lander, P.C.
P. O. Box 667
Clarion, PA 16214-0667
(814) 226-6853

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

PROOF OF SERVICE OF NOTICE OF APPEAL

I hereby certify that I am this day serving copies of the foregoing Notice of Appeal, docket entry, and this proof of service on the following persons in the manner indicated below:

Service by first class mail addressed as follows:

Hon. Frederic J. Ammerman
228 Courthouse, 230 E. Main Street
Clearfield, PA 16830

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Robert W. McFate, Esq.
McFate Law Offices
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Tom Snyder
Court Reporter
228 Courthouse, 230 E. Market Street
Clearfield, PA 16830

David S. Meholick
Court Administrator
228 Courthouse, 230 E. Market Street
Clearfield, PA 16830

GRECO & LANDER:

Dated: FEBRUARY 28, 2005

By: _____
NATHANIEL PARKER, ESQ.

Larry F. Smyers vs. Mid East Oil Company, Devonian Resources, Inc., Van Hampton Gas && Oil Co., Inc.

Civil Other

Date		Judge
10/27/2003	Filing: Civil Complaint Paid by: Taladay, Mathew B. (attorney for Smyers, Larry F.) Receipt number: 1868100 Dated: 10/27/2003 Amount: $85.00 (Check) 1 CC to Shff.	No Judge
11/20/2003	Defendant's Preliminary Objections to Complaint. filed by, s/Dom W. Greco, Esquire no cc	No Judge
	Certificate of Service, Preliminary Objections to Complaint upon: Matthew B. Taladay, Esquire filed by, s/Dom W.. Greco, Esquire no cc	No Judge
11/24/2003	Certificate of Service, Defendant's November 19, 2003, Request for Admissions, Interrogatories & Requested Production of Documents, upon: MATTHEW B. TALADAY, ESQ. filed by, s/Dom W. Greco, Esquire no cc	No Judge
12/17/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
12/31/2003	Amended Complaint. filed by, s/Matthew B. Taladay, Esquire no cc	No Judge
	Response To Request For Admissions: Answers To Interrogatories; and Response To Request For Production Of Documents. filed no cc	No Judge
	Certificate of Service, Notice of Deposition of Party Larry F. Smyers upon: MATTHEW B. TALADAY, ESQ. filed by, s/Dom W. Greco, Esquire no cc	No Judge
01/22/2004	Defendant's Preliminary Objections to Amended Complaint. filed by, s/Dom W. Greco, Esq. s/Nathaniel C. Parker, Esq. 1 cc Atty Greco	No Judge
	Certificate of Service, Defendant's P.O.'s to Amended Complaint upon Matthew B. Taladay, Esquire s/Nathaniel C. Parker, Esq. 1 cc Atty Greco	No Judge
01/27/2004	Defendant's Rule 4014 (c) Motion To Determine Sufficiency of Plaintiff's Answers to Defendant's Nov. 19, 2003 Requests For Admission. filed by, s/Dom W. Greco, Esq. s/Nathaniel C. Parker, Esq. 1 cc Atty Parker	No Judge
	Certificate of Service, Defendant's Rule 4014 (c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions upon Matthew B. Taladay, Esq. filed by, s/Nathaniel C. Parker, Esquire 1 cc Atty Parket	No Judge
02/02/2004	Rule, Now this 30th day of Jan. 2004, issued upon Plaintiff. Rule Returnable the 20th day of February, 2004, for filing Written Response. by the Court, s/FJA,P.J. 2 cc Atty Greco	Fredric Joseph Ammerman
02/12/2004	Objection to Plaintiff's Response To Defendant's Rule 4007.1(D)(1) Notice of Deposition Request For Production Documents. filed by, s/Dom W. Grecco, Esq. s/Nathaniel C. Parker, Esq. no cc	Fredric Joseph Ammerman
	Certificate of Service, Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents upon Matthew B. Taladay, Esq. s/Nathaniel C. Parker, Esq. no cc	Fredric Joseph Ammerman
02/17/2004	ORDER, NOW, this 13th day of February, 2004, Rule issued upon Plaintiff. Argument is scheduled for the 3rd day of March, 2004, at 2:30 p.m. in Courtroom No.1. by the Court, s/FJA, P.J. 2 cc Atty Greco w/service memo	Fredric Joseph Ammerman
02/18/2004	First Amendment To Amended Complaint. filed by, s/Matthew B. Taladay, Esquire Verification s/Matthew B. Taladay, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
	Response To Preliminary Objections To Amended Complaint. filed by, s/Matthew B. Taladay, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
	Notice of Service, Plaintiff's Request For Production Of Documents upon Dom W. Greco, Esquire s/Matthew B. Taladay, Esquire no cc	Fredric Joseph Ammerman

Civil Other

Date		Judge
02/25/2004	Affidavit of Service, Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order upon, Matthew B. Taladay, Esq. and David S. Meholick, CA. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
	Affidavit of Service, Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order upon Matthew B. Taladay, Esq. and David S. Meholick, Court Administrator. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
02/26/2004	Praecipe to Place Defendant's Motion To Determine Sufficiency Of Plaintiff's Answers To Defendant's November 19, 2003 Requests For Admissions On Next Available Argument List. filed by, s/Nathaniel C. Parker, Esquire no cc Copy to CA Certificate of Service	Fredric Joseph Ammerman
03/01/2004	Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents. filed by, s/Dom W. Greco, Esquire no cc	Fredric Joseph Ammerman
	Response To Request For Admissions: Answers To Inaterrogatories: and Response To Request For Productions Of Documents. s/Larry Smyers Certificate of Service no cc	Fredric Joseph Ammerman
	ORDER, AND NOW, this 1st day of March, 2004, re: Argument on Defendant's Preliminary Objections to Amended Complaint has been RESCHEDULED from March 3, 2004, to Thursday, March 11, 2004 at 2:30 p.m., in Courtroom No. 1. Additionally, argument on Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Request for Admissions will also be heard at this time. by the Court, s/FJA, P.J. 1 cc Attys Parker, Taladay	Fredric Joseph Ammerman
03/08/2004	Plaintiffs Response to Defendant's Notice of Deposition. filed by, s/Matthew B. Taladay, Esquire no cc	Fredric Joseph Ammerman
	Response to Defendant's Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents. filed by, s/Matthew B. Taladay, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendant's March 2004 Request For Admissions & Interrogatories upon Matthew B. Taladay, Esquire. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
03/11/2004	Motion for Protective Order, filed by s/Matthew B. Taladay No CC	Fredric Joseph Ammerman
	Outline Of Defendant's Argument in Support of Preliminary Objections to Complaint. filed by, s/Dom W. Greco, Esq. no cc	Fredric Joseph Ammerman
	Outline for Argument of Remaining Defendant's Rule 4014 (C) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003, Requests for Admissions. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Outline for Argument of Remaining Defendant's Rule 4014 (c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions upon Matthew B. Taladay, Esq. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Outline of Defendant's Argument in Support of Preliminary Objections to Complaint upon Matthew B. Taladay, Esquire. filed by, s/Dom W. Greco, Esquire no cc	Fredric Joseph Ammerman
03/12/2004	ORDER, AND NOW, this 11th day of March, 2004, re: Plaintiff is excused from responding to the Request for Admissions submitted by the Defendant. It is further ordered that a Hearing shall be heard on the 1st day of April, 2004, at 1:30 p.m. at which time indivedual Request for Admissions propounded by Defendant to Plaintiff may be considered for exception to this Protective Order. by the Court, s/FJA, J. 3 cc Atty Taladay	Fredric Joseph Ammerman

Civil Other

Date		Judge
03/19/2004	ORDER, AND NOW, this 18th day of March, 2004, re: Defendant's Preliminary Objections. by the Court, s/FJA, P.J. 1 cc Atty Taladay, 2 cc Atty Greco	Fredric Joseph Ammerman
	ORDER, AND NOW, this 19th day of March, 2004, re: Argument on Plaintiff's Motion for Protective Order has been RESCHEDULE from April 1, 2004 to Monday, April 19, 2004, at 9:00 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc & Memo for Service to Atty Taladay	Fredric Joseph Ammerman
03/24/2004	Certificate of Service, Order of Court dated March 19, 2004 upon Dom W. Greco, Esq. and Nathaniel C. Parker, Esq. filed by, s/Matthew B. Taladay, Esquire no cc	Fredric Joseph Ammerman
04/05/2004	Filing: Praecipe for Writ of Summons to Join Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. as Additional Defendants Paid by: Greco, Dom W. (attorney for Mid East Oil Company) Receipt number: 1876591 Dated: 04/05/2004 Amount: $85.00 (Check) Two Writs to Attorney Parker	Fredric Joseph Ammerman
	Rule 1007.1(a) Demand for Jury Trial, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
04/08/2004	Answer, New Matter & Counterclaims to Plaintiff's Amended Complaint. filed by, s/Nathaniel C. Parker, Esquire Verification s/Mark Thompson no cc	Fredric Joseph Ammerman
	Certificate of Service, Answer, New Matter & Counterclaims of Plaintiff's Amended Complaint upon Matthew B. Taladay, Esq. and Robert McFate, Esq. 1 cc to Atty	Fredric Joseph Ammerman
04/19/2004	Acceptance of Service, I hereby accept service of the Writ of Summons to join Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. as additional defendants, on behalf of both Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc., and hereby certify that I am Devonian Resources, Inc.'s and Van Hampton Gas & Oil Co., Inc.'s counsel and I am authorized to do so, filed by s/Robert W. McFate, Esq. No CC	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty Parker no cert. copies Served copy of Defendant's Brief in Opposition to Plaintiff's Motion for Protective Order to Atty. Taladay.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 19th day of April, 2004, re: Plaintiff's Motion for Protective Order is hereby GRANTED. Protective Order issued and Plaintiff not required to respond to any of the items as described within the Motion for Protective Order. by the Court, s/FJA, P.J. 1 cc to Attys Taladay, Creco and McFate	Fredric Joseph Ammerman
05/10/2004	Certificate of Service, Defendant Mid-East's May 2004 Request for Admissions Served Upon Plaintiff Smyers, upon: Matthew B. Taladay, Esq. and Robert W. McFate, Esq. filed by, s/Nathaniel C. Parker, Esquire no cc	Fredric Joseph Ammerman
05/17/2004	Preliminary Objections To Defendant's New Matter And Counterclaims To Plaintiff's Amended Complaint. filed by, s/Matthew B. Taladay, Esq. no cc	Fredric Joseph Ammerman
06/17/2004	Defendant Mid-East's May 2004 Request for Admissions served on Plaintiff Smyers, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
	Certificate of Service, "Defendant Mid-East's May 2004 Request for Admissions served upon Plaintiff Smyers," served upon Matthew B. Taladay, Esq. and Robert W. McFate, Esq., filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
	Defendant Mid-East's Rule 4014(b) Judicial Admissions for Failure to Timely Answer or Object, filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman

Civil Other

Date		Judge
06/17/2004	Certificate of Service, Defendant Mid-East's Rule 4014(b) Judicial Admissions for Failure to Timely Answer or Object, served upon Matthew B. Taladay, Esq. and Robert W. McFate, Esq., filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
06/22/2004	Response to May 2004request for admissions filed by Atty. Taladay No cc.	Fredric Joseph Ammerman
	Response to Defendant's Rule for 4014(b) Jdicial Admissions and Plaintiff's Petition for Enlargement of Time to Respond to Request for Admission filed by Atty. Taladay. No cc.	Fredric Joseph Ammerman
06/29/2004	Order, NOW, this 28th day of June, 2004, upon consideration of Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint, a Rule is issued upon Defendant to Appear and Show Cause why the Objections should not be granted. Argument is scheduled the 23 day of July, 2004, at 9:00 a.m. in Courtroom No. 1. bY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC with service memo to Attorney Taladay	Fredric Joseph Ammerman
07/09/2004	Certificate of Service, Order of Court dated June 28, 2004 served upon Dom W. Greco, Esq. and Robert W. McFate, Esq., filed by s/Matthew B. Taladay No CC	Fredric Joseph Ammerman
07/13/2004	Order, NOW, this 12 day of July, 2004, Order that argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint has been rescheduled from July 23, 2004 to Monday, August 23, 2004 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: McFate, Greco, Taladay	Fredric Joseph Ammerman
07/26/2004	Defendant Mid-East's Preliminary Objections to Plaintiff Smyers' Preliminary Objections to Mid-East's Answer, New Matter, and Counterclaim, filed by s/Nathaniel C. Parker, Esq. One CC Attorney Parker	Fredric Joseph Ammerman
07/27/2004	ORDER, AND NOW, this 26th day of July, 2004, it is the ORDER of the Court the argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaim to Plaintiff's Amended Complaint in the above matter has been rescheduled from August 23, 2004 to Wednesday, September 1, 2004 at 9:00 A.M. in Courtroom No. 1. By the Court, Fredric J Ammerman. One cc Attys: Taladay, Parker, McFare.	Fredric Joseph Ammerman
	ORDER, AND NOW, this 27 day of July, 2004, ORDER that argument on Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaims has been scheduled for WEednesday, Septmeber 1, 2004 at 9:00 a.m. By the Court, Judge Fredric Ammerman. 1 cc Attys: Taladay, Parker, Mcfate.	Fredric Joseph Ammerman
07/28/2004	Complaint Against Additional Defendants. Filed by s/Dom W. Greco, Esq.	Fredric Joseph Ammerman
	Certificate of Service, Complaint Against Additional Defendants, was sent by US Mail, postage pre-paid, to: Matthew B. Taladay, Esq. and Robert W. McFate, Esq. No cc.	Fredric Joseph Ammerman
09/17/2004	Motion to Compel Discovery filed by Atty. Taladay. Cert. of Service of Motion to Compel Discovery also. 1 CC to Atty.	Fredric Joseph Ammerman
09/22/2004	Order AND NOW, this 22 day of Sept. 2004, Rule is hereby issued upon Def.to show cause why the Plff's Motion should not be granted. Rule Returnable Oct. 13, 2004. S/FJA 1 CC to Atty. Taladay.	Fredric Joseph Ammerman
09/29/2004	Certificate of Service, Order of Court dated September, 28, 2004, mailed by U.S. First Class Mail to: Dom W. Greco, Esq., and Robert W. McFate, Esq. filed by s/ Matthew B. Taladay, Esquire.	Fredric Joseph Ammerman
10/13/2004	Defendant Mid-East's Response to Plaintiff Smyers' Motion to Compel Discovery , filed by s/Nathaniel C. Parker, Esq. 2 CC Atty. Parker. Certificate of Service, delivered on October 13, 2004, to other counsel of record.	Fredric Joseph Ammerman

Civil Other

Date		Judge
10/18/2004	Order NOW, this 13th day of October, 2004, following argument on Plff's Preliminary Objections to Mid-East Oil company's Answer, New Matter and Counterclaim and Def. Preliminary Objections to Plff's Preliminary Objection to Def.'s Answer, New matter and Counterclaim, the Court Finds as follows: 1. That Plff's Preliminary objections are hereby denied. 2. Pursuant to the Court's ruling in paragraph 1 above, Def.'s Preliminary Objections are dismissed as the Court finds them to be moot. s/FJA 1 CC Atty. Greco, 2 CC to Atty. McFate, 2 CC to Atty. Taladay.	Fredric Joseph Ammerman
10/20/2004	Notice of Intent to File Praecipe to Enter Judgment by Default filed by Atty. Parker. No cc.	Fredric Joseph Ammerman
	Certificate of Service of Notice of Intent to File Praecipe to Enter Judgment by Default. No cc.	Fredric Joseph Ammerman
10/27/2004	Answer to Complaint to Join Additional Defendants and New Matter filed by Atty. McFate. No cc.	Fredric Joseph Ammerman
	Certificate of Service of Answer to complaint to Join Additional Def. and New Matter filed by Atty. McFate No cc.	Fredric Joseph Ammerman
11/17/2004	Reply to New Matter and Answer to Counterclaim, filed by Atty. Taladay no cert. copies.	Fredric Joseph Ammerman
	Reply to New Matter Alleged by Devonian and Van Hampton, filed by Atty. Greco no cert. copies.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Parker Served copy of Reply to New Matter Alleged by Devonian and Van hampton on Atty's Taladay & McFate.	Fredric Joseph Ammerman
12/01/2004	Transcript of Proceedings, Plaintiff's Motion to Compel Discovery, filed. Held before Honorable Fredric J. Ammerman, President Judge, on Oct. 13, 2004 at Clearfield County Courtroom, before Thomas D. Snyder, RPR Official Court Reporter.	Fredric Joseph Ammerman
12/13/2004	Mid-East's Motion for Partial Judgment on the Pleadings against Devonian & Van Hampton, filed by s/Nathaniel C. Parker, Esq. One CC Attorney Parker	Fredric Joseph Ammerman
12/17/2004	Order, now, this 17th day of Dec., 2004, upon consideration of the attached Motion for Partial Judgment on the Pleadings, a Rule is hereby issued upon the Additional Defendants to show cause why the motion should not be granted. Rule Returnable the 7th day of Jan. for filing written response. Argument is scheduled the 24th day of Jan., 2005 at 9:30 a.m. in Courtroom no. 1, Clfd. Co. Courthouse.	Fredric Joseph Ammerman
01/07/2005	Additional Defendants' Answer To Defendant's Motion For Partial Judgment on the Pleadings, filed by s/ Robert W. McFate. 1CC to Atty.	Fredric Joseph Ammerman
	Certificate of Service, copy of the Additional Defendants' Answer to Defendant's Motion for Partial Judgment on the Pleadings, on Jan. 5, 2005, sent to Nathaniel C. Parker, Esq., and Matthew B. Taladay, Esq. Filed by s/ Robert W. McFate, Esquire. 1CC to Atty	Fredric Joseph Ammerman
01/24/2005	Certificate of Service, copy of Order of Court dated Dec., 17, 2004, on Dec. 24, 2004 to Matthew B.Taladay, Esquire, and Robert W. McFate, Esquire. Filed by s/ Nathaniel C. Parker, Esquire. No CC	Fredric Joseph Ammerman
	Order, NOW, this 24th day of Jan., 2005, following argument on motion for Partial Judgement of the Pleadings filed by Def., it is the ORDER of this Court that Def. Mid-East Oil Co. have 15 days from date hereof to submit a letter brief to the Court, with Additional Def. to respond within 15 days after receipt of the same. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Attys Taladay, D. Greco, McFaye	Fredric Joseph Ammerman
02/01/2005	Order, AND NOW, this 31st day of Jan., 2005, it is ORDERED that Plaintiff's Motion to Compel Discovery is granted. (see orginal). BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty Taladay	Fredric Joseph Ammerman

Civil Other

Date		Judge
02/04/2005	Certificate of Service, Letter Brief in Support of Mid-East's Motion for Partial Judgment on the Pleadings Against Devonian and Van Hampton upon Matthew B. Taladay, Esq., and Robert W. McFate, Esq., filed by s/Nathaniel C. Parker, Esq. No CC	Fredric Joseph Ammerman
02/07/2005	Certificate of Service, copy of certified copy of Order of Court, on the 4th of Feb., 2005, mailed to Dom W. Greco, Esquire., copy to Robert W. McFate, Esquire. Filed by s/ Matthew B. Taladay, Esquire. No CC	Fredric Joseph Ammerman
02/11/2005	Application For Reconsideration, filed by s/ Dom W. Greco, Esquire. No CC	Fredric Joseph Ammerman
	Certificate of Service, copy of the Application For Reconsideration, sent to Matthew B. Taladay, Esquire, and Robert W. McFate, Esquire., on Feb. 11, 2005. Filed by s/ Nathaniel C. Parker, Esquire. No CC	Fredric Joseph Ammerman
02/22/2005	Response To Application For Reconsideration, filed by s/ Matthew B. Taladay, Esquire. No CC	Fredric Joseph Ammerman
02/28/2005	Praecipe to File Deposition Transcript of Record Pursuant to Pa. R.C.P. 4002.1, filed by Atty. Greco no Cert. Copies. Deposition of Larry F. Smyers dated January 19, 2004 attached.	Fredric Joseph Ammerman
	Filing: Appeal to High Court Paid by: Greco, Dom W. (attorney for Mid East Oil Company) Receipt number: 1896465 Dated: 02/28/2005 Amount: $45.00 (Check) 1 Cert. to Atty. and 1 Cert. with $60.00 check to Superior Court.	Fredric Joseph Ammerman

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

FILED 6K 03:00 BL NO CC
FEB 24 2005
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Robert W. McFate, Esq., hereby certify that a true and correct copy of the "**Additional Defendants' Brief in Response to Defendant's Motion for Partial Judgment on the Pleadings**" was sent by U. S. mail, postage prepaid, on February 22, 2005, to the following other counsel of record:

Nathaniel C. Parker, Esq.
Greco & Lander, P. C.
P. O. Box 667
1390 East Main St., Suite 2
Clarion, PA 16214-0667

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
P. O. Box 487
498 Jeffers Street
Dubois, PA 15801

LAW OFFICE OF ROBERT W. McFATE

By: _____
Robert W. McFate, Esquire

#177

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: RESPONSE TO APPLICATION FOR RECONSIDERATION Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

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FEB 22 2005
William A. Shaw
Prothonotary/Clerk of Courts

#76

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

PLAINTIFF'S RESPONSE TO
APPLICATION FOR RECONSIDERATION

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Defendant's Application for Reconsideration as follows:

1. The Plaintiff is not a competitor of the Defendant. The Plaintiff is employed by Fortuna, a Division of British Petroleum, and his geographical work area is limited to the State of New York.

2. The discovery Order issued by the Court sufficiently and strictly limits the usage of material disclosed in discovery so as to protect the Defendant's allegedly propriety information.

3. The discovery restriction suggested by Defendant would place an unreasonable burden on Plaintiff's limited resources by

forcing him to retain and pay an outside individual to perform the functions of which Plaintiff is personally capable.

4. Counsel for Plaintiff does not have the requisite computer skills to scan, copy, cut, paste and italicize selected excerpts of the Court of the transcript of argument in this matter, however respectfully submits that the Court reached its decision after consideration of the relative merits of the arguments of both parties and the discovery Order was properly granted.

WHEREFORE, it is respectfully requested that the Defendant's Application for Reconsideration be denied and that Defendant be ordered to promptly comply with the discovery Order previously issued by this Court.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 18th day of February, 2005, a true and correct copy of Plaintiff's Response to Application for Reconsideration was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Application for Reconsideration"** was sent by U.S. mail, postage prepaid, on FEBRUARY 11, 2005, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

FILED

FEB 11 2005
0/3:15/cc
William A. Shaw
Prothonotary/Clerk of Courts
No Cert Copy

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

{GL039089.1}

#95

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	
	:	
vs.	:	Type of Case
	:	Civil Action – Law
Mid-East Oil Company,	:	
	:	Type of Pleading:
Defendant	:	
	:	***Application for Reconsideration***
vs.	:	
	:	Filed on behalf of Defendant
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Mid-East Oil Company
	:	
	:	Counsel of Record for This Party:
Additional Defendants	:	
	:	Dom W. Greco, Esq.
	:	Supreme Court Id. No. 16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853
	:	

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William A. Shaw
Prothonotary/Clerk of Courts
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#174

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

APPLICATION FOR RECONSIDERATION

The Court's January 31, 2005 Order requires Defendant Mid-East to disclose valuable, confidential, proprietary information to a competitor, Plaintiff Smyers. Plaintiff testified under oath at his deposition that when he previously had access to Defendant's confidential information, Plaintiff used the information for his own personal gain.[1]

Defendant requested an evidentiary hearing to develop a factual record before the Court related to Plaintiff's past actions pertaining to Defendant's confidential information. The Court itself expressed concern about "*turning [plaintiff] loose in defendant's offices, so [plaintiff] can basically look at whatever he wants to look at*".

[1] See Defendant Mid-East's Response to Plaintiff Smyers' Motion to Compel Discovery, Page 6, quoting from Plaintiff Smyers' deposition transcript page 214, Line 2 to line 19.

Despite Defendant's requests and the Court's own concern, the Court did not grant Defendant's request for *limited* protection for its trade secret documents by allowing Defendant to produce the documents to Plaintiff's attorney and expert (but not Plaintiff ***personally***), the Court did not grant Defendant's request for an evidentiary hearing to be held to a record, and instead the Court issued its January 31, 2005 Order 'turning Plaintiff loose to look at whatever he wants to'.

1. Defendant Mid-East respectfully requests that the Court reconsider its January 31, 2005 Order, for the reasons set forth below. He did you begin our Plaintiff served Defendant with a request for production of documents.

2. Plaintiff is a competitor of Defendant.

3. The documents Plaintiff requested are Rule 4012(a)(9) trade secrets and other confidential research, development, and commercial information (collectively "Trade Secret Documents").

4. Defendant agreed to produce the Trade Secret Documents if Plaintiff would execute a confidentiality agreement that limited disclosure of the Trade Secret Documents to Plaintiff's attorney and an independent expert retained by Plaintiff, ***without*** disclosure of the Trade Secret Documents ***personally*** to Plaintiff himself.

5. Plaintiff refused to sign the confidentiality agreement and continued to demand ***personal*** access to Defendant's Trade Secret Documents.

6. Plaintiff then filed a motion to compel discovery seeking a Court order ordering Defendant to allow Plaintiff unrestricted ***personal*** access to Defendant's Trade Secret Documents.

7. Defendant then filed its response to Plaintiff's motion to compel.

8. Defendant's response to Plaintiff's motion to compel:

    a. requested that Defendant be allowed to respond to Plaintiff's document production request by providing the requested confidential information to Plaintiff's attorney and an independent expert retained by Plaintiff, and

    b. pointed out to the Court that during the Plaintiff's sworn deposition testimony Plaintiff admitted that Plaintiff had previously diverted and misused Defendant's confidential proprietary geologic information, and

c. requested an evidentiary hearing to develop a factual record before the Court pertaining to Plaintiff's prior misuse of Defendant's confidential information.

9. Plaintiff's previous misuse of Defendant's Trade Secret Documents gives rise to a reasonable Defendant concern that Plaintiff will again misuse the additional Trade Secret Documents that Plaintiff is now requesting ***personal*** unrestricted access to.

10. The Court then held argument of counsel, but ***not*** an evidentiary hearing, on Plaintiff's motion to compel, and Defendant's request to be allowed to disclose the confidential information only to Plaintiff's attorney and an independent expert.

11. During argument on Plaintiff's motion, and Defendant's request, the Court *itself* stated its own discomfort with granting Plaintiff a motion to compel Defendant to give Plaintiff ***personal*** access to Defendant's Trade Secret Documents, when the Court stated on the record:

    a. " *You know, the problem is I'm not real comfortable taking the plaintiff and literally turning him loose in the defendant's company offices so [plaintiff] can basically look at whatever he wants to look at.*" Motion to Compel record: Page 16 Line 10 to Page 16 Line 13; and

    b. "... *I hesitate to provide carte blanche to the plaintiff and just start digging through all [defendant's] files.*" Motion to Compel record : Page 18 Line 2 to Page 4 Line 13.

12. Defendant reiterated its request on the record that an evidentiary hearing be held to permit a record to be created as to the Plaintiff's prior misuse of the Defendant's Trade Secret Documents, so that the Court would then have an evidentiary record in order to rule on[2]:

    a. Plaintiff's motion to compel Defendant to disclose Defendant's Trade Secret Documents to Plaintiff *personally*, and

    b. the reasonableness of Defendant's request that such disclosure be **limited to** Plaintiff's attorney and an expert.

13. The Court, without providing any explanation for its refusal since the Court issued no opinion in support of its Order, did not grant Defendant's request for an evidentiary hearing.

14. The Court subsequently issued its January 31, 2005 Order granting Plaintiff's motion to compel and ordering Defendant, among other things, to disclose the

[2] See Motion To Compel Argument Transcript, Page 14, Lines 9 to 19.

Trade Secret Documents of Defendant to Plaintiff ***personally***, and not as Defendant had requested to just Plaintiff's attorney and an expert.

15. The January 31, 2005 Order, in fact, does exactly what the Court previously said on the record that the Court was ***not*** comfortable doing -- turning the Plaintiff loose carte blanche in the Defendant's offices, so Plaintiff can start digging through all of Defendant's files looking at whatever proprietary information he wants.

16. The Court in issuing its January 31, 2005 Order:

    a. did not permit Defendant to have the evidentiary hearing that Defendant had requested to permit an evidentiary record to be created showing:

        i. that Plaintiff had previously misused the Trade Secret Documents of Defendant; and

        ii. Defendant's good cause for the *limited* protection that Defendant seeks for the Trade Secret Documents that it is being asked to disclose to competitor Plaintiff.

    b. did not issue any opinion of the Court in support of the Order;

    c. did not make any findings of fact;

    d. did not make any reference to any competent evidence of record in support of the Order;

    e. did not explain why the Court determined to order Defendant to disclose further Trade Secret Documents ***personally*** to Plaintiff, when Plaintiff's own previous sworn deposition testimony established that Plaintiff had previously misused other Trade Secret Documents of Defendant; and

    f. did not explain why the Court issued its January 31, 2005 Order contradicting what the Court said on the record during argument on the Plaintiff's motion as to the Court's discomfort with allowing Plaintiff the relief Plaintiff's motion requested:

        i. " *You know, the problem is I'm not real comfortable taking the Plaintiff and literally turning him loose in the defendant's company offices so [plaintiff] can basically look at whatever he wants to look at.*" Page 16 Line 10 to Page 16 Line 13; and

        ii. *"I hesitate to provide carte blanche to the plaintiff and just start digging through all [defendant's] files.*" Motion to Compel :

Page 18 Line 2 to Page 4 Line 13.

17. Defendant is denied due process, and is denied an effective right to appellate review, if an order, like the January 31, 2005 Order at issue, is issued against the Defendant:

    a. since if Defendant complies with the January 31, 2005 Order and discloses the Trade Secret Documents to competitor Plaintiff ***personally***, "the cat is out of the bag", and no decision on appellate review can put the cat back into the bag; and

    b. where there is no evidence of record to support the Order, and

    c. where there are no findings of fact to support the Order, and

    d. where there is no opinion of the Court explaining how the Court arrived at its conclusion, and

    e. where the Order *contradicts*, without explanation, previous statements made by the Court on the record in opposition to granting the very relief that the Order now grants.

    "*Where the triers of the facts refuse to find facts in favor of the party having the burden of proof, the question on review is not whether competent evidence would sustain such a finding if made, but whether there was a capricious disregard of competent evidence in the refusal so to find.*" Williams v. New Bethlehem Burial Service, 167 Pa.Super. 364, 368, 74 A.2d 677, 679 - 680 (1950).

18. The January 31, 2005 Order:

    a. is separable from and collateral to the main cause of action; and

    b. impairs the right of Defendant to protection of its Trade Secret Documents and is too important to be denied review; and

    c. presents a legal question such that if review is postponed until final judgment in the case, the claim will be irrevocably lost. *Pennsylvania Rule of Appellate Practice 313.*

Wherefore, Defendant respectfully requests that this Honorable Court withdraw its January 31, 2005 Order, and:

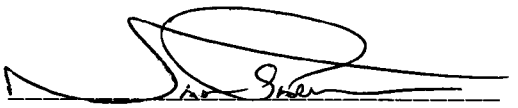
1. Reconsider its January 31, 2005 Order compelling Defendant to make disclosure of its Trade Secret Documents ***personally*** to competitor Plaintiff.

2. Limit the Defendant's disclosure of its Trade Secret Documents to ***only*** Plaintiff's legal counsel and expert, or in the alternative –

3. Grant the Defendant's previous request for an evidentiary hearing so that Defendant may be permitted to introduce evidence of record showing good cause for its requested limited protection of Trade Secret Documents upon which the Court may make findings of fact needed to support any subsequent Order it may issue.

4. Permit Defendant to file a brief in support of this motion for reconsideration.

Respectfully submitted:



Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Greco & Lander, P.C.
P. O. Box 667
Clarion, PA 16214-0667
(814) 226-6853

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: CERTIFICATE OF SERVICE Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

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FEB 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 4th day of February, 2005, a Court certified copy of Order of Court dated January 31, 2005 was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

With a copy to:

Robert W. McFate, Esq.
Attorney for Additional Defendant
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

(P)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

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FEB 0 1 2005
William A. Shaw
Prothonotary/Clerk of Courts

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

No. 03-1598-CD

vs.

DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC.,
Additional Defendant

ORDER

AND NOW, this 31 day of January, ~~2004~~ 2005, FSA upon consideration of Plaintiff's Motion to Compel Response to Discovery and opportunity for hearing,

IT IS HEREBY ORDERED AND DECREED that Plaintiff's Motion to Compel Discovery is granted. The Defendant Mid-East Oil Company is hereby compelled under penalty of sanctions to provide full and complete compliance with Plaintiff's pending Request for Production of Documents within 30 days of the date of this Order. Provision of documents under this Order, however, are under and subject to the following limitations:

1. Confidentiality: All documentation and information provided by any party in this matter shall be considered confidential

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and shall be used solely for the purposes of prosecution or defense of this litigation. Access to this information shall be limited to:

(a) The parties to this litigation;

(b) Counsel for the respective parties (including co-counsel) and employees of said counsel who are assisting with the prosecution or defense of this litigation;

(c) Experts, witnesses and consultants (including independent experts and consultant, and employees or clerical assistants of said expert) who are employed, retained or otherwise consulted by counsel for the prosecution, defense or settlement of this litigation. Provided, however, that prior to inspection of any materials by an expert, consultant or witness each such expert, witness, advisor or witness first acknowledge in writing that he/she has read and is fully familiar with and agrees to comply with the terms of this Order of Court.

2. Filing or Publication: The parties shall not, without consent of Defendant's counsel or leave of Court, in any way file of record or publish any of the documents or information provided in response to Plaintiff's discovery request.

3. Return of Materials: Upon termination of this action, all parties shall return all documents provided by Defendant in response to discovery requests, except those which become a matter of record. Notwithstanding, however, counsel shall be entitled to retain one copy of all documents in closed files for purposes of record

keeping only and subject to the confidentiality provisions set forth herein.

4. The restrictions set forth in any of the preceding paragraphs shall not apply to information which (a) was, is or becomes public knowledge not in violation of this Order of Court; or (b) is acquired from a third party lawfully in possession of such information and/or having no obligation to the designating party; or (c) was known by the party receiving such information prior to disclosure by the designating party.

5. Violation: A violation of this Order by any party shall be considered contempt of Court and shall subject the violator to such sanctions as the Court may impose. Notwithstanding the parties retain any civil remedies for breach of contract or other available causes which may arise from violation of this Order.

BY THE COURT,

J.

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

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01:16 BA
FEB 04 2005
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the **"Letter Brief in Support of Mid-East's Motion for Partial Judgment on the Pleadings Against Devonian and Van Hampton"** was sent by facsimile transmission and U.S. mail, postage prepaid, on FEBRUARY 4, 2005, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

#12

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LARRY F. SMYERS :

VS. : NO. 03-1598-CD

MID-EAST OIL COMPANY, et al :

O R D E R

NOW, this 24th day of January, 2005, following argument on Motion for Partial Judgment on the Pleadings filed by Defendant, it is the ORDER of this Court that Defendant Mid-East Oil Company have fifteen (15) days from date hereof to submit a letter brief to the Court, with the Additional Defendant to respond within fifteen (15) days after receipt of the same.

BY THE COURT:

President Judge

01:00 PM JAN 24 2005

1 cc Atty Talaclay
D. Greco
McFate

#170b

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

NO CC
01:05BN 6K
JAN 24 2005
William A
Prothonotary Clerk of Courts

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the "**Order of Court**" Dated December 17, 2004, pertaining to Mid-East Oil Company's Motion for Partial Judgment on the Pleadings against Devonian and Van Hampton was sent by facsimile and U.S. mail, postage prepaid, on December 24, 2004, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

#10a

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Robert W. McFate, Esq., hereby certify that a true and correct copy of the "**Additional Defendants' Answer to Defendant's Motion for Partial Judgement on the Pleadings**" was sent by U. S. mail, postage prepaid, on January 5, 2005, to the following other counsel of record:

Nathaniel C. Parker, Esq.
Greco & Lander, P. C.
P. O. Box 667
1390 East Main St., Suite 2
Clarion, PA 16214-0667

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
P. O. Box 487
498 Jeffers Street
Dubois, PA 15801

LAW OFFICE OF ROBERT W. McFATE

By: _____
Robert W. McFate, Esquire

FILED

JAN 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff vs. MID-EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	No. 03-1598-CD Type of Pleading: ADDITIONAL DEFENDANTS' ANSWER TO DEFENDANT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS Filed on Behalf of: ADDITIONAL DEFENDANTS Counsel of Record for This Party: Robert W. McFate Supreme Court No. 18528 3178-B State Rte. 257 P. O. Box 407 Seneca, PA 16346 (814-676-3933

FILED
6K JAN 07 2005
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty

#490

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

ADDITIONAL DEFENDANTS' ANSWER TO DEFENDANT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

NOW, COME, Additional Defendants, Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc., by and through their attorney, Robert W. McFate and file the following answer to Defendant's Motion for Partial Judgment on the Pleadings and say:

1. Admitted that Defendant's motion is based upon the pleadings. Denied that the relief requested is supported by the Plaintiffs or by said motion.

2. Admitted.

3. Denied as averred. It is averred on the contrary that Paragraph 7 of the Amended Complaint makes allegations as to a certain Confidentiality Agreement between certain parties to this action and makes no allegations with respect to monies owed to the Plaintiff.

4. Denied in that the averments in Paragraph 4 of the Defendant's Motion inaccurately paraphrases the contents of the Joint Venture Agreement. It is averred on the contrary that under the terms of the Joint Venture Agreement all leases in question were made subject to a 1/64th overriding royalty interest and not subject to "the earlier Plaintiff Smyers - Devonian/Van Hampton contract" as alleged.

5. Denied that Devonian/Van Hampton was conveying their interest free and clear of all liens and encumbrances. It is averred on the contrary that said Assignment and Bill of Sale was given by Devonian Resources, Inc., not Van Hampton Gas & Oil Co., Inc.,. It is further averred that Devonian warranted specially that it had complete legal title to its undivided interest in the oil and gas property free and clear of all encumbrances, said undivided interest being separate and distinct from the outstanding overriding royalty interest held by Smyers. It is further averred that said overriding royalty interest does not constitute a lien or encumbrance but rather a separate estate and a separate and distinct stick in the bundle known as fee simple absolute.

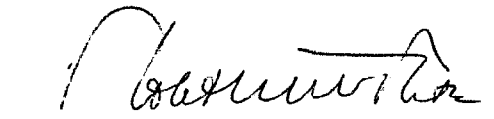
6. It is denied as averred that Devonian/Van Hampton warranted to Defendant Mid-East that "Mid-East shall receive payment of all proceeds from the sale of oil and gas from the subject wells...." . It is averred on the contrary that there is no such warranty contained in any instrument identified by the Defendant. It is further averred that the Assignment and Bill of Sale dated January 16, 2002, does provide that "Mid-East shall receive payment of all proceeds from the sale of oil and gas from the subject wells and shall be responsible for all expenses

thereafter. It is further averred that the allegation to pay expenses includes the allegation to pay overriding royalty interests to the Plaintiff. It is further averred that Van Hampton is not a party to said Agreement.

7. Denied that the Amended Complaint alleges that the Defendant's Motion states that it alleges in Paragraph 7 the motion. It is averred on the contrary that the averments in the Amended Complaint recited by the Defendant as well as all other averments speak for themselves.

WHEREFORE, Additional Defendants, Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc., request that the Defendant's Motion for Partial Judgment on the Pleadings be dismissed in its entirety.

Respectfully submitted,



Robert W. McFate
Attorney for Additional Defendants
Pa. I.D. 18528
3178 State Route 257
P. O. Box 407
Seneca, PA 16346
(814) 676-3933

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LARRY F. SMYERS,
Plaintiff

vs.

MID-EAST OIL COMPANY,
Defendant

vs.

DEVONIAN RESOURCES, INC., and
VAN HAMPTON GAS & OIL CO., INC.,
Additional Defendants

No. 03-1598-CD

ADDITIONAL DEFENDANTS' ANSWER TO DEFENDANT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

LAW OFFICES OF
McFATE, McFATE & McFATE
P.O. BOX 407
3178 STATE ROUTE 257, SUITE B
SENECA, PENNSYLVANIA 16346

FILED
JAN 07 2005
William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES OF
McFATE, McFATE & McFATE
P.O. BOX 407
3178 STATE ROUTE 257, SUITE B
SENECA, PENNSYLVANIA 16346

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers, Plaintiff vs. Mid-East Oil Company, Defendant vs. Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc., Additional Defendants	:	No. 03-1598-CD **JURY TRIAL DEMANDED** Type of Case Civil Action – Law Type of Pleading: ***Mid-East's Motion for Partial Judgment on the Pleadings against Devonian & Van Hampton*** Filed on behalf of Defendant Mid-East Oil Company Counsel of Record for This Party: Dom W. Greco, Esq. Supreme Court Id. No. 16829 Fax: (240) 465-7135 Nathaniel C. Parker, Esq. Supreme Court Id. No. 90993 Fax: (814) 226-4951 Greco & Lander, P.C. P.O. Box 667 Clarion, PA 16214 (814) 226-6853

FILED 1cc Atty Parker
m/9:44 BA
DEC 13 2004
William A. Shaw
Prothonotary/Clerk of Courts

{GL036103.1}: lam

#408

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

Mid-East's Motion for Partial Judgment on the Pleadings against Devonian and Van Hampton

AND NOW comes the Defendant, Mid-East Oil Company ("Mid-East"), who by and through their undersigned counsel, the Law Offices of Greco & Lander, P.C., files this Motion for Partial Judgment on the Pleadings against Additional Defendants Devonian Resources, Inc. ("Devonian") and Van Hampton Gas & Oil Co., Inc. ("Van Hampton"), on the claims set forth in the third-party complaint as to:

(I) Count #1 – Devonian and Van Hampton are solely liable on Plaintiff's cause of action; and

(II) Count #2 – Devonian and Van Hampton are liable over to Mid-East; and

(III) Count #4 – Breach of Contract; and

(IV) Count #5 – Breach of Warranty.

The following chart is submitted as a summary of the within motion to aide the reader in reviewing the motion:

Reasons Defendant Mid-East Entitled to Judgment on Pleadings ***On Counts 1, 2, 4, and 5 of Third-Party Complaint Against Additional Defendants Devonian/Van Hampton***		
Count #	***Cause of action***	***Reason for Judgment on pleading & citation to supporting pleadings***
1	Additional defendants Devonian/Van Hampton "solely liable" to plaintiff Smyers	• Plaintiff's claim is based upon plaintiff Smyers' original contract with additional defendants Devonian/Van Hampton. *(Amended Complaint ¶ 7, Exhibit 1; motion exhibit # 1)* • Defendant Mid-East only took "*subject to*" that earlier plaintiff Smyers-additional defendants Devonian/Van Hampton contract, but defendant Mid-East did ***not*** assume that earlier contract. *(Amended Complaint Exhibit 2, ¶ 2; motion exhibit #2)* • ***Therefore*, if anyone is libel to plaintiff Smyers it is additional defendants Devonian/Van Hampton who are "solely libel" to plaintiff Smyers.**
2 4 5	Additional defendants Devonian/Van Hampton "libel over" to defendant Mid-East on plaintiffs Smyers' causes of action Defendant Mid-East breach of contract against additional defendants Devonian/Van Hampton Defendant Mid-East breach of warranty against additional defendants Devonian/Van Hampton	• Additional defendants Devonian/Van Hampton warranted to defendant Mid-East: 1. that their conveyance to defendant Mid-East was "*free and clear of **all** liens and encumbrances*". *(Amended Complaint Exhibit 3, page 3, first paragraph ;motion exhibit #3;)*; and 2. that defendant Mid-East shall receive payment of "***all** proceeds from the sale of oil and gas from the subject wells*". *(Amended Complaint Exhibit 3, page 3, third paragraph; motion exhibit #3).* • Plaintiff Smyers' complaint alleges (***contrary*** to such additional defendants Devonian/Van Hampton warranty to defendant Mid-East): 1. that additional defendants Devonian/Van Hampton did ***not*** convey the interest to defendant Mid-East free of a 1/64 encumbrance in favor of plaintiff Smyers*(Amended Complaint ¶¶'s 16, 22, 28, 30; motion exhibit #4)* ; and 2. that defendant Mid-East is ***not*** entitled to receive "***all** proceeds from the sale of oil and gas from the subject wells*". *(Amended Complaint ¶¶'s 16, 22, 28, 30; motion exhibit #4).* • ***Therefore*, additional defendants Devonian/Van Hampton are liable over to defendant Mid-East, including for breach of contract and breach of warranty.**

Introduction

Plaintiff Smyers' Amended Complaint is premised upon the assertion that Smyers is entitled to payment from Mid-East, based upon contracts Smyers entered into with Devonian and Van Hampton. Mid-East requests this Honorable Court to enter judgment decreeing that if plaintiff Smyers is successful in his claims, then Devonian and Van Hampton are liable to defendant Mid-East. The factual allegations upon which Mid-East's Motion for Partial Judgment on the Pleadings are premised are set forth hereinafter, with a more detailed evaluation and discussion in support of the within motion to be presented to the Court at the date and time scheduled for argument.

1. This Motion is based upon the pleadings.

2. The relevant pleadings are now closed.

Count #1 – Devonian/Van Hampton solely liable to plaintiff

3. Paragraph 7 of plaintiff Smyers' Amended Complaint alleges that Plaintiff Smyers is owed payments based upon contracts entered into and accepted by Devonian and Van Hampton (copy of such contracts attached hereto as motion exhibit #1).

4. As specified in the Joint Venture Agreement attached to the Amended Complaint as Exhibit 2, paragraph two (motion exhibit #2), Mid-East only took "***subject to***" the earlier plaintiff Smyers- Devonian/Van Hampton contract, but Mid-East **did not assume** that earlier contract.

WHEREFORE, defendant Mid-East prays this Honorable Court to issue a Rule to Show Cause upon additional defendants Devonian and Van Hampton why Mid-East's Motion for an order decreeing that Devonian and Van Hampton are solely liable to plaintiff Smyers on the causes of action he has asserted against Mid-East should not be granted.

Count #2 – Devonian/Van Hampton liable over to defendant Mid-East

Count #4 – Breach of Contract

Count #5 – Breach of Warranty

5. Additional defendants **Devonian/Van Hampton warranted** to defendant Mid-East in the Assignment and Bill of Sale (Amended Complaint, Exhibit 3, page 3, motion exhibit #3), that Devonian/Van Hampton was conveying their interest to Mid-East "***free and clear of all liens and encumbrances***".

6. Additional defendants **Devonian/Van Hampton warranted** to defendant Mid-East in the Assignment and Bill of Sale (Amended Complaint, Exhibit 3, page 3, motion exhibit #3), **that "*Mid-East shall receive payment of all proceeds from the sale of oil and gas from the subject Wells ...*".**

7. Plaintiff Smyers Amended Complaint alleges (contrary to Devonian/Van Hampton's contract warranties):

    a. That additional defendants Devonian/Van Hampton did not convey the interest to defendant Mid-East free of a $1/64^{th}$ encumbrance in favor of plaintiff Smyers (Amended Complaint ¶¶'s 16, 22, 28, 30, motion exhibit #4); and

b. That defendant Mid-East is not entitled to receive "*all proceeds from the sale of oil and gas from the subject Wells*" (Amended Complaint ¶¶'s 16, 22, 28, 30, motion exhibit #4).

WHEREFORE, defendant Mid-East prays this Honorable Court to issue a Rule to Show Cause upon additional defendants Devonian and Van Hampton why defendant Mid-East's Motion for Partial Judgment on the Pleadings, and the following relief, should not be granted:

a. Issue an order decreeing that additional defendants Devonian and Van Hampton are liable over to defendant Mid-East on the causes of action asserted by plaintiff Smyers; and

b. Issue an order and decree entering judgment against additional defendants Devonian and Van Hampton in favor of defendant Mid-East for breach of contract; and

c. Issue an order and decree entering judgment against additional defendants Devonian and Van Hampton in favor of defendant Mid-East for breach of warranty.

Respectfully submitted:



Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Motion for Partial Judgment on the Pleadings against Devonian and Van Hampton"** was sent by U.S. mail, postage prepaid, on DECEMBER 9, 2004 _____, 2004, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

{GL036103.1}: lam

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

FILED

6K DEC 17 2004

William A. Shaw
Prothonotary

ORDER OF COURT

Now this 17 day of December, 2004, upon consideration of the attached Motion for Partial Judgment on the Pleadings, a Rule is hereby issued upon the Additional Defendants to show cause why the Motion should not be granted. Rule Returnable the 7 day of January, 200__, for filing written response. Argument is scheduled the 24 day of January, 2005, at 9:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE

#18

DPA / SIPES

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Division of Professional Affairs
of the American Association
of Petroleum Geologists and
Society of Independent
Professional Earth Scientists

CONFIDENTIALITY AGREEMENT

This Agreement is between LARRY F. SMYERS ("Offeror") and Devonian Resources, Inc. ("Receiver") and sets forth the terms for the presentation to Receiver of an oil and gas exploration prospect (the "Prospect") which will provide Receiver with the opportunity to evaluate the Prospect and to acquire an oil and gas interest (including - but not limited to - drilling or leasing, royalty, and purchase of producing properties) in the Prospect lands on the basis of mutually acceptable compensation to the Offeror. The Prospect is located in the geographical area set forth below and in Exhibit "A", if attached hereto. Since the Prospect, the Prospect information and the geographical area related to the Prospect is secret, proprietary and confidential information developed by Offeror over time and at great expense, Receiver, as consideration for the opportunity to evaluate the Prospect, agrees to the following:

1. **The Geographical Area.** As used in this Agreement, the geographical area on which the Prospect is located ("Geographical Area") is agreed to mean the following:

Certain areas located in Burnside Twp., Centre Co., PA and Cooper Twp., Clearfield Co., PA and Boggs Twp., Clearfield County, PA and West Decatur Clearfield Co., PA. This AREA OF INTEREST CAN be AMENDED by MUTUAL CONSENT between OFFEROR AND RECEIVER.

A Detailed Geographic AREA will be outlined AND ATTACHED AS Exhibit I

EXHIBIT "A" IS/IS NOT ATTACHED HERETO.

2. **Proprietary and Confidential Information.** The term "Proprietary and Confidential Information" ("PCI") as used in this Agreement is agreed to mean all oral disclosures and information, data and knowledge contained in the documents (whether geological, geophysical, economic, financial or management and whether in the form of maps, charts, logs, seismographs, interpretations, calculations, summaries, opinions or other written or charted means) which are related, directly or indirectly, to the Prospect or to the exploration potential of the Geographical Area, and which are now or hereafter delivered or disclosed by or on behalf of the Offeror to the Receiver. However, the PCI shall not include information to the extent it (a) is now or subsequently becomes part of the public domain through no acts or omissions attributable to Receiver or (b) as shown by Receiver's written records, was rightfully in Receiver's possession prior to disclosure by the Offeror. The Receiver acknowledges that Offeror intends to maintain the confidential, proprietary and secret nature of the PCI.

3. **Restrictions on Receiver's Future Activities.** For the period of DUE (1) years after the date on which Receiver has signed this Agreement, Receiver agrees:

(a) To keep the PCI secret and not to disclose the PCI to any entity or person except to Receiver's employees or consultants necessary to evaluate the Prospect, unless specific written authorization is received from the Offeror; OFFEROR ALSO AGREES TO KEEP CONFIDENTIAL GEOGRAPHIC AREA FOR term of Agreement. (LFS)

(b) To use the PCI solely for the purpose of evaluating the Prospect and not to use the PCI for Receiver's financial advantage without compensation to the Offeror;

(c) Not to purchase or acquire in any manner, directly or indirectly, any oil or gas ownership, leasehold, royalty or other interest within the Geographical Area unless it shall be deemed by such action or otherwise that Receiver has accepted the terms of the Offeror in conjunction with the presentation of the Prospect; OFFEROR will NOT lease (subsequent) IN geographic AREA FOR Term of Agreement. SOME ROYALITIES AND OWNERSHIP in previous drilling programs by Another operator are owned by OFFEROR but do not conflict with THIS Agreement (LFS)

~~(b) Not to reproduce or make any copies of any of the PCI unless specific written authorization is received from the Offeror except copies used in conjunction with the evaluation of the PCI; and~~ LFS

~~(c) Immediately at the request of the Offeror or within fifteen (15) days of Receiver's rejection of the Prospect, to return to the Offeror all PCI which has been delivered or disclosed to Receiver and to destroy all other related documents (except a copy of this Agreement) including, without limitation, all documents, memoranda, notes, interpretations, data, copies and other written material prepared by Receiver or others utilizing any PCI or in evaluating the Prospect, certifying to the Offeror in writing that Receiver has destroyed all such documents.~~ Not applicable LFS

4. Remedies for Breach of this Agreement by Receiver. Receiver agrees that if this Agreement is breached by Receiver the remedy at law may be inadequate and therefore an injunction, specific performance or other forms of equitable relief or money damages or any combination thereof shall be available. All rights, powers and remedies provided for herein are cumulative, and not exclusive, of any and all rights, powers and remedies at law or in equity as may now or hereafter exist. However, and not withstanding the foregoing, Offeror and Receiver agree that if Receiver shall breach paragraph 3(c) of this Agreement, the remedy shall be only as stated therein, namely, acceptance of terms. The Offeror shall be entitled to recover the cost and expenses incurred in enforcing this Agreement including any attorney's fees.

5. Binding Effect on Receiver and Others. This Agreement entered into by Receiver shall be binding on Receiver and Receiver's officers, directors, employees, agents, attorneys, accountants and representatives. Receiver agrees to inform all such persons and entities of this Agreement and to be liable to the Offeror for the acts of such persons and entities if this Agreement is breached by any one of them. If any part of this Agreement is declared void or unenforceable, the Receiver agrees to be bound by the remaining part of this Agreement.

6. Miscellaneous. The following are also agreed to by Offeror and Receiver:

(a) THIS AGREEMENT AND THE RELATIONSHIP THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF PENNSYLVANIA WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PROVISION;

(b) The Prospect is offered subject to prior sale; and

(c) This Agreement is not intended to and does not create a partnership, joint venture or any other business combination between Receiver and Offeror.

Addenda: This confidentiality agreement is intended to expand on and Supplement the terms of a letter dated August 3, 1999 to Van Hampton Oil and Gas Company (RECEIVER) from Larry F. Snyder (OFFEROR) ATTACHED HEREIN AS Exhibit II. This letter OUTLINES terms to provide technical ASSISTANCE to Explore for and develop NATURAL GAS AND ASSOCIATED hydrocarbons in the Geographical AREA OUTLINED IN Exhibit #1. This AGREEMENT INCLUDES VAN HAMPTON Oil and Gas, it related companies And JOINT INTEREST ACTIVITIES IN THE AREA DEFINED IN EXHIBIT I

AGREED TO AND ACCEPTED:

STAN Thompson Title: President (RECEIVER)

By: _____ Date: _____

Larry F Snyder DATE 2/29/00 (OFFEROR)

LARRY Snyder

2/5
6/2/00

Page 2 of 5

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF Crawford :

On this, the 21st day of September 2001, before me a Notary Public, the undersigned officer, personally appeared S.R. Thompson - President - Devonian Resources

known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notarial Seal
Cecilia R. Adams, Notary Public
City of Titusville, Crawford County
My Commission Expires May 14, 2005
Member, Pennsylvania Association of Notaries

Cecilia R. Adams
Notary Public

STATE OF Pennsylvania :

COUNTY OF Crawford :

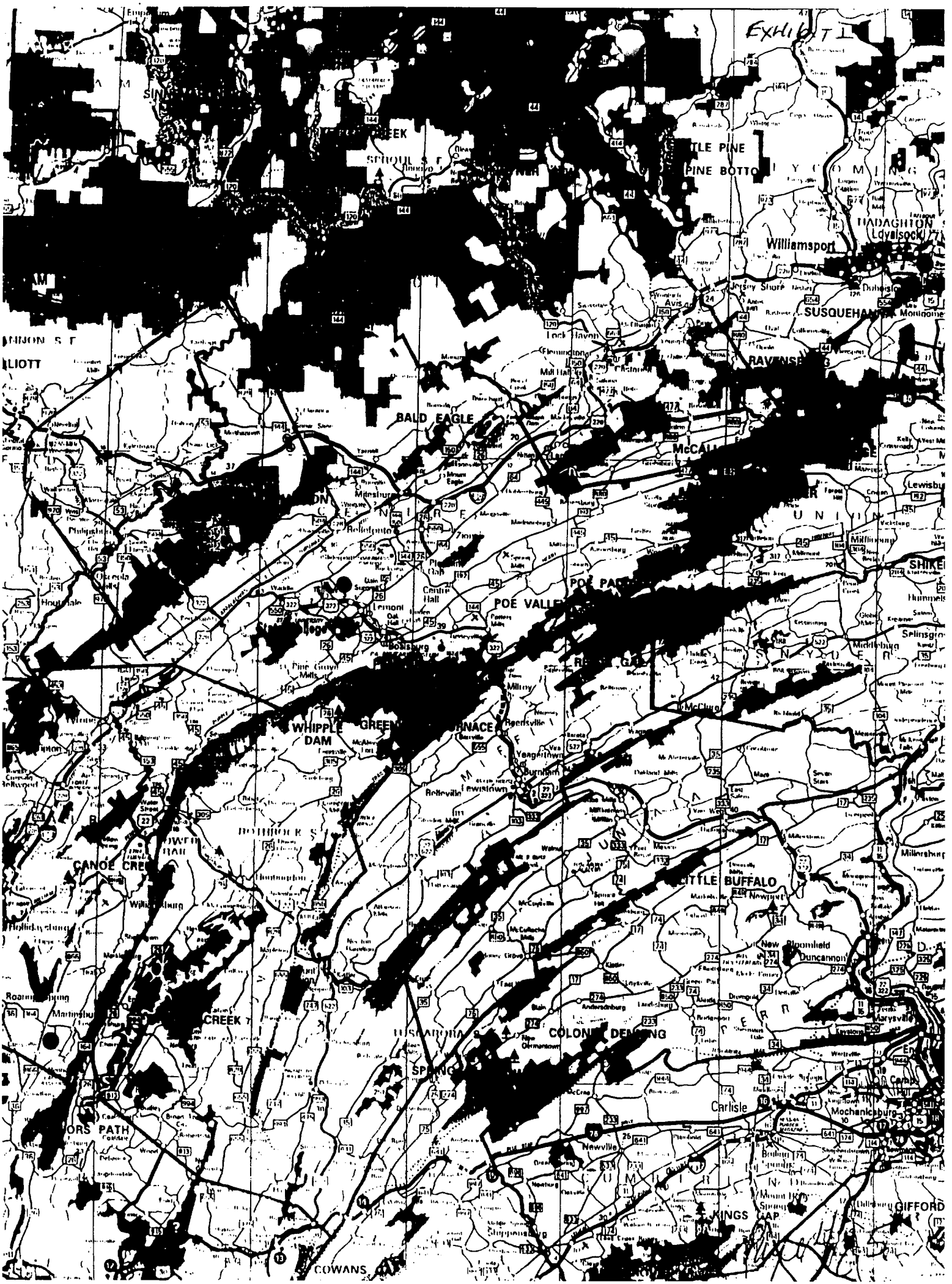
On this, the 21st day of September 2001, before me a Notary Public, the undersigned officer, personally appeared Larry F. Smyers

known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Cecilia R. Adams
Notary Public

Notarial Seal
Cecilia R. Adams, Notary Public
City of Titusville, Crawford County
My Commission Expires May 14, 2005
Member, Pennsylvania Association of Notaries


EXHIBIT I
Williamsport
Jersey Shore
SUSQUEHANNA
Lock Haven
BALD EAGLE
Bellefonte
Lemont
Bobsburg
POE VALLEY
WHIPPLE DAM
Lewistown
Burnham
Yeagertown
Belleville
McClure
Selinsgrove
Middleburg
Millmont
Mifflinburg
Lewisburg
Hummels
Millersburg
Newport
New Bloomfield
Duncannon
Marysville
Carlisle
Mechanicsburg
Newville
Shippensburg
KINGS GAP
GIFFORD
COWANS
CANOE CREEK
PENNSYLVANIA
SUSQUEHANNA
JUNIATA
PERRY
CUMBERLAND

Larry F. Smyers
Petroleum Geologist/Geophysicist

AAPG Certified Petroleum Geologist # 4774
Lic. Prof. Geologist WY, # 221
Reg. Professional Geologist PA, 3203

300 E. Second Ave.
DuBois, PA 15801

Telephone/Fax
814.371.7450

August 3, 1999

Mr. Stan Thompson
Van Hampton Oil & Gas Company
Route 36
Pleasantville, PA

Dear Stan:

It was a pleasure to meet with you to discuss the potential of some areas for natural gas drilling, and my availability to aid you in developing drilling programs.

The following is a brief summary of my proposal to retain my services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development. It is my intention to keep it as simple as possible and start working towards some significant drilling projects:

1. Retainer fee of ~~$ 2,500~~ 1500 LFS, from which a $ 175/ day fee will be deducted for each day worked on a project (plus necessary expenses). This retainer fee is renewable when the balance from the previous payment is depleted. Prospects and/or programs will be developed as efficiently as professional prudence and economics allow.
2. A 1/64 interest (ORRI) of the gross from the sale of natural gas, associated liquids, or crude oil from each well located in a prospect, or program, I propose.
3. Cost of maps, seismic data, or that data necessary for prospect, and program development, will be borne by Van Hampton and will remain their property. Any information used in prospect and/or program development from my personal files of which copies will become the property of Hampton Oil & Gas.
4. The areas of interest will adhere to the AAPG DPA/ SIPES Confidentiality Agreement attached.
5. When drilling programs develop, my professional services will be retained ongoing project technical development (i.e. site geological consulting etc.).

Details can be worked out at a later date in respect to areas of interest, data necessary for project development, fee renewal schedule, etc. as the projects develop.

I trust this proposal is sufficient to begin discussion towards a rewarding working relationship. Please call me if you have any questions.

Sincerely,

Larry Smyers

Exhibit II

DEVONIAN RESOURCES, INC.

P.O. Box 329
Pleasantville, PA 16341
(814) 589-7061
(814) 589-7936 Fax

August 23, 2000

Mr. Mark Thompson
Mid East Oil Company
P.O. Box 1378
Indiana, PA 15701

RE: JOINT VENTURE AGREEMENT (Pine Glen Prospect)

Dear Mark:

This Letter Agreement when accepted by you shall govern the terms and conditions of the joint venture between Devonian Resources, Inc. and Mid East Oil Company (the Parties) which shall be established to explore for and develop Devonian sandstone formations, principally in the Townships of Burnside and Snowshoe of Centre County, Pennsylvania.

1. An Area of Mutual Interest (AMI), shall be established that will include all of Devonians leasehold position in the Pine Glen and all of Mid East leasehold position in this area, in addition to any new acreage that may be acquired by the Parties which lies within the boundaries of the AMI as delineated on the attached Exhibit "A".

2. All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area, however, the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent. All current leases held by Devonian Resources and Mid East at the time of the signing of this Joint Venture Agreement, shall be cross assigned to both parties to effectuate an undivided Fifty-Percent (50%) interest into each parties leasehold estate. All new leases shall be taken in the name of Mid East Oil Company. Devonian Resources, Inc. shall be assigned a 50% interest in said new leases acquired. Any leases acquired from another company shall be taken by that party as deemed appropriate. Such lease acquisitions, however, will not be made without the consent of both parties. A leasing budget may be proposed by either party and at the mutual consent of both parties, a leasing program will be undertaken and directed by Mid East. The cost of any and all lease acquisition will be borne jointly in accordance with each parties working interest. Any lease acreage proposed by either party not mutually consented to, shall not be a part of the AMI of this Joint Venture Agreement.

ASSIGNMENT AND BILL OF SALE

Devonian Resources, Inc., a Pennsylvania business corporation, hereinafter referred to as "Devonian", with an office address of P. O. Box 329, Pleasantville, PA 16341, for valuable consideration, and with the intent to be legally bound hereby, has assigned, transferred, sold, conveyed and set-over, and by the presents does hereby assign, transfer, sell, convey and set-over, unto Mid-East Oil Company, a Pennsylvania business corporation, hereinafter referred to as "Mid-East", with offices at 255 Airport Road, Indiana, PA 15701, all of the right, title and interest of Devonian in and to all oil and gas property of any kind or nature situate or relating to lands within the political boundaries of Burnside Township, Center County, Pennsylvania (hereinafter the "AMI"), including but not limited to all lease rights, working interests and/or fee interests, all easements and other interests in real estate held in connection with same, all oil and/or gas wells thereon together with all downhole equipment, all production equipment, machinery, fixtures, pipelines and compressors connected thereto, and all tools, maps, electronic mapping data, digital document imaging, tracings, surveys, engineering and engineering work product, seismic, geophysical, geological, geochemical and other geotechnical information and data, logs, contracts, contract rights, licenses, permits, bonds, and all records and documents relating thereto, and all claims and causes of action as relate to any of the same, and further including without limitation by way of enumeration, all of the right, title and interest of Devonian in and to (a) the oil and gas lease and leasehold known as the Commonwealth of Pennsylvania, Pennsylvania Game Commission, State Game Lands No. 100, Tract 100A-00, (b) the Confer lease and leasehold, (c) all right, title and interest of Devonian in and to the leasehold estates,

oil and gas ownership rights and rights-of-way (the "Oil & Gas Agreements") situate in Centre County, Pennsylvania, more particularly set forth and described on Exhibit A attached hereto and made a part hereof, (d) all the right, title and interest of Devonian in the AMI established to explore for and develop Devonian sandstone formations in the Townships of Burnside and Snow Shoe, Centre County, Pennsylvania, and known as the Pine Glen Prospect, the terms and conditions of the AMI being more fully set forth and described in a letter dated August 23, 2000, a copy of which is attached hereto as Exhibit B and made a part hereof, (e) all of the fractional working interests of Devonian and all of the right, title and interest of Devonian in all those certain oil and gas "Wells" situate in Burnside Township, Centre County, Pennsylvania, more particularly designated and described on Exhibit C attached hereto and made a part hereof, (f) all royalty and/or overriding royalty interests of Devonian within the AMI, (g) all right, title and interest of Devonian in and to the natural gas gathering system within the AMI, consisting of all pipelines, compressors and other machinery and equipment used in connection with the transportation of gas production from the flow lines of the wells drilled within the AMI to the transmission lines of the purchasers of gas, as now and hereafter constituted, including all additions, replacements and extensions thereof (the "Gathering System") and (h) all other assets ("Assets") of Devonian that are the subject of the Asset Purchase Agreement between Devonian and Mid-East, dated November 15, 2001, all of the foregoing hereinafter described as the "Oil & Gas Property".

Assignor hereby warrants specially that it has complete legal title to its undivided interest in the Oil & Gas Property free and clear of all liens and encumbrances.

It is further specially warranted that the said leases and agreements are in full force and effect and contain all covenants and obligations of Assignor concerning the oil and gas operations on the leased premises. Assignor disclaims all warranties concerning the quality and quantity of oil and gas that may be produced in the future from the subject oil and gas Well.

Devonian shall have the right to receive payment for all oil and gas produced and marketed from the leases described herein up to the date of the chart change on or about December 27, 2001. Devonian shall also make payment of all expenses incurred in the operation of the subject Wells including the payment of royalties through such production period. Mid-East shall receive payment of all proceeds from the sale of oil and gas form the subject Wells and shall be responsible for all expenses thereafter.

This Assignment and Bill of Sale shall be binding upon and shall enure to the benefit of the parties hereto and their successors and assigns.

TO HAVE AND TO HOLD the entire interest of Devonian and all claims of Devonian in and to the Assets and their hereditaments and the premises herein granted and mentioned, and intending so to be with the appurtenances unto Mid-East, its successors and assigns forever.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Assignment and Bill of Sale this 16th day of January 2002.

16. Defendant, by virtue of its position as successor and assign of Devonian Resources, Inc., and by virtue of the Joint Venture Agreement dated August 23, 2001, which is attached as an exhibit to the Bill of Sale, is obligated to pay a 1/64 overriding royalty to Plaintiff on all mineral resources produced within the AMI.

17. Based on information obtained from the Pennsylvania Department of Environmental Protection, Plaintiff believes and therefore avers that there exists within the AMI multiple gas and/or oil wells which are set forth in Exhibit "4". The well numbers in the shaded area of this exhibit represent wells for which Plaintiff received royalties through December 2, 2003.

18. By letter dated December 2, 2003, Defendant advised Plaintiff that it was no longer making any royalty payments to Plaintiff for wells located within the AMI. (Copy of this letter is attached as Exhibit 5.)

19. In addition, Plaintiff believes and therefore avers that Defendant has developed additional wells within the AMI which Defendant is obligated for royalty payments to the Plaintiff.

20. Despite its obligation under the AMI and Joint Venture Agreements, the Defendant has failed and refused to make royalty payments due and owing to Plaintiff for all other oil and gas wells listed on Exhibit "4" as well as any and all other wells developed by Defendant within the AMI which are currently not known to Plaintiff. Information required to specifically calculate the royalty amounts due and owing to Plaintiff, the dates upon which these

payments became due, and the production information on which these payments are based is within the exclusive possession and control of Defendant, and therefore, damages cannot be specifically calculated at present.

COUNT I
BREACH OF CONTRACT

21. Plaintiff realleges the averments set forth in Paragraphs 1 through 20 of this Complaint.

22. Defendant has breached its contractual obligation to Plaintiff as follows:

(a) In failing to pay 1/64 overriding royalty interests on all oil and gas production within the AMI as set forth in the controlling agreements;

(b) In failing to provide an accounting of oil and gas production for all wells located within the AMI; and

(c) In failing to record or otherwise document of record Plaintiff's overriding royalty interest in all wells developed within the AMI.

23. As a direct result of Defendant's breach of their contractual obligations, Plaintiff has incurred and continues to incur damages in excess of Twenty-five Thousand and 00/100 ($25,000.00) Dollars.

WHEREFORE, Plaintiff demands relief as follows:

(a) Immediate payment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff;

(b) An immediate and ongoing accounting of oil and gas production for all oil and gas wells within the AMI; and

(c) Interest, costs of suit and all other interest which tl Court deems to be just and equitable.

COUNT II
UNJUST ENRICHMENT

24. Plaintiff realleges the averments set forth in Paragraphs 1 through 23 of this Complaint.

25. Plaintiff conferred benefits on the Defendant by performing geological services including preparation of a drilling prospect for the AMI in which Defendant is drilling.

26. Defendant's retention of proceeds from the wells located in the AMI without payment of royalties to the Plaintiff is inequitable.

27. Defendant has been unjustly enriched and Plaintiff i entitled to receive the agreed upon value for his professional services

28. Defendant has been unjustly enriched at Plaintiff's expense because of the following:

(a) Defendant's failure to honor Plaintiff's 1/64 overriding royalty interest in all oil and gas wells located within the AMI; and

(b) Defendant's failure or refusal to provide an accounting to production from all oil and gas wells within the AMI.

WHEREFORE, Plaintiff demands relief as follows:

(a) Immediate payment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff;

(b) An immediate and ongoing accounting of oil and gas production for all oil and gas wells within the AMI;

(c) Interest, costs of suit and all other interest which the Court deems to be just and equitable;

(d) Judgment in an amount in excess of $25,000.00.

COUNT III
CONSTRUCTIVE TRUST

29. Plaintiff realleges the averments set forth in Paragraphs 1 through 28 of this Complaint.

30. By virtue of the transactions and agreement referenced herein, the Plaintiff has an equitable interest in royalties which are being retained by the Defendant. The Defendant is retaining all proceeds from drilling operations in the area of mutual interest.

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

FILED 12 no cc
m/11:04BH
NOV 17 2004
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Reply to New Matter Alleged by Devonian and Van Hampton"** was sent by U.S. mail, postage prepaid, on NOVEMBER 15, 2004, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq.

GL036017.1}: lam

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,

Plaintiff

vs.

Mid-East Oil Company,

Defendant

vs.

Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,

Additional Defendants

: No. 03-1598-CD

: **JURY TRIAL DEMANDED**

: Type of Case
: Civil Action – Law

: Type of Pleading:

: ***Reply to New Matter Alleged by Devonian and Van Hampton***

: Filed on behalf of Defendant Mid-East Oil Company

: Counsel of Record for This Party:

: Dom W. Greco, Esq.
: Supreme Court Id. No. 16829
: Fax: (240) 465-7135

: Nathaniel C. Parker, Esq.
: Supreme Court Id. No. 90993
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: Clarion, PA 16214
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FILED
3:11:04 BL
NOV 17 2004
William A. Shaw
Prothonotary/Clerk of Courts

{GL036017.1}: lam

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers, Plaintiff vs. Mid-East Oil Company, Defendant vs. Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc., Additional Defendants	:	No. 03-1598-CD

REPLY TO NEW MATTER ALLEGED BY DEVONIAN AND VAN HAMPTON

AND NOW comes the Defendant, Mid-East Oil Company ("Mid-East"), who by and through their undersigned counsel, the Law Offices of Greco & Lander, P.C., files this Reply to New Matter alleged by Devonian Resources and Van Hampton and states as follows:

1. No New Matter alleged.

2.

a. No New Matter alleged.

b. No New Matter alleged.

c.

i. Denied. After reasonable investigation Mid-East is without sufficient knowledge or information to form a belief as to the truth of the averments contained herein. The allegations of

¶2.c.i. of Additional Defendants' New Matter are therefore denied.

ii. Denied. After reasonable investigation Mid-East is without sufficient knowledge or information to form a belief as to the truth of the averments contained herein. The allegations of ¶2.c.ii. of Additional Defendants' New Matter are therefore denied.

iii. No New Matter alleged.

iv. No New Matter alleged.

v. No New Matter alleged.

d. Denied. After reasonable investigation Mid-East is without sufficient knowledge or information to form a belief as to the truth of the averments contained herein. The allegations of ¶2.d. of Additional Defendants' New Matter are therefore denied.

3. Admitted in part and denied in part. In answering ¶3 of Additional Defendants' New Matter, it is averred that the allegations contained in ¶3 of the Third Party Complaint accurately represent the content of the letter attached to Plaintiff's Amended Complaint as Page 5 of Exhibit 1. Except as so averred the allegations of ¶3 of Additional Defendants' New Matter are denied.

4. No New Matter alleged.

5. No New Matter alleged.

6. No New Matter alleged.

7. No New Matter alleged.

8.

a. Admitted in part and denied in part. It is admitted that ¶2 of the Joint Venture Agreement provides for the cross assignment of leases, as wel as notes that leases will be ***subject to*** a $1/64^{th}$ interest. Except as so averred the allegations of ¶2 of Additional Defendants' New Matter ar denied.

b. No New Matter alleged.

c. No New Matter alleged.

d. No New Matter alleged.

9. No New Matter alleged.

10.

a. No New Matter alleged.

b. Admitted.

c. Admitted.

11. Admitted in part and denied in part. It is admitted that a formal assignment of all of Devonian and/or Van Hampton's corporate interests and rights never occurred. It is specifically denied that a defacto assignment of these same rights occurred. By way of further answer, Additional Defendants' New Matter admits that Devonian "*continued in existence doing business after Devonian entered into the ... Joint Venture Agreement ... and ... the Assignment and Bill of Sale with Mid-East*". Except as so averred the allegations of ¶11 of Additional Defendants' New Matter are denied.

12. No New Matter alleged.

13. No New Matter alleged.

14. No New Matter alleged.

15. No New Matter alleged.

16. No New Matter alleged.

17. No New Matter alleged.

18. No New Matter alleged.

19. No New Matter alleged.

20. No New Matter alleged.

21. No New Matter alleged.

22. No New Matter alleged.

23. Admitted that the exhibits attached to the amended complaint are subject to interpretation. Except as so averred the allegations of ¶23 of Additional Defendants' New Matter are denied.

4. No New Matter alleged.

5. Admitted in part and denied in part. It is admitted that Smyers did not erbally or in writing release Devonian or Van Hampton from any obligation to nake payments to him. It is denied that ¶2 or any other part of the Joint Venture greement dated August 23, 2000, referred to the agreement between Smyers and an Hampton and/or Devonian, the August 3, 1999 letter, or the Confidentiality greement dated September 21, 2001. Except as so averred the allegations of ¶26 of dditional Defendants' New Matter are denied.

6. Denied. After reasonable investigation Mid-East is without sufficient nowledge or information to form a belief as to the truth of the averments contained erein. The allegations of ¶26 of Additional Defendants' New Matter are therefore enied.

7. No New Matter alleged.

8. No New Matter alleged.

9. Denied. After reasonable investigation Mid-East is without sufficient nowledge or information to form a belief as to the truth of the averments contained erein. The allegations of ¶29 of Additional Defendants' New Matter are therefore enied.

0. No New Matter alleged.

1. No New Matter alleged.

2. No New Matter alleged.

3.

a. Denied. The paragraph entitled "*Addenda*" of the Confidentiality Agreement specifically provides that it was "*intended to expand on and supplement the terms of a letter dated August 3, 1999, to Van Hampton Gas & Oil Company ....*". It is specifically denied that the Confidentiality Agreement "*merely committed the parties to confidentiality*". By its express terms the Confidentiality Agreement outlines the proposed terms for the provision of Plaintiff Smyers' services.

b. Denied. The Confidentiality Agreement expressly provides additional proposed terms for the provision of Larry Smyers' services to Devonian Resources.

c. No New Matter alleged.

d. No New Matter alleged.

34. No New Matter alleged.

35.

a. Admitted.

b. Admitted in part and denied in part. It is admitted that at the time Mid-East entered into the Joint Venture Agreement, Mid-East knew that Devonian Resources and/or Van Hampton had entered into a prior agreement with a geologist pertaining to the leasehold interests owned by Devonian. It is specifically denied that Mid-East had a full and complete knowledge or understanding of all of the terms of any prior agreement. By way of further answer, it is averred that since Mid-East entered into the Joint Venture Agreement Mid-East was and is unaware of the full terms of any agreement between Smyers and Devonian and/or Van Hampton, as well as any breaches thereof. Pursuant to the terms of the Joint Venture Agreement Mid-East took "subject to" Mid-East paying the geologist for future services provided by the geologist as long as the geologist was performing such services thereafter to Mid-East. When plaintiff Smyers indicated to Mid-East that plaintiff Smyers would not render any such future services to Mid-East, Mid-East stopped making payments to Smyers. Except as so averred the allegations of ¶36.b of Additional Defendants' New Matter are denied.

c. No New Matter alleged.

d. Denied. The Joint Venture Agreement contains no provision by which Mid-East assumed any obligation to satisfy Devonian's obligations to any third party including Smyers. It is specifically denied that by entering into said agreement Mid-East assumed and agreed to pay any obligations of Devonian and/or Van Hampton. Pursuant to the terms of that Joint Venture Agreement Mid-East took "subject to" Mid-East paying the geologist for future services provided by the geologist as long as the geologist was performing such services thereafter to Mid-East. It is denied that Mid-East had actual knowledge of the existence of "the agreement" between Devonian and/or Van Hampton and plaintiff Smyers. All Mid-East had knowledge of was what was set forth in the joint venture agreement that it executed. Further, Mid-East denies that plaintiff Smyers had "a $1/64^{th}$ overriding royalty interest". All plaintiff Smyers had was the right to be paid in the future if plaintiff Smyers rendered services in the future and then only while he was rendering such services. When plaintiff Smyers indicated to Mid-East that plaintiff Smyers would not render any such future services to Mid-East, Mid-East stopped making payments to Smyers.

e. Denied. The allegation of Additional Defendants in ¶35.e. constitute a legal conclusion to which no responsive pleading is required. By way of further answer, it is specifically denied that Smyers, or anyone else, was a third party beneficiary of the Joint Venture Agreement. No third party is mentioned in the agreement, and there was no intent between the parties to create any rights in any third party by the terms of the Joint Venture Agreement.

f. No New Matter alleged.

g. No New Matter alleged.

36. Admitted in part and denied in part. It is admitted that Devonian conveyed its interest to Mid-East free and clear of all liens and encumbrances of any kind. It is specifically denied that Devonian only conveyed a "*fractional interest*" in Mid-East's AMI to Mid-East. Except as so averred the allegations of ¶37 of Additional Defendants' New Matter are denied.

37. Denied. After reasonable investigation Mid-East is without sufficient knowledge or information pertaining to an assignment dated January 6, 2003, to form a belief as to the Additional Defendants' allegations related thereto. Therefore, the allegations of ¶37 are denied.

38.

a. Admitted in part and denied in part. It is admitted that Mid-East's AMI is encompassed within and is only a part of the "AMI" as alleged and defined by Plaintiff Smyers in his Amended Complaint to include all of Centre and Clearfield Counties, Pennsylvania. It is denied that the January 16, 2002, Assignment conveyed all of Devonian's right in the "AMI" as defined by Smyers in his Amended Complaint. Except as so averred the allegations of ¶38.a of Additional Defendants' New Matter are denied.

b. Denied. It is denied that in the January 16, 2002, Assignment Devonian only warranted its interest to the extent its interest was free and clear of all liens and encumbrances. Devonian warranted its entire interest in Mid-East's AMI not just whatever portion was free and clear of any lien or encumbrance. If the converse were true, Devonian's warranty would have been illusory, and warranted nothing.

c. No New Matter alleged.

d. Admitted in part and denied in part. It is admitted that the January 16, 2002, Assignment made no reference of, nor provided payment to, Larry Smyers. It is admitted that the Joint Venture Agreement made reference to the fact that Devonian's leases were subject to a 1/64th

overriding royalty interest as mandated by a prior agreement. It is denied that Mid-East had actual notice of all the terms of said agreement. It is denied that Mid-East had actual knowledge of such royalty payments being paid by Devonian. After reasonable investigation Mid-East is without sufficient knowledge or information to form a belief as to the truth of the averment that Devonian did in fac make payment of the said royalty interest. Therefore such allegations are denied. Except as so averred the allegations of ¶38.d of Additional Defendants' New Matter are denied.

e. No New Matter alleged.

f. No New Matter alleged.

g. No New Matter alleged.

h. Admitted in part and denied in part. It is admitted that the January 16, 2002, Assignment provided for a payment by Devonian of all expenses and royalties due and owing for production on or before December 27, 2001. Except as so averred the allegations of ¶38.h. are denied.

i. No New Matter alleged.

j. No New Matter alleged.

k. No New Matter alleged.

39. No New Matter alleged.

40. No New Matter alleged.

41.

a. Admitted in part and denied in part. It is denied that Devonian conveyed free and clear only such interest that it owned free and clear. By way of further answer it is averred that Devonian warranted its entire interest in Mid-East's AMI free and clear of all liens and encumbrances. It is specifically denied that an outstanding interest in land is ***not*** "*a lien or encumbrance*" on Devonian's undivided interest in Mid-East's AMI. By way of further answer it is denied that Smyers has, or ever had, an interest in the land that comprises Mid-East's AMI Rather, Smyers had a contract with Devonian and/or Van Hampton that provided for Smyers to be compensated while he was performing services. It is admitted that Mid-East had actual notice that Devonian had an agreement with a third party geologist providing for compensation to said geologist, however it is specifically denied that Mid-East assumed any obligation of Devonian's to compensate said

third party, or that Mid-East waived or released Devonian from its warranty obligations. Pursuant to the terms of that Joint Venture Agreement Mid-East took "subject to" Mid-East paying the geologist for future services provided by the geologist as long as the geologist was performing such services thereafter to Mid-East. When plaintiff Smyers indicated to Mid-East that plaintiff Smyers would not render any such future services to Mid-East, Mid-East stopped making payments to Smyers. Further, Mid-East denies that plaintiff Smyers had "a $1/64^{th}$ overriding royalty interest". All plaintiff Smyers had was the right to be paid in the future if plaintiff Smyers rendered services in the future and then only while he was rendering such services. When plaintiff Smyers indicated to Mid-East that plaintiff Smyers would not render any such future services to Mid-East, Mid-East stopped making payments to Smyers. Except as so averred the allegations of ¶41.a of Additional Defendants' New Matter are denied.

b. Admitted in part and denied in part. It is admitted that for a period of time after the January 16, 2002, Assignment Mid-East made payments to Plaintiff Smyers. Pursuant to the terms of that Joint Venture Agreement Mid-East took "subject to" Mid-East paying the geologist for future services provided by the geologist as long as the geologist was performing such services thereafter to Mid-East. When plaintiff Smyers indicated to Mid-East that plaintiff Smyers would not render any such future services to Mid-East, Mid-East stopped making payments to Smyers. Further, Mid-East denies that plaintiff Smyers had "a $1/64^{th}$ overriding royalty interest". All plaintiff Smyers had was the right to be paid in the future if plaintiff Smyers rendered services in the future and then only while he was rendering such services. When plaintiff Smyers indicated to Mid-East that plaintiff Smyers would not render any such future services to Mid-East, Mid-East stopped making payments to Smyers. Except as so averred the allegations of ¶41.b of Additional Defendants' New Matter are denied.

c. No New Matter alleged.

42. It is admitted that Plaintiff Smyers' Amended Complaint alleges that Defendant Mid-East is liable to Plaintiff Smyers for royalty payments derived from both the August 3, 1999, letter to Van Hampton and the February 29, 2000, Confidentiality Agreement with Devonian.

43. No New Matter alleged.

44. No New Matter alleged.

45. No New Matter alleged.

46. No New Matter alleged.

47.

a. Denied. In answering ¶47.a. of Additional Defendants' New Matter, Mid-East incorporates by reference the allegations of ¶38.b. the same as if set forth herein in entirety. Except as so averred the allegations of ¶47.a. of Additional Defendants' New Matter are denied.

b. Denied. It is denied that Devonian complied with its covenants and obligations as set forth in a November 15, 2001, agreement. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the averment of ¶47.b. of Additional Defendants' New Matter pertaining to Devonian being ready, willing, and able to deliver documents to Mid-East that should have been delivered contemporaneously with the November 15, 2001, agreement's execution. Therefore said allegations are denied.

48. Denied. It is denied that Devonian and Van Hampton have at all times heretofore performed all the terms and covenants of their agreements with Mid-East fully and in good faith. It is further averred that Devonian and/or Van Hampton have misrepresented the terms of their agreement with, and their overall relationship with, Plaintiff Smyers, in an attempt to avoid liability thereon, and to shift responsibility to Defendant Mid-East. It is averred that Devonian and/or Van Hampton have in fact acted in bad faith.

49. No New Matter alleged.

50.

a. Denied. In answering ¶50.a. of Additional Defendants' New Matter, Mid-East incorporates by reference the allegations of ¶38.b. the same as if set forth herein in their entirety. Except as so averred the allegations of ¶50.a. of Additional Defendants' New Matter are denied.

b. Denied. It is denied that Devonian and/or Van Hampton have fully performed all of their covenants and obligations required under said agreements. ***If*** Mid-East is liable to Plaintiff Smyers, Devonian and/or Van Hampton will have failed to perform all of the covenants and obligations, and express warranties, provided for in the said agreements.

51. Denied. In answering ¶51 of Additional Defendants' New Matter, Mid-East incorporates by reference the allegations contained in ¶50.b. hereinabove the same as if set forth herein in their entirety. Except as so averred the allegations of ¶51 are denied.

52. Defendant Mid-East incorporates by reference the allegations contained in ¶¶1 through 51 hereinabove the same as if set forth herein in their entirety.

53. Admitted in part and denied in part. It is admitted that from and after Augu 23, 2000, Mid-East assumed the designation of operator of a prospect known and defined by Mid-East in its pleadings as "Mid-East's AMI". It is also admitted that at times Mid-East has referred to "Mid-East's AMI" as the "Pine Glen Prospect". is specifically denied that "Mid-East's AMI" is the same thing as the "Pine Glen Prospect" as defined by Plaintiff Smyers in his Amended Complaint to include all Centre and Clearfield Counties. Except as so averred the allegations of ¶53 of Additional Defendants' New Matter are denied.

54. Admitted in part and denied in part. It is admitted that from and after the Joint Venture Agreement Mid-East was the exclusive operator of "Mid-East's AM Except as so averred the allegations of ¶54 are denied.

55. Admitted in part and denied in part. It is admitted that at the time of the Jo Venture Agreement Mid-East knew that Devonian and/or Van Hampton had a prio geologic service agreement with a third party geologist providing for the payment compensation to such geologist, with such compensation computed during the tim when the geologist rendered services based upon a percentage of the value of natu gas production from gas wells that the geologist was supposed to continue to prov services to develop and operate, for such compensation to be paid to the geologist long as the geologist continued to render such services. It is specifically denied th at the time of the said Joint Venture Agreement Mid-East in any way knew of a perpetual obligation to pay the geologist a $1/64^{th}$ overriding royalty indefinitely in the future unrelated to whether or not the geologist continued to render, or even failed or refuse to render, such services. Except as so averred the allegations of ¶ are denied.

56. Admitted in part and denied in part. It is admitted that from and after the Joint Venture Agreement Mid-East made compensation payment to Larry Smyers amounts computed based upon $1/64^{th}$ of production from certain wells located wit Mid-East's AMI. By way of further answer it is averred that Mid-East made such payments specifically because Devonian and/or Van Hampton represented to Mid-East that Plaintiff Smyers would render services to Mid-East pursuant to the geologic service contract and as consideration for such services Smyers would be paid such compensation amounts for as long as plaintiff Smyers continued to rend such services to Mid-East. Upon Mid-East concluding that plaintiff Smyers would not provide such services to Mid-East, Mid-East ceased and discontinued making said payments.

57. Denied. The allegations of ¶57 of Additional Defendants' New Matter are conclusions of law to which no responsive pleading is required. By way of furthe answer it is specifically denied that Plaintiff Larry Smyers was a third party beneficiary to the said Joint Venture Agreement.

58. Denied. It is denied that at the time Mid-East entered into the Joint Ventur

Agreement, Mid-East knew of any outstanding overriding royalty interests in land. By way of further answer it is averred that at the time of entering into the Joint Venture Agreement, Mid-East knew that Devonian was providing compensation to a third party geologist who was providing services to Devonian and/or Van Hampton. Mid-East was and is however, without any knowledge of any "overriding royalty interest", being an interest in land, ever being conveyed to Plaintiff Smyers or anyone else.

Respectfully submitted:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.

IN THE COURT OF COMMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

VERIFICATION

I, Mark Thompson, verify that the statements made herein are true and correct to the best of my knowledge, information, and belief and are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 11/12/04, 2004

Mark Thompson

{GL.036017.1}: lam

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

vs.

DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC.,
Additional Defendants

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM

Filed on Behalf of:

PLAINTIFF

Counsel of Record for this Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
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FILED 10 CC
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NOV 17 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	No. 03-1598-CD

REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM

AND NOW, comes the Plaintiff, Larry F. Smyers, by his Attorneys, Hanak, Guido and Taladay, and hereby replies to Defendant's New Matter and Counterclaim.

1. through 31. The allegations of Paragraphs 1 through 31 of the Complaint are incorporated as though set forth in full.

32. Denied as stated. The terms of the agreement between Plaintiff and Van Hampton Gas & Oil Company and Devonian Resources, Inc. are as set forth in the Complaint.

33. Denied as stated. To the contrary, Smyers committed effort, expertise and knowledge to develop the area of mutual interest known as the Pine Glen Prospect with the expectation that:

(a) His time, effort, expertise and knowledge in developing the Prospect were to be compensated by 1/64th overriding royalty by Van Hampton Gas & Oil Company, Devonian Resources, Inc., and their successors and assigns;

(b) Smyers was not at that time an employee of the Defendant or its predecessors;

(c) Smyers has not received the benefit of his bargain with Van Hampton Gas & Oil Company, Devonian Resources, Inc., and their successors;

(d) While rendering services, Smyers had at all times acted with regard to his obligations as a licensed professional geologist;

(e) Smyers was at all times licensed in the Commonwealth of Pennsylvania; and

(f) Smyers at all times acted with due regard for his obligations as a professional geologist.

34. Denied as stated. While Paragraph 34 of Defendan answer correctly sets forth language excerpted from the August 3, 1999 document, the Plaintiff does not agree with the Defendant's interpretation as set forth in Subparagraphs (a) through (e). To the contrary, the letter dated August 3, 1999, created a binding agreement between Larry Smyers and Defendant's successors as set forth in the Complaint.

35. The allegations of Defendant's New Matter Paragraphs 35 (a) through (h) set forth conclusions of law and/or interpretations of an agreement which is the subject matter of this dispute and to which no response is required. To the extent that a response is required, Plaintiff specifically denies these assertions and allegations. To the contrary, the agreement between the parties is valid, binding and subject to the interpretation stated and the relief requested in Plaintiff's Complaint which is incorporated herein by reference.

36. Admitted in part and denied in part. It is admitted that the joint venture agreement does not specifically name Larry Smyers. However, the joint venture agreement does adequately identify Larry Smyers as the individual who has provided geological services in developing the AMI and was entitled to a 1/64th overriding interest in all wells drilled on existing and after-acquired leases.

37. Denied as stated. It is admitted that Paragraph 37 contains excerpts from the joint venture agreement, however, the Defendant's proposed interpretation of this agreement is denied. To the contrary, the Defendant is contractually obligated to Smyers as set forth in the Complaint.

38. Denied as stated. It is admitted that Paragraph 38 contains excerpts from the joint venture agreement, however, the Defendant's proposed interpretation of this agreement is denied. To the contrary, the Defendant is contractually obligated to Smyers as set forth in the Complaint.

39. Denied as stated. The Complaint alleges that Smyers provided geological services to establish the AMI prior to August 2000. By way of further answer, it is averred that Smyers later became employed by Devonian Resources, Inc. and was occasionally requested to provide geological services toward the joint venture. However, as of the formation of the joint venture, Smyers was entitled to overriding royalties as set forth in the Complaint without obligation to perform any additional geological services.

40. Denied. Plaintiff incorporates by reference his response to Paragraph 33 of New Matter.

41. Denied. To the contrary, the joint venture agreement does subject all leases in the AMI to an overriding royalty obligation in favor of the Plaintiff. By way of further answer:

(a) The joint venture agreement and subsequent assignment to Mid-East specifically and/or implicitly is subject to the obligation to pay Smyers the specified royalty;

(b) The prior agreement between Smyers and Van Hampton Gas & Oil Company, Inc. and Devonian Resources, Inc. was specifically known to, or in the exercise of reasonable diligence should have been discovered by Devonian at the time it entered into the joint venture agreement and was known to, or in the exercise of reasonable diligence should have been known to Mid-East as the party providing geological services. In

addition, Mid-East royalty payments to Smyers following the joint venture agreement and assignment are an acknowledgment of Smyers' status as the rightful recipient of the royalties and Mid-East is, therefore, estopped from denying his right to these royalties.

(c) While not named in the Joint Venture Agreement, Smyers is sufficiently identified as the individual providing geological services and entitled to overriding royalty payments, was known to Mid-East as the holder of these interests, and was subsequently paid royalty overrides by Mid-East.

42. (a through d) The averments of Paragraphs 42 set forth conclusions of law to which no responses are required. To the extent that a response may be required, these allegations are denied incorporating by reference the averments of the Complaint and Reply to New Matter as previously set forth.

43. Admitted in part and denied in part. It is admitted that Mid-East did not succeed to or receive all the rights of Devonian. However, Mid-East did succeed to and receive assignment of all the rights of Devonian to the area of mutual interest, which is the subject matter of this lawsuit.

44. Admitted. By way of further answer, Mid-East was aware of Smyers overriding royalty rights by virtue of the joint venture agreement and its ongoing royalty payments to Smyers. Mid-East remains liable to Smyers as set forth in the Complaint.

45. Denied as stated. To the contrary, Mid-East as successor to the contract between Smyers and Devonian/Van Hampton is contractually obligated to pay Smyers royalties based on geological services performed by Smyers in identification and development of the AMI.

46. Denied. Plaintiff incorporates by reference its response to Paragraph 45. By way of further answer, it is averred that Smyers on occasion provided advice and information to Mid-East.

47. Denied as stated. See responses to Paragraphs 45 and 46 above.

48. Denied as stated. To the contrary, Smyers contribution to the AMI was in its initial development designation. Therefore, Smyers is entitled to compensation as set forth in the Complaint. By way of further answer, Plaintiff incorporates Subparagraphs (a) through (f) of Paragraph 33 of this Reply to New Matter.

49. Denied as stated. Plaintiff has no way to know whether Mid-East distributed monies to all those who were legally entitled to such monies. By way of further answer, Plaintiff contends that Mid-East did, for a period of time, continue to pay some, but not all royalties due and owing to Smyers. These royalties were discontinued following the institution of the present lawsuit.

50. Admitted.

51. Admitted.

52. By way of further answer, there may have been circumstances where a written consent was not necessary or practical.

53. Denied as stated. The confidentiality agreement between Smyers and Devonian speaks for itself, and its purposes are as set forth in the Complaint.

54. Denied. The confidentiality agreement with Devonian was for purposes of identifying and developing an area of mutual interest as more fully set forth in the Complaint.

55. Denied as stated. Proposals can either be oral or in writing.

56. Admitted as a general proposition, however, denied as to instances when circumstances warrant a deviation from this practice.

57. Admitted as a general proposition, however, denied as to instances when circumstances warrant a deviation from this practice.

58. Paragraph 58 sets forth a conclusion of law to which no response is required. To the extent that a response may be required, Plaintiff is unable to respond to the vague general statements set forth in Paragraph 58, but denies breaching any duty to a client or employer.

59. Denied as stated. To the contrary, the proposals to Devonian and Van Hampton were based on Smyers' experience, expertise, knowledge and professional acumen, as well as information generally available to the public.

60. Admitted as a general proposition.

61. Denied as stated. Mr. Smyers' personal files may contain other documents or information not specifically described in Paragraph 61.

62. Admitted. By way of further answer, it is unknown whether Mid-East had a copy of Smyers' engagement letter and fee agreement with Donald Sbarra. However, Mid-East was fully aware of Smyers' services for Sbarra in that Mid-East, by its Chief Executive Officer, introduced Sbarra to Smyers and requested Smyers to perform geological services for Sbarra.

63. Denied. To the contrary, Smyers claims the right to overriding royalties on any and all wells located within the AMI as set forth in the Complaint.

64. Denied as stated. Smyers intended the February 29, 2000 confidentiality agreement to supplement and incorporate the terms of the August 3, 1999 letter to Van Hampton, whose terms were incorporated into the agreement between Smyers and Devonian and assumed by Defendant, Mid-East.

65. Denied as stated. Plaintiff incorporates his response to Paragraph 64 and the allegations of the Complaint.

66. Denied as stated. The agreement subject to this lawsuit required Smyers only to propose an area for development in accordance with the terms and conditions of the documents attached to the Complaint.

67. Denied as stated. To the contrary, the agreement between Smyers and Devonian and/or Van Hampton provided for the possibility of retaining Smyers' services in the future for additional compensation.

68. Admitted. By way of further answer, it is averred that Smyers has contributed the necessary technical assistance and program development to entitle him to his claim for royalty interest in the AMI.

69. Paragraph 69 sets forth a conclusion of law to which no response is required.

70. Paragraph 70 sets forth a conclusion of law to which no response is required.

71. Paragraph 71 sets forth a conclusion of law to which no response is required.

72. Admitted.

73. Denied as stated. To the contrary, the obligations of Smyers regarding the AMI are set forth in the agreements between the parties and as may have been modified by conduct or assent. By way of further answer, it is averred that Smyers has performed all services necessary to entitle him to the royalty interest claimed.

74. Denied as stated. It is admitted that the documents attached to the Amended Complaint set forth the sole written component of the agreement between the Plaintiff and Van Hampton and/or Devonian.

75. Denied as stated. Plaintiff was made aware of the assignment of all AMI interests to Mid-East, and for a period of time was receiving royalty payments from Mid-East. It is Plaintiff's belief as set forth in the Complaint that Mid-East is solely responsible for all royalty payments to the Plaintiff.

76. Admitted in part and denied in part. It is admitted that Smyers sued Mid-East to collect payments for oil and gas produced from geographic areas included in the AMI. It is further the belief of Plaintiff that Mid-East has become successor to all interests of Devonian and/or Van Hampton under the AMI pursuant to the January 16, 2002 assignment.

77. Admitted.

78. Denied. To the contrary, Smyers worked extensively in various geographic areas in Pennsylvania and elsewhere for Eastern States.

79. Denied as stated. As an employee of Eastern States, Smyers had various job duties including leasing, exploration, geology, and proposing well sites and drilling programs throughout central Pennsylvania and elsewhere.

80. Admitted. By way of further answer, it is noted that the contract documents make reference to wells previously drilled in the AMI area by others.

81. Admitted.

82. Denied as stated. While others, including Devonian, may have drilled wells within the geographical region which

constitutes the AMI, the geographical region which comprises the AMI was specifically proposed for development as an area of mutual interest notwithstanding prior drilling activities based on Smyers' education, knowledge, background, experience and analysis.

83. Admitted. By way of further answer, Plaintiff incorporates his response to Paragraph 82.

84. Based on information and belief, Plaintiff is of the understanding that Van Hampton and/or Devonian may have acquired some property rights within the area of the AMI prior to the August 3, 1999 letter.

85. Denied as stated. To the contrary, the geological prospect information provided by Smyers in accordance with the agreements attached to the Amended Complaint and outlined in the map attached to these documents as Exhibit 1, the result of Plaintiff's experience, education, research, knowledge and analysis were provided to Devonian and/or Van Hampton in consideration for the overriding royalty interests which are the subject of the present lawsuit.

86. Denied as stated. The Plaintiff was hired by Devonian subsequent to the consummation and commencement of the AMI agreement which is the subject matter of this lawsuit. The job duties that Plaintiff performed for Devonian, after which he was separately compensated, were not part and parcel of the agreement which is the subject matter of the lawsuit.

87. Denied as stated. Plaintiff is unaware as to whether his activities relating to the AMI were communicated to or known to his prior employer, its successors or assigns. By way of further answer, it is averred that whether or not such activities were communicated is totally irrelevant to the present claim.

88. Denied. Plaintiff continued to assert his right to payment from various wells in which Plaintiff acquired an interest through an employee investment plan with Eastern States. These included one or more wells within the AMI. Plaintiff is unaware as to whether his claim for royalty payments as set forth in the subject lawsuit was communicated to his prior employer.

89. Plaintiff is unaware as to whether Mid-East acquired any gas rights located within the AMI prior to the joint venture agreement. By way of further answer, it is averred that whether or not it is fact, the Plaintiff's rights as set forth in the Complaint are unaffected.

90. Denied as stated. It is admitted that Smyers did not participate in the drafting or execution of the joint venture agreement. However, it is denied that Plaintiff's rights under prior agreements with Devonian or Van Hampton were not participatory in the joint venture agreement. To the contrary, Smyers' rights to overriding royalty were expressly acknowledged within the terms of the joint venture agreement.

91. Admitted. It is further admitted that there are many other things that Smyers cannot explain, including the aerodynamics

by which a bumblebee can fly or the annual migratory path of the Canada goose. This does not in any way change the fact that Smyers was the only individual contemplated in the joint venture agreement entitled to overriding royalty interests, that his overriding royalty interests were acknowledged by and initially paid by Mid-East, and that Mid-East has now blatantly failed or refused to honor its contractual obligations.

92. Denied. The prior agreement referenced in the joint venture agreement is a clear reference to the contractual documents between Smyers and Devonian and/or Van Hampton as attached to the Complaint, and upon which the subject claim is based.

93. Admitted.

94. Admitted.

95. Admitted.

96. Denied as stated. It was Mark Thompson, President or CEO of Mid-East who requested Smyers to assist Donald Sbarra in analyzing Sbarra's investments in Mid-East Wells. By way of further answer, it is averred that Mark Thompson originally recommended to Donald Sbarra that he contact Larry Smyers for purposes of geological consultation. Larry Smyers did not know or know of Donald Sbarra prior to being contacted by Mr. Sbarra.

97. Denied as stated. The advice Smyers gave to Donald Sbarra were for purposes of assisting Sbarra in analyzing his investments in various wells, including some within the AMI.

98. Denied. Mid-East both authorized and requested Smyers to perform geological services for Donald Sbarra, but placed no limitation on those services. By way of further answer, Smyers' duty to Donald Sbarra as a professional geologist would preclude him from doing "whatever it would take to keep Donald Sbarra investing with Mid-East in Mid-East's AMI."

99. Denied as stated. Plaintiff was aware that Donald Sbarra had invested in various wells and believed that Sbarra had financial resources with which to make additional investments. By way of further answer, it is submitted that the terms "wealthy" and "a lot of money" are subjective terms which mean different things to different people.

100. Denied as stated. While Plaintiff and Donald Sbarra did discuss the potential for jointly participating in a business venture, these discussions never came to fruition.

101. Denied as stated. See reply to Paragraph 100.

102. Denied as stated. See reply to Paragraph 100.

103. Denied as stated. See reply to Paragraph 100.

104. Denied as stated. See reply to Paragraph 100.

105. Denied as stated. Although the Plaintiff engaged in discussions with several parties regarding the development of drilling prospects outside of the AMI, no agreement to do so was ever entered by Plaintiff.

106. Denied. Plaintiff believes that Devonian was fully aware that Smyers was providing consultation services to Donald

Sbarra. Various information was provided by Mid-East for Plaintiff's review via fax sent by Mid-East to Plaintiff at the offices of Devonian.

107. Denied as stated. It is admitted that Plaintiff provided consultation services for Donald Sbarra while under the employ of Devonian. By way of further answer, it is averred that Devonian was aware of these services and had no objection to Plaintiff providing these services.

108. Plaintiff is unable to respond to the allegation set forth in Paragraph 108 in that it calls for Plaintiff to evaluate the concept of whether or not a corporation was "upset". A reply to this question calls for information that was not within the possession of the Plaintiff and for subjective judgments which are not the proper subject of pleading.

109. Denied. To the contrary, Plaintiff was encouraged by Mid-East and Devonian to provide consultation services for Donald Sbarra to commit Sbarra to exercise informed judgments on whether or not to participate in various wells proposed by Mid-East. In this capacity, Plaintiff was required to give honest and good faith assessments as to the potential profitability of each prospect. To the extent that Sbarra's choice not to invest in any particular well proposal may have been harmful to Mid-East or Devonian, Plaintiff is unaware, however, Plaintiff's activities were nevertheless sanctioned and approved by Mid-East and Devonian.

110. Denied to the extent that Sbarra may have chosen to participate or not participate in any given drilling prospect based on

information and input provided by Smyers, or to the extent that Sbarra's decision to invest his money in proposals other than those of Mid-East may have been harmful, assumes that Mid-East would have been unable to find investors or financing for its well prospects other than Sbarra. Plaintiff verify believes that his services to Sbarra were not to the direct detriment of Mid-East or Devonian.

111. Denied as stated. It is denied that Donald Sbarra "used" Smyers for any purpose. Consultation services provided by Smyers for Sbarra were for purposes of evaluating investment prospects, most or all of which were within the AMI.

112. Admitted. By way of further answer, it is asserted that Smyers consultation services provided for Sbarra were for purposes of submitting to Sbarra to evaluate investment opportunities. Whether or not Sbarra chose to invest in Mid-East well development projects or some other projects was not within Smyers' control. Likewise, what was or was not in the best interest of Devonian or Mid-East was not within the Plaintiff's province to determine.

113. Admitted.

114. Denied as stated. The confidentiality agreement entered into between Plaintiff and Devonian was for purposes of permitting Devonian to analyze the Plaintiff's proposed area of mutual interest in the well development program, to enter an agreement regarding development of this area of mutual interest if interested, and to prevent Devonian from utilizing the input, education, analysis data, and opinion of the Plaintiff as to the desirability of the AMI in the

event that Devonian chose not to enter the AMI agreement. Conversely, the information provided to Donald Sbarra and also provided to Plaintiff Smyers for his review on Sbarra's behalf was directly provided by Mid-East for purposes of permitting Sbarra to determine whether or not he was interested in further participating in further development of particular wells. By way of further answer, it is averred that Smyers had no knowledge of the terms of the agreements between Mid-East and Sbarra.

115. Denied. Smyers was unaware as to any arrangements between Mid-East and Sbarra concerning information provided for Sbarra's analysis.

116. Denied. The consultation services provided by Smyers to Sbarra were primarily to assist Sbarra in deciding whether to participate on a well by well basis in wells already under development by Mid-East.

117. Admitted. As set forth in Paragraph 116 above, Smyers believes that the information he provided was used by Sbarra in determining whether he should be an investment participant in wells already under development by Mid-East.

118. Denied as stated. As set forth above, Plaintiff Smyers provided consultation services to Donald Sbarra during the time frame while he was an employee of Devonian. However, all information, graphs, charts and production data evaluated by Sbarra and Smyers on Sbarra's behalf was provided by Mid-East.

119. Denied as stated. Smyers provided analysis and opinion to Donald Sbarra based on information provided by Mid-East. Smyers believes this information was used by Sbarra primarily to determine whether to invest in the completion of various wells in which he had provided a preliminary investment. During the term of Devonian's participation in the AMI, Smyers was available to provide any information and analysis required. Also during the relevant time period, Mid-East employed personnel who were providing similar analysis and input.

120. Denied as stated. It is admitted that Plaintiff Smyers provided various analysis and estimates to Donald Sbarra to assist Sbarra in considering investment opportunities presented by Mid-East. By way of further answer, it is averred that at all times during his consultation services, Smyers was aware that Sbarra was engaged in multiple investments and in numerous states. By way of further answer, it is averred that Smyers encouraged Sbarra to continue to invest with Mid-East even though Sbarra had expressed dissatisfaction and difficulty in working with Mid-East.

121. Denied as stated. It is admitted that Smyers did provide evaluation of data to Donald Sbarra concerning areas outside of the AMI.

122. Denied as stated. It is admitted that Smyers provided Sbarra with information and analysis for purposes of considering investment in areas outside of the AMI.

123. Denied as stated. Any information provided for Smyers' review regarding the AMI originated from Mid-East. However, this information was either submitted directly to Sbarra or submitted both to Sbarra and Smyers by Mid-East.

124. Admitted.

125. Denied as stated. Plaintiff does not understand the term "either AMI" in that it is Plaintiff's position that there is a single AMI under the control of Mid-East and for which Plaintiff is entitled to royalties. It is admitted that Smyers met with John McNally at the request of Donald Sbarra to discuss potential business opportunity which did not include any interest in the AMI. However, this meeting and these discussions did not lead to any agreements, investments or business ventures.

126. Admitted.

127. Denied as stated. While the Plaintiff may have speculated at the reasons for Donald Sbarra's request for Plaintiff to meet with John McNally, the Plaintiff is uncertain of the reason for this meeting. By way of further answer, it is asserted that Smyers obtained no fee, contingent or otherwise, as a result of his meeting with Donald Sbarra and John McNally.

128. Denied as stated. As set forth above, Smyers has acted as a paid consultant for Sbarra and was paid for his efforts on a fee basis. Smyers engage in no business with Donald Sbarra involving a contingent fee. By way of further answer, it is asserted that to Smyers

knowledge, no business venture ever transpired as the result of Donald Sbarra meeting with John McNally.

129. Denied. It is specifically denied that Smyers undertook any efforts to convince Donald Sbarra to invest in prospects other than the AMI. To the contrary, Sbarra advised Smyers that he was reluctant to invest any further in Mid-East prospects because of Mid-East's questionable business practices and ethics. It is further vehemently denied that any partition action instituted by Donald Sbarra regarding his investments in the AMI have absolutely nothing to do with any act or omission of Smyers. While Smyers does not know the reasons that Sbarra and others have instituted a partition action against Mid-East, based on information and belief, it is contended that the partition action was instituted by Sbarra due to questionable business practices of Mid-East.

130. Denied. Smyers specifically denies "diverting" Donald Sbarra as an investor. To the contrary, Smyers encourage Sbarra to invest in promising wells in that both Sbarra, and peripherally Smyers, would economically benefit only if a well was successful and therefore Smyers had incentive to see all successful wells in the AMI drilled. By way of further answer, it is averred that Donald Sbarra is a competent adult individual and businessman capable of making his own investment decisions. Smyers further denies any responsibility for the partition action instituted by Sbarra and others. With regard to the remaining allegations of paragraph 130, Smyers is without information sufficient to form a belief as to the alleged legal

fees and other expenses regarding the partition action. Strict proof thereof is demanded at trial. However, Smyers denies any liability for any such expenses.

131. Denied. Plaintiff incorporates by reference the allegations of the Complaint.

132. Denied. To the contrary, Smyers invested his time, expertise, experience, knowledge and professional analysis in the development of the AMI to which Mid-East became the successor.

133. Admitted. By way of further answer, it is averred that Smyers was never requested to perform services for Mid-East because Mid-East did retain on staff a professional geologist as well as obtaining the services of outside geological consultants who assisted in well development and production decisions.

134. Denied. Plaintiff's responses to paragraphs 132 and 133 are incorporated by reference.

Affirmative Defense #1: Statute of Frauds

135. Plaintiff incorporates by reference all averments of the Complaint and his responses to paragraphs 32 through 134 as set forth herein.

136. Denied. Although the documents attached as exhibits to the Amended Complaint form the basis for the Plaintiff's claims, it is believed that there are a multitude of additional documents including well production records, royalty statements, lease documents, royalty payment statements and other documents which evidence and support Smyers' claims.

137. The allegations of paragraph 137 of Defendant's New Matter set forth conclusions of law to which no response is required. However, to the extent that a response may be required, the documents attached to exhibits to Plaintiff's Complaint do:

(a) grant a present conveyance of 1/64 overriding royalty interest in all leaseholds within the AMI to Smyers;

(b) sufficiently outline and denote the AMI for purposes of identifying Defendant's leaseholds within this area;

(c) contain the signatures of the parties authorized to bind themselves or respective entities.

138. Denied. Mid-East, in entering the Joint Venture Agreement and later accepting assignment of the AMI, has assumed contractual privity with Smyers.

139. Denied as stated. It is admitted that Smyers did not receive executed assignment documents. However, Devonian and/or Van Hampton at all times honored its assignment of a 1/64th overriding royalty interest to Smyers through conduct and assent. In addition, Devonian and/or Van Hampton set forth Smyers' overriding royalty interest in the Joint Venture Agreement with Mid-East furthering evidencing the existence of this assignment.

140. Denied as stated. While Mid-East never provided Smyers with a formal assignment document, Mid-East did by conduct and assent, acknowledge Smyers' 1/64th overriding royalty interest by:

(a) Entering a Joint Venture Agreement with Devonian acknowledging Smyers' 1/64th overriding royalty interest;

(b) Accepting assignment of the AMI and with it Smyers' 1/64th overriding royalty interest as a separate estate or interest in all rights conveyed;

(c) Making payments to Smyers representing overriding royalty interest due.

141. This paragraph sets forth a conclusion of law to which no response is required. To the extent that a response may be required: denied.

WHEREFORE, Plaintiff demands judgment in his favor.

Affirmative Defense #2: Failure of Consideration

142. Plaintiff incorporates by reference the averments of paragraphs 1 through 31 of the Complaint and paragraphs 32 through 141 as set forth herein as if set forth in full.

143. This paragraph sets forth a conclusion of law to which no response is required. To the extent that a response may be required: denied.

WHEREFORE, Plaintiff demands judgment in his favor as set forth in the Complaint.

Counterclaim #1: Breach of Contract

144. Plaintiff incorporates by reference paragraphs 1 through 31 of the Complaint and paragraphs 32 through 143 as set forth herein.

145. Denied. To the contrary, Smyers at all times performed all necessary obligations entitling him to the relief set forth in the Complaint. Mid-East is the breaching party as further set forth in the Complaint.

146. Denied. To the contrary, Mid-East made payments to Smyers based on its obligation to pay overriding royalty interests as set forth in the Complaint. By way of further answer, it is averred that Mid-East neither requested nor rightfully could have expected Smyers to perform additional uncompensated work. There have been no breaches of the agreement accept those committed by Mid-East as set forth in the Complaint.

147. Denied. To the contrary, Smyers has not breached the agreement and Mid-East has suffered no detriment, but rather has wrongfully benefited from its just refusal to pay Plaintiff the overriding royalty interest which he is entitled.

WHEREFORE, Plaintiff demands judgment in his favor as set forth in the Complaint.

Counterclaim #2: Breach of Fiduciary Duty

148. Plaintiff incorporates paragraphs 1 through 31 of the Complaint and paragraphs 32 through 147 set forth herein as if set forth in full.

149. Denied. Plaintiff has at all times honored his fiduciary duty to Devonian and/or Mid-East. Any consultation services performed by Plaintiff for Donald Sbarra were at the request of, and with the consent of, Mid-East as set forth above. Plaintiff bears no responsibility for the investment decisions of a third party.

150. Denied. Plaintiff specifically denies "selling Mid-East and/or Devonian information" to Donald Sbarra. To the contrary, any information provided to Donald Sbarra and Plaintiff for analysis came directly from Mid-East and was provided for the purposes of permitting Sbarra to evaluate investment prospects with Mid-East. Smyers breached no fiduciary duty to either Devonian or Mid-East.

151. Denied. It is specifically denied that Smyers breached any fiduciary duty and further denied that Plaintiff suffered any damages as a result of any acts of Smyers.

WHEREFORE, Plaintiff respectfully requests that Defendant's Counterclaim be dismissed.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

VERIFICATION

I, LARRY SMYERS, do hereby verify that I have read the foregoing REPLY TO NEW MATTER and ANSWER TO COUNTERCLAIM. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 11-12-04

Larry Smyers

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 16th day of November, 2004, a true and correct copy of Plaintiff's Reply to New Matter and Answer to Counterclaim was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Robert W. McFate, Esq., hereby certify that a true and correct copy of the "**Answer to complaint to Join Additional Defendants and New Matter**" was sent by U. S. mail, postage prepaid, on October 25, 2004, to the following other counsel of record:

Dom W. Greco, Esq.
Greco & Lander, P. C.
P. O. Box 667
1390 East Main St., Suite 2
Clarion, PA 16214-0667

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
P. O. Box 487
498 Jeffers Street
Dubois, PA 15801

LAW OFFICE OF ROBERT W. McFATE

By: _____
Robert W. McFate, Esquire

FILED
m/11:00 BY
OCT 27 2004
No CC

#156

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "**Defendant's March 2004 Request for Admissions & Interrogatories**" was sent by U. S. mail, postage prepaid, on March 3, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

APR 4

Dated: March 3, 2004

_____(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

FILED

MAR 0 8 2004

William A. Shaw
Prothonotary/Clerk of Courts

03/03/2004 5:50 PM{GL029388.1}

#27

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

Response to Defendant's Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

MAR 0 8 2004

William A. Shaw
Prothonotary/Clerk of Courts

#26

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION TO PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 4007.1(d)(1) NOTICE OF DEPOSITION REQUEST FOR PRODUCTION OF DOCUMENTS

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Defendant's Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production of Documents, as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted in part and denied in part. It is admitte that the written answer pursuant to Rule 4009.1(2) was not provide prior to or during the January 19, 2004 deposition. The failure to respond was not intentional and was due to an oversight by Plaintiff's

counsel. Plaintiff has now prepared and served a written response pursuant to Rule 4009.1(2), copy of which is attached hereto.

7. Admitted in part and denied in part. It is admitte that thirty days have passed since the service of the request for production of documents. It is denied that Plaintiff has not yet provided the written response, which was served on Defendant by mailing of December 30, 2003.

WHEREFORE, it is respectfully suggested that Defendant's objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Requestion for Production of Documents has bee rendered mute.

Respectfully submitted,

HANAK, GUIDO and TALADAY

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 5th day of March, 2004, a true and correct copy of foregoing Plaintiff's Response to Defendant's Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition request for Production of Documents was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

Plaintiff's Response to Defendant's Notice of Deposition

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

MAR 0 8 2004

William A. Shaw
Prothonotary/Clerk of Courts

#25

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

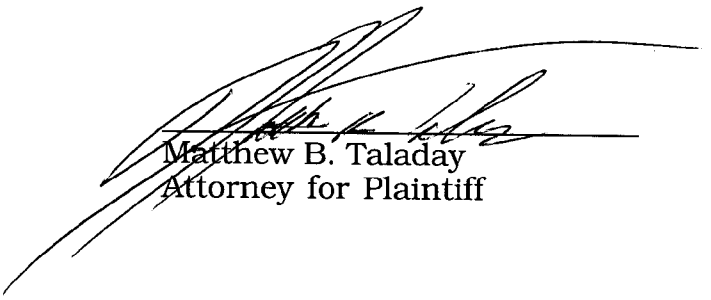
PLAINTIFF'S RESPONSE TO DEFENDANT'S
NOTICE OF DEPOSITION PURSUANT TO Pa.R.C.P. 4007(1)(d)(1)

AND NOW, comes Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Notice of Deposition Pursuant to Pa.R.C.P. 4007.1(d)(1) as follows:

1. - 28. All documents in the custody and control of Plaintiff, Larry F. Smyers, as described in paragraphs 1 through 28 of Defendant's Motion were provided at the time of the Deposition of Larry F. Smyers, January 19, 2004. Excerpts of the Deposition of Larry F. Smyers of January 19, 2004 are attached hereto as Exhibit "A". The identity of the documents and things produced are readily discernible by counsel for Defendant and were the subject of extensive questioning during the course of the deposition. Plaintiff verily believes and therefore avers that his responses to Defendant's Requests are sufficient for the purposes of Pa.R.C.P. Rule 4007.1(d)(1).

There are no documents which were not produced because of objection pursuant to Pa.R.C.P. Rule 4019.12(b)(2). Plaintiff, however, does not waive any objections to relevance or admissibility of any documents produced at the time of trial.

By way of further answer, it is averred that additiona documents requested by counsel for Defendant during the course of discovery are being located and will be provided to counsel for Defendant upon their availability.



Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,	:	CIVIL DIVISION
	:	No. 03-1598-CD
Plaintiff,	:	
	:	COPY
Vs.	:	
	:	
MID-EAST OIL COMPANY,	:	Called on behalf of Defendant
	:	
Defendant.	:	
	:	Counsel of Record for Party:
	:	
	:	Dom W. Greco, Esquire
	:	GRECO & LANDER, P.C.
	:	1390 East Main St., Suite 2
	:	P.O. Box 667
	:	Clarion, PA 16214-0667
	:	
	:	

The Deposition of Larry F. Smyers
January 19, 2004

a witness herein, called by defendant for examination, taken pursuant to the Pennsylvania Rules of Civil Procedure, by and before Deanne M. Van Der Wal, a Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of Dom Greco, Esquire, Clarion, Pennsylvania, on Monday, January 19, 2004, at 11:00 a.m.

Q. I'm going to hand you what has been marked as Exhibit A. Could you please look at it and tell me whether you've seen this before?

A. This is the same one I had before I believe.

MR. TALADAY: It's a yes or no question.

A. Yes.

MR. TALADAY: I'll acknowledge for the record that Exhibit A is a copy of some notice of deposition that was served on my office and provided to Mr. Smyers.

MR. GRECO: Thank you.

Q. In the notice of deposition, do you recall that it requested that you produce certain documents today for examination?

A. Yes.

Q. Did you provide all of the documents requested in the notice?

A. Everything I had, yes.

MR. TALADAY: And I may just note for the record that discovery is ongoing in this matter, and should additional documents that meet the description of the notice

of deposition or the request for production become available, we will certainly provide them to you.

MR. GRECO: Thank you.

Q. Were there any documents that were requested that you didn't have possession of but you knew that someone else did?

A. There are some, yes.

Q. Can you recall any classes of document that might fall within that category?

A. A report or two and original maps that I produced.

Q. So there are some maps that you have that would have been within the scope of the request that you didn't produce?

A. I do not have them.

Q. That you don't have?

A. I do not have.

Q. Who would have those maps?

A. It would be in the zoning resources office.

Q. That's all of the questions I have for Exhibit A. Are you married, Mr. Smyers?

A. Yes, I am.

Q. Do you have any children?

A. Yes.

Q. Do you reside in Dubois?

A. Yes.

Q. Is this the employment proposal that was made to you by Devonian?

A. Yes.

Q. And is this the one that you accepted?

A. Yes.

MR. GRECO: I'd like to have that marked as Exhib. F.

(Deposition Exhibit F marked for identification.)

Q. Now, that letter doesn't make any mention of overrides, does it?

A. No, it does not.

MR. TALADAY: By the way, you're marking these copies with exhibit stickers, but these may be the only existing copies.

MR. GRECO: Well, I was going to talk to you about the mechanics of what we need to do. Somehow I would like t get copies. We need to give some to be attached. What I could do, if it's agreeable to you, is after we're done, I can make copies and send the originals back to you. I could then use copies to give to the court reporter.

MR. TALADAY: That's fine. I guess my concern is that we're identifying them for purposes of the deposition, and if we use it later, we have a sticker on the original document.

MR. GRECO: What we'll do is before we make the photocopies, we'll take the stickers off.

MR. TALADAY: Good.

MR. GRECO: Well, in fact, we're going to give the originals back. So what we'll have is photocopies with the stickers on them. Does that work for you?

MR. TALADAY: Fine.

MR. GRECO: Because I don't want to mess up your originals with the stickers.

MR. TALADAY: Yes. That will work.

Q. I would like to hand you a copy of the check from Devonian Resources and ask if you recognize that?

A. Yes.

Q. Was this a consulting fee before you were an employee?

A. This one right here is the one that refers to the letter that's my consulting fee. (Witness indicates.)

Q. Would it be like a per diem?

A. It was work cost.

Q. This check No. 1130 is payable to Larry Smyers for

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 5th day of March, 2004, a true correct copy of Plaintiff's Response to Defendant's Notice of Deposition was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
MID-EAST OIL COMPANY	:	

ORDER

AND NOW, this 1st day of March, 2004, it is the ORDER of the Court that argument on Defendant's Preliminary Objections to Amended Complaint in the above matter has been rescheduled from March 3, 2004 to **Thursday, March 11, 2004 at 2:30 P.M**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. Additionally, argument on Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Request for Admissions will also be heard at this time.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED

MAR 0 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

RESPONSE TO REQUEST FOR ADMISSIONS; ANSWERS TO INTERROGATORIES; AND RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

MAR 0 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

#23

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents

The Defendant, pursuant to Rules 4005, 4009.1 et seq. and 4014 of the Pennsylvania Rules of Civil Procedure, hereby request that Plaintiff answer or respond to, in writing and under oath, by an officer or agent, within thirty (30) days after service hereof, the following requests for admissions, interrogatories and requests to produce, and produce for inspection and copying within thirty (30) days after service hereof in the office of the Defendant's counsel at 1390 East Main Street, Suite 2, Clarion, Pennsylvania, the documents requested herein.

In accordance with Rule 4007.4 these requests for admission, interrogatories and requests to produce shall be deemed continuing so as to require the filing of supplemental or amended responses, answers or production of documents prior to trial in the event that additional or different information or documents become available or are obtained in accordance with Rule 4007.4 of the Pennsylvania Rules of Civil Procedure.

The Defendant reserves the right to serve supplemental or additional requests for admission, interrogatories and requests for production of documents.

GENERAL DEFINITIONS

1. ***"Identify"***: As the term is used herein, identify shall have the following meaning:

(a) ***Persons***. When identifying a person to give such person's:

(1) ***Name***. Full name;

(2) ***Address***. Last known business address and last known residence address;

(3) ***Business Affiliation***. Present or last known business affiliation at the time in question; and

(4) ***Telephone***. The business and residence telephone numbers of such person.

(b) ***Documents***. When identifying a document or writing to:

(1) ***Author & Parties***. Identify the author thereof, any and all parties thereto, and, if the case, the name of the person who signed the document;

(2) ***Identification***. State its title, number, code or other identifying data;

(3) ***Pages***. State the number of pages, if the document contains more than one page;

(4) ***Attachments & Supplements***. Identify any attachments or supplemental items incorporated with the document;

(5) ***Date Of Preparation***. State the date on which the document was prepared but if not known the approximate date;

(6) ***Date On Documents***. State the date appearing on the document;

(7) ***Transaction & Substance***. State the transaction, act or occurrence to which each such document relates and the substance of the document;

(8) ***General Description***. State the general description of the document;

(9) ***Disposition Of Document***. If such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it; and

(10) ***Custodian***. Identify the present custodian of such writing or document.

(c) ***Oral Communication***. When identifying an oral communication:

(1) ***Persons***. Identify the person who made the communication and the person to whom the communication was directed;

(2) ***Date***. Give the date, time and place of the communication;

(3) ***Content***. Give the content of the communication in as verbatim a form as possible;

(4) ***Context***. Give the conversational context in which such statement or utterance was made;

(5) ***Other Persons***. Identify any other persons present when the communication was made;

(6) ***Reduction To Writing***. State whether such statement or utterance was later reduced to writing, in whole or in part, and, if so, identify such writing; and

(7) ***Related Documents***. Identify each document relating or referring to such oral statement or utterance.

2. ***"Document" or "Documents"*** means the originals, or any copies when originals are not available, unless otherwise stated, and any non-identical copies, whether different from originals because of notes made on such copies or otherwise, and writings of every kind and description, whether inscribed by hand or by mechanical, electronic, photographic, or other means, as well as phonic, such as tape recordings, or visual representations or oral statements, conversations or events and including, but not limited to, correspondence, letters, agreements, reports, records, price lists, quotations, memoranda, financial statements, telephone call slips, information stored in computers, teletype messages, internal memoranda, notes, reports, contracts, records of meetings, conferences or telephone or other conversations or communications, photographs, computer printouts, computer stored data, plans, maps, drawings, diaries, calendars, books, minutes of meetings, known to you or any of your employees, agents, consultants, contractors, or any person acting or purporting to act on its behalf.

3. ***"Oral Communication"*** as the term is used herein shall include any utterance heard by any person, whether in person, by telephone, or otherwise.

4. ***"Person" or "Persons"*** The term "person" or "persons" means natural persons, firms, partnerships, governmental entities, associations and corporations, and divisions, departments or units thereof.

5. ***"And/Or"*** When used in the course of an enumeration of items as to which documents or information is required, the words "or" and "and" are to be construed as requesting documents or information as to each item in the enumeration, the same as if the entire request had been addressed solely to that item.

6. ***Use Of Documents In Place Of An Answer***. Whenever a full and complete answer to any interrogatory or part of an interrogatory is contained in a document or documents, the documents, if appropriately identified as answering a specific numbered interrogatory or part of any interrogatory, may be supplied in place of a written answer at the time of answering, and only the author, date and type need be provided.

7. ***Numeral Information***. Interrogatories calling for numeral or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it shall be identified as such together with a source of information underlying the estimate.

8. ***Sources Of Information***. In answering these interrogatories, every source of information to which you have access shall be consulted, regardless of whether the source is within Defendants' immediate possession or control. All documents or other information in the possession of experts or consultants should be consulted.

9. ***Partial Answers***. If any interrogatory cannot be answered fully, as full an answer as possible should be provided. State the reason for your inability to answer fully, and give any information, knowledge or belief you have regarding the portion unanswered.

10. ***Deletions From Documents***. Where anything has been deleted from a document produced in response to the requests for production:

(a) ***Nature***. Specify the nature of the material deleted;

(b) ***Reason***. Specify the reason for the deletion; and

(c) ***Person***. Identify the person responsible for the deletion.

11. ***Claim Of Privilege Or Exclusion***. If objection is made to answering any interrogatory or disclosing the substance of any document on the basis of any claim of privilege or exclusion, specify in writing the nature of such information or documents, along with the nature of the privilege claim, so that the Court may rule on the proprietary of the objection. In case of documents, state:

(a) ***Title***. The title of the document;

(b) ***Notice***. The nature of the document (interoffice memorandum, correspondence, report, etc.);

(c) ***Author Or Sender***. The author or sender;

(d) ***Addressee***. The addressee;

(e) ***Date***. The date of the document;

(f) ***Others***. The name of each person to whom the original or a copy was shown or circulated;

(g) ***Circulation List***. The names appearing on any circulation list relating to the document;

(h) ***Basis Of Privilege Claim***. The base upon which privilege is claimed; and

(i) ***Subject Matter***. A summary statement of the subject matter of the document in sufficient detail to permit the Court to rule on the propriety of the objections.

12. ***"Relating to"*** means constituting, defining, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

INSTRUCTIONS

1. If your answer to any Request for Admission which follows is any response other than an unqualified admission, then please copy, answer and complete the following "Interrogatory" and " Request To Produce" as part of your response to each such Request for Admission.

Then for each such Interrogatory and Request To Produce, please insert the number of the Request for Admission to which each such Interrogatory and Request To Produce answer and response relates:

INTERROGATORY NO.__:

A. *State The Facts*. If your answer to the Request for Admission is any response other than an unqualified admission, state with particularity and in detail all facts (not opinions) on which you have relied, and on which you intend to rely at trial, to support any such response to the admission requested.

B. *Identify Documents & Communications*. Identify all documents, notes, reports, memorandums, electronic and/or tape recordings, photographs, oral statements, communications, or any other tangible or intangible thing that supports in any manner your refusal to admit or your qualification of your admission.

C. *Custodians*. The name and address of a custodian of all tangible or intangible things identified in response to B. above.

D. *Identify All Persons*. The name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or the qualification of your admission.

ANSWER TO INTERROGATORY NO. __:

REQUEST TO PRODUCE NO.__:

Produce for inspection and copying each document referred to in your response to Request for Admission No. 1 and Interrogatory No. 1 at the time and place aforesaid.

RESPONSE TO REQUEST TO PRODUCE NO. __:

***Additional Documents*:**

2. **In answering each interrogatory;**

(a) *Document Identification*. Identify the date, sender, recipient, location and custodian of each document relied upon or which corroborates the answer given or the substance of what is given in answer to the interrogatories.

(b) *Personal Knowledge*. State whether the information furnished is within your personal knowledge and, if not, the name, if known, of each person to whom the information is a matter of personal knowledge; and

(c) *Other Persons*. Identify each person who assisted or participated in preparing or supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories.

(d) *Additional Space Needed*. If more space is needed for your answer to any interrogatory, insert extra pages.

(e) *Grouping & Labeling Documents*. Where request is made for production of documents, group and label the documents produced according to each specific request for the production of document.

(f) *Required Execution & Verification Of Answers*. The answers must be signed and verified as required by Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.

1. ***Representation Made by Plaintiff.***

Plaintiff's August 3, 1999 letter to Van Hampton Oil & Gas Company, attached to the complaint as exhibit #1, p. 5 of 5, represented plaintiff as "*AAPG certified petroleum geologist #4774*".

Admitted: ___X___ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

2. ***Representation As American Association of Petroleum Geologist.***

The designation "*AAPG*" in the phrase "*AAPG certified petroleum geologist #4774*" referred to in Plaintiff's August 3, 1999 letter to Van Hampton Oil & Gas Company refers to the American Association of Petroleum Geologist.

Admitted: ___X___ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

3. ***Plaintiff's General Duties.***

The following provision is (and was on August 3, 1999) contained in the

American Association of Petroleum Geologist Code of Ethics:

"Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every member as professional obligations."

(American Association of Petroleum Geologist Code of Ethics, General Principles § 2)

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

4. ***Duty to Disclose Competitive or Conflicting Interests.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Code of Ethics:

"Members shall disclose to prospective employers or clients the existence of any pertinent competitive or conflicting interests."

(American Association of Petroleum Geologist Code of Ethics, Relation of Members to Employers and Clients § 1)

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

5. ***Duty of Nondisclosure.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Code of Ethics:

"Members shall not use or divulge any employer's or client's confidential information without their permission and shall avoid conflicts of interest that may arise from information gained during geological investigations."

(American Association of Petroleum Geologist Code of Ethics, Relation of Members to Employers and Clients § 2)

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

6. ***Duty to Protect.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

" (a) A member shall protect, to the fullest extent possible, the interest of his employer or client so far as is consistent with the public welfare and his professional obligations and ethics."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (a))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

7. ***Duty to Correct or Resign.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(b) A member who finds that his obligations to his employer or client conflict with his professional obligations or ethics should have such objectionable conditions corrected or resign."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (b))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

8. ***Duty to Disclose Mineral Interests.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(c) A member will offer to disclose to his prospective employer or client the existence of any oil, gas, or other mineral interest which he holds, either directly or indirectly, having a pertinent bearing on such employment."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (c))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

9. ***Prohibition against Use of Confidential Information.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(d) A member will not use, directly or indirectly, any employer's or client's confidential information in any way which is competitive, adverse, or detrimental to the interest of employer or client."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (d))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

10. ***Duty to Reject Conflicting Engagements.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(e) A member retained by one client will not accept, without client's consent, and engagement by another if the interest of the two is in any manner conflicting."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (e))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

11. ***Prohibition against Use of Confidential Information for Personal Profit.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(f) A member who has made an investigation for any employer or client will not seek to profit economically from the information gained, unless permission to do so is granted, or until it is clear that there can no longer be conflict of interest with original employer or client."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (f))

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

12. ***Duty of Nondisclosure of Confidential Information.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(g) A member will not divulge information given to him in confidence."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (g))

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

13. ***Plaintiff As Devonian Resources Inc. Consultant***.

a. On August 3, 1999 plaintiff was a consultant for Devonian Resources Inc.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. On August 3, 1999 plaintiff was a consultant for Devonian Resources Inc. with respect to the area that plaintiff's complaint ¶ 4 describes as the Area of Mutual Interest.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

c. At the time that plaintiff filed his complaint in this action plaintiff was an employee of Devonian Resources Inc..

Admitted: x Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

d. Plaintiff is presently an employee of Devonian Resources Inc.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

e. On August 3, 1999 Devonian Resources Inc. was a legal entity separate and apart from Van Hampton Oil & Gas Company.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

14. ***Donald Sbarra.***

Answer to Interrogatory No. 13(d).

As of December 26, 2003, Plaintiff is no longer an employee Devonian Resources.

Answer to Interrogatory No. 13(e).

It is Plaintiff's belief that Van Hampton Oil and Gas Company directly related to, owned by, controlled by, a subsidiary of, a ego of, or otherwise controlled by Devonian Resources, Inc. c August 3, 1999.

a. ***Communication of information about Area of Mutual Interest.***

i. On one or more occasion between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff communicated with Donald Sbarra.

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. On one or more occasion between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff communicated information to Donald Sbarra about the geology of and/or wells drilled on what plaintiff's complaint describes in ¶ 4 of the complaint as the Area of Mutual Interest.

Admitted: ____X____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. ***Lack of relationships with Donald Sbarra.***

i. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Devonian Resources Inc.

Admitted: _____ Denied: ____X____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Van Hampton Oil & Gas Company.

Admitted: _____ Denied: ____X____

Answer to Interrogatory No. 14

(a)(i) Plaintiff believes that all communications that he had with Donald Sbarra were undertaken at the request of, under the direction of, and with full knowledge of the CEO of Mid-East Oil Company and the management of Devonian Resources, Inc. and Van Hampton Oil and Gas Company. Donald Sbarra was identified by Mark Thompson as an investor in Mid-East Oil Company's energy development projects, including wells within the AMI. Any information provided by Plaintiff to Donald Sbarra was at the request of, and with full knowledge and consent of Mark Thompson and Stanley Thompson, who are believed to be the officers and CEO's of Mid-East Oil Company, Van Hampton Oil and Gas Company and Devonian Resources, Inc.

(b)(i) Plaintiff is unaware of the relationship between Donald Sbarra and Devonian Resources, Inc. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing resources for development for oil and gas prospects within the AMI.

(b)(ii) Plaintiff is unaware of the relationship between Donald Sbarra and Van Hampton Gas and Oil Company. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing resources for development for oil and gas prospects within the AMI.

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of defendant.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

c. ***Intended use of information by Donald Sbarra or others.***

i. At the time of plaintiff's communications with Donald Sbarra between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Devonian Resources Inc.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Van Hampton Oil & Gas Company.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Answer to Interrogatory No. 14

(b)(iii) Plaintiff is unaware of the relationship between Donald Sbarra and Mid-East Oil Company. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing resources for development for oil and gas prospects within the AMI.

(c)(i) All information provided by Plaintiff to Donald Sbarra was done so with the belief that Plaintiff was acting at the request and consent of Devonian Resources and for purposes of fostering continued investment in natural resource production within the AMI.

(c)(ii) All information provided by Plaintiff to Donald Sbarra was done so with the belief that Plaintiff was acting at the request of and with the consent of Van Hampton Oil and Gas Company and for purposes of fostering continued investment in natural resource production within the AMI.

iii. At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than defendant.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

d. ***Actual use of information by Donald Sbarra.***

i. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Devonian Resources Inc.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Van Hampton Oil & Gas Company.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that

Answer to Interrogatory No. 14

(c)(iii) All information provided by Plaintiff to Donal Sbarra was done so with the belief that Plaintiff was acting at tl request and consent of Mid-East Oil Company and for purposes of fostering continued investment in natural resource producti within the AMI.

(d)(i) Plaintiff believes that any information provide to Donald Sbarra was done so for the benefit of the parties to tl AMI agreement, including Devonian Resources, Inc.

(d)(ii) Plaintiff believes that any information provide to Donald Sbarra was done so for the benefit of the parties to tl AMI agreement, including Van Hampton Oil and Gas Company.

Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than defendant.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

e. ***Donald Sbarra payment to plaintiff.***

Donald Sbarra or a payor other than Devonian Resources Inc. made payment or gave other consideration to plaintiff during the period of time between August 3, 1999 and the day that plaintiff filed his complaint in this action in full or partial consideration for assistance or information that plaintiff provided to Donald Sbarra or someone other than Devonian Resources Inc. with regard to what ¶ 4 of plaintiff's complaint describes as the Area of Mutual Interest.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

15. **January 16, 2002 Assignment and Bill of Sale**.

a. ***Agreement conveyed rights to defendant.***

i. On January 16, 2002 Devonian Resources Inc. and defendant entered into an "*Assignment and Bill of Sale*".

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. The January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant is exhibit 3 to the plaintiff's complaint in this action.

Admitted: X Denied: _____

Answer to Interrogatory No. 14

(d)(iii) Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the AMI agreement, including Mid-East Oil Company.

(e) Plaintiff provided geological information to Donald Sbarra regarding various drilling programs of the Defendant and/or Devonian with the full knowledge and consent of Devonian and/or Defendant. Plaintiff was compensated by Donald Sbarra for his time expenditure in providing this geological information with full knowledge and consent of Mid-East Oil Company and/or Devonian Resources, Inc.

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. The rights that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant were collectively defined therein as "*Oil & Gas Property*".

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. Conveyance of area of Mutual Interest rights to defendant free & clear.

i. The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale included all of the rights of Devonian Resources Inc. with respect to the area referred to in the complaint as the Area of Mutual Interest.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of sale included "*all royalty and/or overriding royalty interests of Devonian within the AMI*", which abbreviation represents the area referred to in the complaint as the Area of Mutual Interest.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Answer to Interrogatory No. 15

(a)(iii) The agreement and bill of sale utilize the term "oil and gas property". The question of determination of the character and nature of the rights transferred under this agreement and bill of sale are for determination by the Court and may not be fully characterized by this particular terminology.

(b)(i) All rights transferred to Devonian Resources, Inc. by Agreement of January 16, 2002 also convey to the assignee the obligation to pay overriding royalty interests to the Plaintiff as set forth in the Complaint.

(b)(ii) The Plaintiff does not deny inclusion of the language in the bill of sale as set forth in the Request for Admission, and further does not deny that the term "AMI" refers to the Area of Mutual Interest. However, Plaintiff does deny that this agreement in any way extinguishes Plaintiff's right to receive overriding royalty interests as set forth in the Complaint.

iii. The January 16, 2002 Assignment and Bill of sale between Devonian Resources Inc. conveyed the"*Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".

Admitted: _____ Denied: ___x___

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

16. **Scope of plaintiff's services regarding Area of Mutual Interest.**

a. The August 3, 1999 letter from plaintiff to Van Hampton Oil & Gas Company attached as part of exhibit #1 to the complaint included a proposal by plaintiff that plaintiff would provide "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development.*"

Admitted: ___x___ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. Plaintiff did not provide defendant with all of the "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*" with respect to the area of Mutual Interest referred to in the complaint.

Admitted: _____ Denied: ___x___

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

FOR DEFENDANT:
Mid-East Oil Company

DOM W. GRECO, ESQ.

Answer to Interrogatory No. 15

(b)(iii) The Plaintiff admits that the January 16, 2002 Assignment and Bill of Sale contains the language "free and clear of all liens and encumbrances". However, the Plaintiff denies that the inclusion of this terminology in any way extinguishes his right to obtain oil and gas royalties for all resource production within the AMI as set forth in Plaintiff's Complaint.

Answer to Interrogatory No. 16

(b) Plaintiff did provide all services necessary to the development of drilling prospects and technical assistance in preparation of drilling program for the establishment of the AMI and the initial drilling program for Devonian, which entitles Plaintiff to ongoing overriding royalty interest payments for all resource development and production within the area of mutual interest.

Response to Request for Production of Documents Nos. 3 - 1

Code of Ethics

General Principles

a. Geology is a profession, and the privilege of professional practice requires professional morality and professional responsibility.
b. Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every member as professional obligations.
c. Each member shall be guided by high standards of business ethics, personal honor, and professional conduct. The word "member" as used throughout this code includes all classes of membership.

Relation of Members to the Public

a. Members shall not make false, misleading, or unwarranted statements, representations or claims in regard to professional matters, nor shall they engage in false or deceptive advertising
b. Members shall not permit the publication or use of their reports or maps for any unsound or illegitimate undertakings.
c. Members shall not give professional opinions, make reports or give legal testimony without being as thoroughly informed as reasonably required.

Relation of Members to Employers and Clients

a. Members shall disclose to prospective employers or clients the existence of any pertinent competitive or conflicting interests.
b. Members shall not use or divulge any employer's or client's confidential information without their permission and shall avoid conflicts of interest that may arise from information gained during geological investigations.

Relation of Members to One Another

a. Members shall not falsely or maliciously attempt to injure the reputation or business of others.
b. Members shall freely recognize the work done by others, avoid plagiarism, and avoid the acceptance of credit due others.
c. Members shall endeavor to cooperate with others in the profession and shall encourage the ethical dissemination of geological knowledge.

Duty to the Association

a. Members of the Association shall aid in preventing the election to membership of those who are unqualified or do not meet the standards set forth in this *Code of Ethics*.
b. By applying for or continuing membership in the Association each member agrees to uphold the ethical standards set forth in this *Code of Ethics*.
c. Members shall not use AAPG membership to imply endorsement, recommendation, or approval by the Association of specific projects or proposals.

Discipline for Violations of Standards

Members violating any standard prescribed in this Article shall be subject to discipline as provided by the Bylaws.

VERIFICATION

I, LARRY SMYERS, do hereby verify that I have read the foregoing RESPONSE TO REQUEST FOR ADMISSIONS, INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 12-24-03

Larry Smyers

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

No. 03-1598-CD

CERTIFICATE OF SERVICE

I certify that on the 30th day of December, 2003, a true and correct copy of Plaintiff's Response to Request for Admissions w forwarded by FAX transmission and mailed by United States First Cla Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214
(240) 465-7135

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,

Plaintiff

vs.

Mid-East Oil Company,

Defendant

: No. 03-1598-CD

: Type of Case
: Civil Action – Law

: Type of Pleading:

: ***Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents***

: Counsel of Record for This Party:
: Dom W. Greco, Esq.

: Supreme Court I.D. No. 16829

: Dom W. Greco, Esq.
: Greco & Lander, P.C.
: P.O. Box 667
: Clarion, PA 16214
: (814) 226-6843
: Fax: (240) 465-7135
: Pa. I.D. #16829

FILED

MAR 0 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

#22

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents

The Defendant, pursuant to Rules 4005, 4009.1 et seq. and 4014 of the Pennsylvania Rules of Civil Procedure, hereby request that Plaintiff answer or respond to, in writing and under oath, by an officer or agent, within thirty (30) days after service hereof, the following requests for admissions, interrogatories and requests to produce, and produce for inspection and copying within thirty (30) days after service hereof in the office of the Defendant's counsel at 1390 East Main Street, Suite 2, Clarion, Pennsylvania, the documents requested herein.

In accordance with Rule 4007.4 these requests for admission, interrogatories and requests to produce shall be deemed continuing so as to require the filing of supplemental or amended responses, answers or production of documents prior to trial in the event that additional or different information or documents become available or are obtained in accordance with Rule 4007.4 of the Pennsylvania Rules of Civil Procedure.

The Defendant reserves the right to serve supplemental or additional requests for admission, interrogatories and requests for production of documents.

GENERAL DEFINITIONS

1. ***"Identify"***: As the term is used herein, identify shall have the following meaning:

(a) ***Persons***. When identifying a person to give such person's:

(1) ***Name***. Full name;

(2) ***Address***. Last known business address and last known residence address;

(3) ***Business Affiliation***. Present or last known business affiliation at the time in question; and

(4) ***Telephone***. The business and residence telephone numbers of such person.

(b) ***Documents***. When identifying a document or writing to:

(1) ***Author & Parties***. Identify the author thereof, any and all parties thereto, and, if the case, the name of the person who signed the document;

(2) ***Identification***. State its title, number, code or other identifying data;

(3) ***Pages***. State the number of pages, if the document contains more than one page;

(4) ***Attachments & Supplements***. Identify any attachments or supplemental items incorporated with the document;

(5) ***Date Of Preparation***. State the date on which the document was prepared but if not known the approximate date;

(6) ***Date On Documents***. State the date appearing on the document;

(7) ***Transaction & Substance***. State the transaction, act or occurrence to which each such document relates and the substance of the document;

(8) ***General Description***. State the general description of the document;

(9) ***Disposition Of Document***. If such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it; and

(10) ***Custodian***. Identify the present custodian of such writing or document.

(c) ***Oral Communication***. When identifying an oral communication:

(1) ***Persons***. Identify the person who made the communication and the person to whom the communication was directed;

(2) ***Date***. Give the date, time and place of the communication;

(3) ***Content***. Give the content of the communication in as verbatim a form as possible;

(4) ***Context***. Give the conversational context in which such statement or utterance was made;

(5) ***Other Persons***. Identify any other persons present when the communication was made;

(6) ***Reduction To Writing***. State whether such statement or utterance was later reduced to writing, in whole or in part, and, if so, identify such writing; and

(7) ***Related Documents***. Identify each document relating or referring to such oral statement or utterance.

2. ***"Document" or "Documents"*** means the originals, or any copies when originals are not available, unless otherwise stated, and any non-identical copies, whether different from originals because of notes made on such copies or otherwise, and writings of every kind and description, whether inscribed by hand or by mechanical, electronic, photographic, or other means, as well as phonic, such as tape recordings, or visual representations or oral statements, conversations or events and including, but not limited to, correspondence, letters, agreements, reports, records, price lists, quotations, memoranda, financial statements, telephone call slips, information stored in computers, teletype messages, internal memoranda, notes, reports, contracts, records of meetings, conferences or telephone or other conversations or communications, photographs, computer printouts, computer stored data, plans, maps, drawings, diaries, calendars, books, minutes of meetings, known to you or any of your employees, agents, consultants, contractors, or any person acting or purporting to act on its behalf.

3. ***"Oral Communication"*** as the term is used herein shall include any utterance heard by any person, whether in person, by telephone, or otherwise.

4. ***"Person" or "Persons"*** The term "person" or "persons" means natural persons, firms, partnerships, governmental entities, associations and corporations, and divisions, departments or units thereof.

5. ***"And/Or"*** When used in the course of an enumeration of items as to which documents or information is required, the words "or" and "and" are to be construed as requesting documents or information as to each item in the enumeration, the same as if the entire request had been addressed solely to that item.

6. ***Use Of Documents In Place Of An Answer***. Whenever a full and complete answer to any interrogatory or part of an interrogatory is contained in a document or documents, the documents, if appropriately identified as answering a specific numbered interrogatory or part of any interrogatory, may be supplied in place of a written answer at the time of answering, and only the author, date and type need be provided.

7. ***Numeral Information***. Interrogatories calling for numeral or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it shall be identified as such together with a source of information underlying the estimate.

8. ***Sources Of Information***. In answering these interrogatories, every source of information to which you have access shall be consulted, regardless of whether the source is within Defendants' immediate possession or control. All documents or other information in the possession of experts or consultants should be consulted.

9. ***Partial Answers***. If any interrogatory cannot be answered fully, as full an answer as possible should be provided. State the reason for your inability to answer fully, and give any information, knowledge or belief you have regarding the portion unanswered.

10. ***Deletions From Documents***. Where anything has been deleted from a document produced in response to the requests for production:

(a) ***Nature***. Specify the nature of the material deleted;

(b) ***Reason***. Specify the reason for the deletion; and

(c) ***Person***. Identify the person responsible for the deletion.

11. ***Claim Of Privilege Or Exclusion***. If objection is made to answering any interrogatory or disclosing the substance of any document on the basis of any claim of privilege or exclusion, specify in writing the nature of such information or documents, along with the nature of the privilege claim, so that the Court may rule on the proprietary of the objection. In case of documents, state:

(a) ***Title***. The title of the document;

(b) ***Notice***. The nature of the document (interoffice memorandum, correspondence, report, etc.);

(c) ***Author Or Sender***. The author or sender;

(d) ***Addressee***. The addressee;

(e) ***Date***. The date of the document;

(f) ***Others***. The name of each person to whom the original or a copy was shown or circulated;

(g) ***Circulation List***. The names appearing on any circulation list relating to the document;

(h) ***Basis Of Privilege Claim***. The base upon which privilege is claimed; and

(i) ***Subject Matter***. A summary statement of the subject matter of the document in sufficient detail to permit the Court to rule on the propriety of the objections.

12. ***"Relating to"*** means constituting, defining, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

INSTRUCTIONS

1. If your answer to any Request for Admission which follows is any response other than an unqualified admission, then please copy, answer and complete the following "Interrogatory" and " Request To Produce" as part of your response to each such Request for Admission.

Then for each such Interrogatory and Request To Produce, please insert the number of the Request for Admission to which each such Interrogatory and Request To Produce answer and response relates:

INTERROGATORY NO.__:

A. *State The Facts*. If your answer to the Request for Admission is any response other than an unqualified admission, state with particularity and in detail all facts (not opinions) on which you have relied, and on which you intend to rely at trial, to support any such response to the admission requested.

B. *Identify Documents & Communications*. Identify all documents, notes, reports, memorandums, electronic and/or tape recordings, photographs, oral statements, communications, or any other tangible or intangible thing that supports in any manner your refusal to admit or your qualification of your admission.

C. *Custodians*. The name and address of a custodian of all tangible or intangible things identified in response to B. above.

D. *Identify All Persons*. The name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or the qualification of your admission.

ANSWER TO INTERROGATORY NO. __:

REQUEST TO PRODUCE NO.__:

Produce for inspection and copying each document referred to in your response to Request for Admission No. 1 and Interrogatory No. 1 at the time and place aforesaid.

RESPONSE TO REQUEST TO PRODUCE NO. __:

Additional Documents:

2. **In answering each interrogatory;**

(a) *Document Identification*. Identify the date, sender, recipient, location and custodian of each document relied upon or which corroborates the answer given or the substance of what is given in answer to the interrogatories.

(b) *Personal Knowledge*. State whether the information furnished is within your personal knowledge and, if not, the name, if known, of each person to whom the information is a matter of personal knowledge; and

(c) *Other Persons*. Identify each person who assisted or participated in preparing or supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories.

(d) *Additional Space Needed*. If more space is needed for your answer to any interrogatory, insert extra pages.

(e) *Grouping & Labeling Documents*. Where request is made for production of documents, group and label the documents produced according to each specific request for the production of document.

(f) *Required Execution & Verification Of Answers*. The answers must be signed and verified as required by Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.

1. ***Representation Made by Plaintiff.***

   Plaintiff's August 3, 1999 letter to Van Hampton Oil & Gas Company, attached to the complaint as exhibit #1, p. 5 of 5, represented plaintiff as "*AAPG certified petroleum geologist #4774*".

   Admitted: _____ Denied: _____

   SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

2. ***Representation As American Association of Petroleum Geologist.***

   The designation "*AAPG*" in the phrase "*AAPG certified petroleum geologist #4774*" referred to in Plaintiff's August 3, 1999 letter to Van Hampton Oil & Gas Company refers to the American Association of Petroleum Geologist.

   Admitted: _____ Denied: _____

   SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

3. ***Plaintiff's General Duties.***

   The following provision is (and was on August 3, 1999) contained in the

American Association of Petroleum Geologist Code of Ethics:

"Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every member as professional obligations."

(American Association of Petroleum Geologist Code of Ethics, General Principles § 2)

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

4. ***Duty to Disclose Competitive or Conflicting Interests.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Code of Ethics:

"Members shall disclose to prospective employers or clients the existence of any pertinent competitive or conflicting interests."

(American Association of Petroleum Geologist Code of Ethics, Relation of Members to Employers and Clients § 1)

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

5. ***Duty of Nondisclosure.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Code of Ethics:

"Members shall not use or divulge any employer's or client's confidential information without their permission and shall avoid conflicts of interest that may arise from information gained during geological investigations."

(American Association of Petroleum Geologist Code of Ethics, Relation of Members to Employers and Clients § 2)

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

6. ***Duty to Protect.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

" (a) A member shall protect, to the fullest extent possible, the interest of his employer or client so far as is consistent with the public welfare and his professional obligations and ethics."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (a))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

7. ***Duty to Correct or Resign.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(b) A member who finds that his obligations to his employer or client conflict with his professional obligations or ethics should have such objectionable conditions corrected or resign."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (b))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

8. ***Duty to Disclose Mineral Interests.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(c) A member will offer to disclose to his prospective employer or client the existence of any oil, gas, or other mineral interest which he holds, either directly or indirectly, having a pertinent bearing on such employment."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (c))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

9. ***Prohibition against Use of Confidential Information.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(d) A member will not use, directly or indirectly, any employer's or client's confidential information in any way which is competitive, adverse, or detrimental to the interest of employer or client."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (d))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

10. ***Duty to Reject Conflicting Engagements.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(e) A member retained by one client will not accept, without client's consent, and engagement by another if the interest of the two is in any manner conflicting."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (e))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

11. ***Prohibition against Use of Confidential Information for Personal Profit.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(f) A member who has made an investigation for any employer or client will not seek to profit economically from the information gained, unless permission to do so is granted, or until it is clear that there can no longer be conflict of interest with original employer or client."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (f))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

12. ***Duty of Nondisclosure of Confidential Information.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(g) A member will not divulge information given to him in confidence."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (g))

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

13. ***Plaintiff As Devonian Resources Inc. Consultant.***

a. On August 3, 1999 plaintiff was a consultant for Devonian Resources Inc.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. On August 3, 1999 plaintiff was a consultant for Devonian Resources Inc. with respect to the area that plaintiff's complaint ¶ 4 describes as the Area of Mutual Interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

c. At the time that plaintiff filed his complaint in this action plaintiff was an employee of Devonian Resources Inc..

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

d. Plaintiff is presently an employee of Devonian Resources Inc.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

e. On August 3, 1999 Devonian Resources Inc. was a legal entity separate and apart from Van Hampton Oil & Gas Company.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

*14. **Donald Sbarra**.*

a. ***Communication of information about Area of Mutual Interest.***

i. On one or more occasion between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff communicated with Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. On one or more occasion between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff communicated information to Donald Sbarra about the geology of and/or wells drilled on what plaintiff's complaint describes in ¶ 4 of the complaint as the Area of Mutual Interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. ***Lack of relationships with Donald Sbarra.***

i. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Devonian Resources Inc.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Van Hampton Oil & Gas Company.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of defendant.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

c. ***Intended use of information by Donald Sbarra or others.***

i. At the time of plaintiff's communications with Donald Sbarra between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Devonian Resources Inc.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Van Hampton Oil & Gas Company.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than defendant.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

d. ***Actual use of information by Donald Sbarra.***

i. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Devonian Resources Inc.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Van Hampton Oil & Gas Company.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that

Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than defendant.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

e. ***Donald Sbarra payment to plaintiff.***

Donald Sbarra or a payor other than Devonian Resources Inc. made payment or gave other consideration to plaintiff during the period of time between August 3, 1999 and the day that plaintiff filed his complaint in this action in full or partial consideration for assistance or information that plaintiff provided to Donald Sbarra or someone other than Devonian Resources Inc. with regard to what ¶ 4 of plaintiff's complaint describes as the Area of Mutual Interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

15. **January 16, 2002 Assignment and Bill of Sale.**

a. ***Agreement conveyed rights to defendant.***

i. On January 16, 2002 Devonian Resources Inc. and defendant entered into an "*Assignment and Bill of Sale*".

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. The January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant is exhibit 3 to the plaintiff's complaint in this action.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. The rights that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant were collectively defined therein as "*Oil & Gas Property*".

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. Conveyance of area of Mutual Interest rights to defendant free & clear.

i. The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale included all of the rights of Devonian Resources Inc. with respect to the area referred to in the complaint as the Area of Mutual Interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of sale included "*all royalty and/or overriding royalty interests of Devonian within the AMI*", which abbreviation represents the area referred to in the complaint as the Area of Mutual Interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. The January 16, 2002 Assignment and Bill of sale between Devonian Resources Inc. conveyed the"*Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

16. **Scope of plaintiff's services regarding Area of Mutual Interest.**

a. The August 3, 1999 letter from plaintiff to Van Hampton Oil & Gas Company attached as part of exhibit #1 to the complaint included a proposal by plaintiff that plaintiff would provide "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development.*"

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. Plaintiff did not provide defendant with all of the "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*" with respect to the area of Mutual Interest referred to in the complaint.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

FOR DEFENDANT:
Mid-East Oil Company

_____
DOM W. GRECO, ESQ.

IN THE COURT OF COMMON PLEAS
OF CLEAFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Larry F. Smyers, Plaintiff, vs. Mid-East Oil Company, Defendant	:	No. 03-1598-CD Type of Case Civil Action - Law Type of Pleading: ***Praecipe to Place Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests for Admissions on Next Available Argument List*** Filed on Behalf of Defendant Counsel of Record for This Party: Dom W. Greco, Esq. Pa. Id.#16829 Nathaniel C. Parker, Esq. Pa. Id.# 90993 Law Offices of Greco & Lander, P.C. P.O. Box 667 Clarion, PA 16214 (814) 226-6853 Fax: (814) 226-4951

FILED

FEB 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

{GL029548.1}: tsr

#21

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

PRAECIPE TO PLACE "DEFENDANT'S MOTION TO DETERMINE SUFFICIENCY OF PLAINTIFF'S ANSWERS TO DEFENDANT'S NOVEMBER 19, 2003 REQUESTS FOR ADMISSIONS" ON NEXT AVAILABLE ARGUMENT LIST

TO THE PROTHONOTARY:

Kindly place "Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests for Admissions" on the next available argument list. Defendant requests that this matter be added to the March 3, 2004 Argument list since both parties are already scheduled to argue preliminary objections in the same case on that date.

Respectfully submitted:

Dated: February 24, 2004


(SEAL)

Nathaniel C. Parker, Esq.
Law Offices of Greco & Lander, P.C.
P.O. Box 667
Clarion, PA 16214
(814) 226-6853
Fax: (240) 465-7135
Pa. I.D. #16829

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Larry F. Smyers,

Plaintiff

vs.

Mid-East Oil Company,

Defendant

No. 03-1598-CD

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "**Praecipe To Place Defendant's Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests for Admissions On Next Available Argument List**" was sent by U.S. mail, postage prepaid, on FEBRUARY 24, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, Pennsylvania 15801

GRECO & LANDER, P.C.

By _____
NATHANIEL C. PARKER, ESQ.

FILED

FEB 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

{GL029548.1}: tsr

#21

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

AFFIDAVIT OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order"** was sent by U.S. mail, postage prepaid, on February 23, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

David S. Meholick, Court Administrator
Clearfield County Courthouse
Suite 228, East Market Street
Clearfield, PA 16830

GRECO & LANDER, P.C.:

By _____
NATHANIEL C. PARKER, ESQ.

FILED

FEB 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

#20

C'A

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
Plaintiff	:	
vs.	:	No. 03-1598-CD
Mid-East Oil Company,	:	
Defendant	:	

AFFIDAVIT OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Defendant's Preliminary Objections to Amended Complaint and February 13, 2004 Order"** was sent by U.S. mail, postage prepaid, on February 23, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

David S. Meholick, Court Administrator
Clearfield County Courthouse
Suite 228, East Market Street
Clearfield, PA 16830

GRECO & LANDER, P.C.:

By _____
NATHANIEL C. PARKER, ESQ.

FILED NO CC
02:30 BH
FEB 25 2004
William A. Shaw
Prothonotary/Clerk of Courts

02/23/2004 3:17 PM:lam

{GL029542.1}

#19

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: NOTICE OF SERVICE Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED

FEB 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

#18

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being counsel of record for Defendant, do hereby certify that I propounded on Defendant, via United States mail, first class, postage pre-paid, this 17th day of February, 2004, Plaintiff's REQUEST FOR PRODUCTION OF DOCUMENTS to the below indicated person, at said address, being counsel of record for the Defendant:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

RESPONSE TO PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

FEB 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

#17

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

PLAINTIFF'S RESPONSE TO
PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Preliminary Objection #1: Failure to Allege Performance by Plaintiff. Paragraph No. 4 of Plaintiff's Complaint alleges that the Plaintiff invested his time, effort, expertise and knowledge as a professional geologist to develop the Pine Glen Prospect. The remaining content of this Preliminary Objection pertains to elements of proof rather than elements of pleading.

Preliminary Objection #2:

(1) Privity of Contract - Plaintiff claims rights against Defendant in Defendant's capacity as a successor in interest and beneficiary with knowledge of Plaintiff's rights. No claim of privity is required.

(2) Failure of Plaintiff to Timely Record - Based on the Joint Venture Agreement and Defendant's conduct in making partial payments to Plaintiff, it is averred that Plaintiff had knowledge of Plaintiff's right to receive royalties under the terms of the AMI, recording of the document is not prerequisite to Plaintiff's rights.

Preliminary Objection #3: Failure to Join Indispensable Parties. Defendant is the sole successor in interest to the contract rights of Devonian Resources, Inc. Defendant is not precluded from joining Devonian as an additional defendant.

Preliminary Objection #4: Failure to Attach Writing. See Amendment to Amended Complaint, paragraph 16.

Preliminary Objection #5: Insufficient Specificity. Plaintiff's pleading has set forth sufficient facts to allow Defendant to respond to the Complaint. All other factual minutia is a matter of proof.

Preliminary Objection #6: Failure to Plead Satisfaction of Conditions. Plaintiff's Complaint alleges that Plaintiff had invested time, effort, expertise and knowledge as a professional geologist in the development of the "Pine Glen Prospect", thereby entitling him to overriding royalty interests as set forth in the various agreements. Satisfaction of all conditions prerequisite to payment may be a matter of proof at trial. However, the Complaint is adequately pled to permit the Defendant to answer.

Preliminary Objection #7: Misjoinder of Defendant. Joint Venture. It is obvious from the pleadings and attached documents that the Joint Venture merged in Mid-East Oil Company, Inc. when it purchased all rights and interest of Devonian. The breaches alleged in the Complaint occurred after consolidation of the Joint Venture rights and duties in Mid-East. Therefore, the pleading is sufficiently clear to allow Defendant to respond.

WHEREFORE, it is respectfully requested that Defendant's Preliminary Objections be dismissed and Defendant be ordered to file a responsive pleading or suffer judgment of default.

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 17th day of February, 2004, a true and correct copy of Plaintiff's Response to Preliminary Objections to Amended Complaint was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

FIRST AMENDMENT
TO AMENDED
COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

FEB 18 2004

William A Shaw
Prothonotary/Clerk of Courts

#16

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641, Ext. 1300

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

FIRST AMENDMENT TO AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby files the within correction to paragraph 16 of the Amended Complaint. This paragraph of the Complaint is amended to read as follows:

16. Defendant, by virtue of its position as successor and assign of Devonian Resources, Inc., and by virtue of the Joint Venture Agreement dated August 23, 2000, which is attached as an exhibit to the Bill of Sale, is obligated to pay a 1/64 overriding royalty to Plaintiff on all mineral resources produced within the AMI.

WHEREFORE, Plaintiff demands relief as set forth in the Amended Complaint.

A JURY TRIAL DEMANDED.

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

VERIFICATION

I, Matthew B. Taladay, hereby verify that the statements contained in the foregoing AMENDMENT TO AMENDED COMPLAINT are correct to the best of my personal knowledge or information and belief based on information provided to me and I am authorized to make this verification on behalf of Plaintiff Smyers because of my position as counsel of record.

February 17, 2004

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 17th day of February, 2004, a true and correct copy of Plaintiff's Amendment to Amended Complaint was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
-EAST OIL COMPANY	:	

ORDER

NOW, this 13 day of February, 2004, upon consideration Defendant's Preliminary Objections to Amended Complaint, a Rule is hereby ed upon the Plaintiff to Appear and Show Cause why the Objections should be granted. Argument is scheduled the 3 day of March, 4, at 2:30 P.M. in Courtroom No. 1, Clearfield County rthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED

FEB 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

#15

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "***Objection to Plaintiff's Response to Defendant's Rule 4007.1(d)(1) Notice of Deposition Request for Production Documents***" was sent by U.S. mail, postage prepaid, on February 10, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By _____
Nathaniel C. Parker, Esq

FILED No cc
m/ 11:58
FEB 12 2004
William A. Shaw
Prothonotary/Clerk of Courts

02/10/2004 3:41 PM:DWG{GL029202.1}

#14

CA

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Objection to Plaintiff's Response***
Defendant	:	***To Defendant's Rule 4007.1(d)(1)***
	:	***Notice of Deposition Request For***
	:	***Production of Documents***
	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
	:	Pa. I.D. #16829
	:	
	:	Nathaniel C. Parker, Esq.
	:	Pa. I.D. #90993
	:	
	:	Greco & Lander, P.C.
	:	1390 East Main Street, Suite 2
	:	P.O. Box 667
	:	Clarion, PA 16214-0667
	:	(814) 226-6853
	:	Fax: (814) 226-4951
	:	Fax: (240) 465-7135

FILED

FEB 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

02/10/2004 3:41 PM:DWG{GL029202.1}

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

OBJECTION TO PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 4007.1(D)(1) NOTICE OF DEPOSITION REQUEST FOR PRODUCTION DOCUMENTS

Defendant, by its undersigned counsel, hereby makes the following objection to the plaintiff's response to defendant's Rule 4007.1(d)(1) deposition request for production documents contained in the notice of deposition that defendant previously served on plaintiff for plaintiff to be deposed by defendant on January 19, 2004 at the offices of defendant's legal counsel:

1. **Defendant's notice of deposition**. On December 29, 2003 defendant served plaintiff with a notice of deposition for defendant to depose plaintiff on January 19, 2004 at the offices of defendant's legal counsel.
2. **Defendant's request for production of documents**. The notice of deposition served on plaintiff included the following request for plaintiff to produce documents for examination by defendant:

"This request is hereby made pursuant to Pa. R.C.P. 4007.1(d)(1) for

Mr. Smyers to produce at the scheduled deposition all of the following documents, with the understanding that all references to "you" or "your" are references to plaintiff Larry F. Smyers."

3. **Permissibility of request for production of documents**. Pa. R.C.P. 4007.1(d)(1) provides:

"If the person to be examined is a party, the notice may include a request made in compliance with Rule 4009.1 et seq, for the production of documents and tangible things at the taking of the deposition."

4. **Required answer to request for production of documents**. Pa.R.C.P. No. 4009.12 provides in part:

(a) The party upon whom the request is served shall within thirty days after the service of the request

(1) serve an answer including objections to each numbered paragraph in the request, and

(2) produce or make available to the party submitting the request those documents and things described in the request to which there is no objection.

(i) Where the documents may be identified only after review of a larger group of documents, and the burden of identifying the documents would be substantially the same for the party serving the request as for the party served, the party served may afford the party serving the request reasonable opportunity to identify the documents, to examine or inspect them and to obtain copies.

(b) The answer shall be in the form of a paragraph-by-paragraph response which shall

(1) identify all documents or things produced or made available;
(2) identify all documents or things not produced or made available because of the objection that they are not within the scope of

permissible discovery under Rule 4003.2 through Rule 4003.6 inclusive and Rule 4011(c). Documents or things not produced shall be identified with reasonable particularity together with the basis for non-production;
(3) specify a larger group of documents or things from which the documents or things to be produced or made available may be identified as provided by subdivision (a)(2)(i);
(4) object to the request on the grounds set forth in Rule 4011(a), (b), and (e) or on the ground that the request does not meet the requirements of Rule 4009.11;
(5) state that after reasonable investigation, it has been determined that there are no documents responsive to the request.

Note: The party who is requested to produce documents or things is encouraged to identify the documents or things produced and the documents or things withheld through a system of numbering. The party producing the documents and things and the party receiving them are encouraged to keep a current list of the documents and things produced and withheld based on the numbering system. This procedure will assist the court in resolving disputes arising out of production of documents.

Ordinarily, each page of a document should receive a separate number. However, a document may be assigned a number as a whole if it is bound or if it contains pages which are sequentially numbered.

The court may require numbering.

(c) The answer shall be signed and verified by the party making it and signed also by the attorney making an objection if one is set forth.

5. **Documents produced by plaintiff**. Plaintiff produced numerous documents in response to defendant's request for production documents.

6. **No plaintiff Rule 4009.12 required answer.** However, defendant's production of documents prior to and during the January 19, 2004 defendant deposition of plaintiff did ***not*** include plaintiff providing defendant with the Rule 4009.12 required answer.

7. **Expiration of thirty days after service of request**. The thirty day period of time after defendant's service of its December 29, 2003 request for production of documents expired on January 28, 2004, with

plaintiff still ***failing*** to provide defendant with an answer in compliance with Rule 4009.12, which, among other things:

a. **Objections**. Identifies any objections that plaintiff is making to any of defendant's specific document production requests;

b. **Identify What Produced**. Includes a paragraph by paragraph response identifying all documents or things produced or made available;

c. **Identify What Not Produced**. Includes a paragraph by paragraph response identifying all documents or things not produced or made available because of the objection that they are not within the scope of permissible discovery, identifying such documents or things not produced "*with reasonable particularity together with the basis for non-production*";

d. **Numbering**. Identifying the documents or things produced and the documents and things withheld through system of numbering and

e. **Signed & Verified**. Signed and verified by the plaintiff and signed also by the plaintiff's attorney as to any objections made by the plaintiff in the plaintiff's answer to the defendant's reques for production of documents.

Defendant's request

Defendant hereby respectfully requests that plaintiff ***immediately*** serve defendant with an answer to defendant's December 29, 2003 request for production of

documents that complies with the requirements of Rule 4009.12, including thos requirements of such Rule described in paragraph 7 above.

FOR DEFENDANT:
Mid-East Oil Company

Dated: February 10, 2004

Dom W. Greco, Esq.
PA I.D. #16829

Nathaniel C. Parker, Esq
PA I.D. #90993

Greco & Lander, P.C.
P. O. Box 667
Clarion, PA 16214
(814) 226-6853
Fax: (814) 226-4951
Fax: (240) 465-7135

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS :
:
vs. : No. 03-1598-CD
:
MID-EAST OIL COMPANY :

NOW, this 30th day of January, 2004, upon consideration of the attached Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's Nov. 19, 2003 Requests for Admissions, a Rule is hereby issued upon Plaintiff to Show Cause why the Motion should not be granted. Rule Returnable the 20 day of February, 2004, for filing written response.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

FILED

FEB 0 2 2004

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT:

Judge J. Zimmerman

Judge

#12

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "Defendant's Rule 4014 (c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions" was sent by U.S. mail, postage prepaid, on January 22, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By _____
NATHANIEL C. PARKER, ESQ.

FILED

JAN 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

#11

01/22/2004 1:05 PM:DWG{GL028681.1}

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,

Plaintiff

vs.

Mid-East Oil Company,

Defendant

: No. 03-1598-CD

: Type of Case
: Civil Action – Law

: Type of Pleading:

: ***Defendant's Rule 4014(c) Motion To Determine Sufficiency of Plaintiff's Answers to Defendant's Nov 19, 2003 Requests For Admissions***

: Counsel of Record for This Party:
: Dom W. Greco, Esq.

: Dom W. Greco, Esq.
: Pa. I.D. #16829
: Fax: (240) 465-7135

: Nathaniel C. Parker, Esq.
: Pa. I.D. #90993
: Fax: (814) 226-4951

: Greco & Lander, P.C.
: P.O. Box 667
: Clarion, PA 16214
: (814) 226-6853

FILED

JAN 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

#10

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

Defendant's Rule 4014 (C) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions

AND NOW, this 22nd day of January, 2004, Defendant Mid-East Oil Company, by its undersigned counsel hereby files this Motion, with a summary attached hereto as ***Exhibit B***, to determine the sufficiency of certain denials of Plaintiff to various of Defendant's November 19, 2003, Requests for Admissions and to have such plaintiff denials held to be plaintiff deemed admissions. In support of this Motion, Defendant avers as follows:

1. **Pleadings**. Plaintiff filed a complaint against defendant. Defendant filed preliminary objections. Plaintiff then filed an amended complaint.

2. **Amended complaint**. The amended complaint alleges the following causes of action against defendant:

   a. Breach of contract --Count #1.

   b. Unjust enrichment -- Count #2.

c. Constructive trust -- Count #3.

3. **Defendant's discovery request**. Defendant served plaintiff with defendant's November 19, 2003 discovery requests, which included requests for admissions, a copy of which has been filed of record.

4. **Plaintiff's denials**. Plaintiff responded to defendant's requests for admissions, by ***denying*** various of defendant's requests for admissions, a copy of which has been filed of record.

5. **Denials not comply with Rule**. A number of Plaintiff's denials of defendant's request for admissions did ***not*** comply with the requirements of Rule 4014(b) with respect to denials to requests for admissions.

   a. **Rule requirements violated**. Attached as exhibit A is a copy of the pertinent portion of Rule 4014 that plaintiff's denials did ***not*** comply with.

   b. **Specific deemed admissions**. Attached as exhibit B is a list identifying and describing:

      i. **Specific denials in violation**. Each of the specific plaintiff denials that defendant contends plaintiff denied in ***violation*** of the requirements of Rule 4014(b).

      ii. **Reason why denial in violation** The ***reason*** why each such plaintiff denial is in violation of the requirements of Rule 4014(b).

iii. **Justification for "deemed admission"**. Why the court should hold that, as a result, each such plaintiff denial is a "deemed admission" by plaintiff of each such defendant request for admission.

6. **Court to determine sufficiency of Plaintiff's denials**.

a. **Rule 4014 (c) provides**:

i. **Rule justification for this motion**. "*The party who has requested the admission may move to determine the sufficiency of the answer...*"

ii. **Rule justification for "deemed admission" order**. "*If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.*"

b. **Denials not comply with requirements**. Plaintiff's denials to Defendant's requested admissions listed and identified in exhibit B do ***not*** comply with the particular requirements of Rule 4014 that are identified and described in such exhibit.

7. **Materiality of denials at issue.**

a. **Material relevance of subject matter**. The subject matter of ***each*** of the plaintiff's denials that Defendant requests be held to be deemed admissions

by plaintiff, are materially relevant to this litigation, ***because*** such subject matter pertains to:

i. **Plaintiff's violation of statutory duty to Defendant**.

1. The ***issue*** of plaintiff having communicated confidential and proprietary information to a third party (Sbarra) for payment of consideration by such third party to plaintiff[1],

2. when plaintiff as a Pennsylvania licensed geologist[2] was statutorily required by 63 P.S. § 151[3] to hold such information as "*faithful agent and trustee*" for defendant (and its predecessor) in accordance with requirements of the Pennsylvania geologist licensing statute,

3. which plaintiff disclosed information to such third party (Sbarra) plaintiff knew or suspected would be used and was used by and for the benefit of such third party (Sbarra).

---

[1] Plaintiff has ***already*** judicially admitted the following defendant ¶ 14e November 19, 2003 request for admission:

"Donald Sbarra payment to plaintiff. Donald Sbarra or a payor other than Devonian Resources Inc. made payment or gave other consideration to plaintiff during the period of time between August 3, 1999 and the day that plaintiff filed his complaint in this action in full or partial consideration for assistance or information that plaintiff provided to Donald Sbarra or someone other than Devonian Resources Inc. with regard to what ¶ 4 of plaintiff's complaint describes as the Area of Mutual Interest."

[2] See letterhead of plaintiff's letter attached as an exhibit to the complaint, which complaint exhibit letterhead represents plaintiff as a Pennsylvania license geologist.

[3] "*It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer, professional land surveyor or professional geologist: (1) To act for his client or employer in professional matters otherwise than as a faithful agent or trustee, or to accept any remuneration other than his stated recompense for services rendered.*" **63 P.S. § 151**

(Defendant's Requested Admissions ¶ 14(b)(i)-(iii), ¶ 14(c)(i)-(iii) ¶ 14(d)(i)-(iii) and Plaintiff's Related Denials, described in Exhibit B).

ii. **Defendant "free & clear" of plaintiff's claims.** The ***issue*** of whether the conveyance of the "*Oil & Gas Rights*" to Defendant was "*free and clear*" of the claims that plaintiff is asserting against defendant in this litigation. *(Defendant's Requested Admissions ¶ 15a(iii) and 15b(ii)-(iii) and Plaintiff's Related Denials, described in Exhibit B).*

iii. **Plaintiff performance of alleged contract**. The ***issue*** of whether plaintiff actually performed his obligations under the contract that plaintiff alleges is the basis of the causes of action that plaintiff is asserting against defendant. *(Defendant's Requested Admissions ¶ 16b and Plaintiff's Related Denials, described in Exhibit B).*

b. **Relevance of specific plaintiff denials to Causes of Action**. The subject matter of each such defendant requested admission and the related plaintiff denial pertains to plaintiff's alleged cause of action against defendant as follows:

i. **Relationship of Information Recipient**. The **relationship** of a person (Sbarra) to whom plaintiff communicated confidential information pertaining to matters at issue in the litigation

(Defendant's Requested Admissions ¶ 14(b)(i)-(iii) and Plaintiff's Related Denials, described in Exhibit B).

ii. **Intended Use of Information**. What plaintiff knew or suspected about that person's (Sbarra's) **intended use** of that confidential information *(Defendant's Requested Admissions ¶ 14(c)(i)-(iii) and Plaintiff's Related Denials, described in Exhibit B).*

iii. **Actual use of information**. What plaintiff knew or suspected about that person's (Sbarra's) **use** of that confidential information *(Defendant's Requested Admissions ¶ 14(d)(i)-(iii) and Plaintiff's Related Denials, described in Exhibit B).*

iv. **Conveyance to Defendant "Free & Clear"**. The document of conveyance of the "*Oil & Gas Property*" to defendant expressly stated that such conveyance to defendant was "***free and clear of all liens and encumbrances***" *(Defendant's Requested Admissions ¶ 15a(iii) and 15b(ii)-(iii) and Plaintiff's Related Denials, described in Exhibit B).*

v. **Failure of Plaintiff to Perform**. The failure of plaintiff to perform certain specific and material **services required** by the documents that plaintiff himself attached to his complaint as the basis of plaintiff's alleged contract and the three causes of action that plaintiff has asserted against defendant in the complaint

(Defendant's Requested Admissions ¶ 16b and Plaintiff's Related Denials, described in Exhibit B).

Prayer for Relief:

Defendant hereby respectfully requests that this Honorable Court order that Defendant's requested admissions (*listed and identified in the table attached as exhibit B*) are hereby deemed **ADMITTED** by Plaintiff.

Respectfully Submitted:

Dom W. Greco / N.P.

DOM W. GRECO, ESQ.
Pa. I.D. #16829
Fax: (240) 465-7135

NATHANIEL C. PARKER, ESQ.
Pa. I.D. #90993
Fax: (814) 226-4951

Attorneys for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers, Plaintiff vs. Mid-East Oil Company, Defendant	:	No. 03-1598-CD

ORDER DETERMINING ANSWERS INSUFFICIENT & DEEMED ADMISSIONS

AND NOW, this _____ day of _____, 2004, after consideration of Defendant's Rule 4014(c) Motion to Determine Sufficiency of Answers to Defendant's November 19, 2003, Request for Admissions, Plaintiff's response, and argument of counsel, it is hereby ORDERED and DECREED that Defendant's requested admissions (*listed and identified in the table attached as exhibit B to Defendant's Rule 4014(c) Motion to Determine Sufficiency of Answers to Defendant's November 19, 2003, Request for Admissions*) are hereby deemed **ADMITTED** by Plaintiff.

BY THE COURT:

_____J.

Rule 4014(b) Grounds for Rule 4014(c) Motion to Determine Sufficiency of Answers

Exhibit A

Rule 4014(b)

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it. **Pa.R.C.P. No. 4014(b)**

specific Rule 4014(b) grounds holding plaintiff's responses as admissions

1. **Failure of the denial to "fairly meet" the request**. "*A denial shall **fairly meet** the substance of the requested admission...*"

2. **Failure to deny remainder of request**. "*... when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or **deny the remainder.***"

3. **Failure to state "reasonable inquiry"**. "*An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party **states that he or she has made reasonable inquiry** ....*"

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

Exhibit B

Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-3]*
14b.i	Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Devonian Resources Inc.	***Denied.*** "Plaintiff is unaware of the relationship between Donald Sbarra and Devonian Resources Inc. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing Resources for development for oil and gas prospects within the [area of mutual interest]."	**Failure to state "reasonable inquiry" (#3).** Therefore, plaintiff's denial is a "***deemed admission***" of the following, since plaintiff's denial and claim to be "unaware" is not based upon the rule required "reasonable inquiry": **Deemed Admission Summary:** **Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was *not* an owner, director, officer, agent, partner, employee, or representative of Devonian Resources Inc., Van Hampton Oil & Gas Company, or defendant.**
14b.ii	Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Van Hampton Oil & Gas Company.	***Denied.*** "Plaintiff is unaware of the relationship between Donald Sbarra and Van Hampton Oil and Gas Company . As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing Resources for development for oil and gas prospects within the [area of mutual interest]."	
14b.iii	Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of defendant.	***Denied.*** "Plaintiff is unaware of the relationship between Donald Sbarra and Mid-East Oil Company . As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing Resources for development for oil and gas prospects within the [area of mutual interest]."	

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

Exhibit B

Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-3]*
14c.i	At the time of plaintiff's communications with Donald Sbarra between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Devonian Resources Inc.	***Denied*** "All information provided by plaintiff to Donald Sbarra was done so with the belief that plaintiff was acting at the request and consent of Devonian Resources and for purposes of fostering continued investment in natural resource production within the [area of mutual interest]."	• **Failure of the denial to "fairly meet" the request (#1).** Therefore, plaintiff's denial is a "***deemed admission***" of the following, since plaintiff's denial ignored and failed to "*fairly meet*" the portion of the defendant's request [*highlighted to the left*] as to Sbarra's "***intention to use***" the information for the ***other*** designated party (eg. Devonian, Van Hampton, etc). **Deemed Admission Summary:** **At the time of plaintiff's communications with Donald Sbarra between August 3, 1999 and the day that plaintiff filed his complaint in this action *plaintiff knew or suspected* that Donald Sbarra *intended to use* the information from that communication for the benefit of someone *other than* Devonian Resources Inc. Van Hampton Oil & Gas Company, or defendant.**
14c.ii	At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Van Hampton Oil & Gas Company.	***Denied*** "All information provided by plaintiff to Donald Sbarra was done so with the belief that plaintiff was acting at the request and consent of Van Hampton Oil and Gas Company and for purposes of fostering continued investment in natural resource production within the [area of mutual interest]."	
14c.iii	At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than defendant.	***Denied*** "All information provided by plaintiff to Donald Sbarra was done so with the belief that plaintiff was acting at the request and consent of Mid-East Oil Company and for purposes of fostering continued investment in natural resource production within the [area of mutual interest]."	

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

Exhibit B

Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-3]*
14d.i	At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Devonian Resources Inc.	***Denied*** "Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the [area of mutual interest] agreement, including Devonian Resources Inc.."	**Failure of the denial to "fairly meet" the request (#1).** Therefore, plaintiff's denial is a "***deemed admission***" of the following, since plaintiff's denial ignored and failed to "*fairly meet*" the portion of the defendant's request [*highlighted to the left*] as to whether "***Sbarra ...used*** *information*" for the benefit of the ***other*** designated party (eg. Devonian, Van Hampton, etc). **Deemed Admission Summary:** **At the time of plaintiff's communications with Donald Sbarra between August 3, 1999 and the day that plaintiff filed his complaint in this action *plaintiff knew or suspected* that Donald Sbarra *used* the information from that communication for the benefit of someone *other than* Devonian Resources Inc., Van Hampton Oil & Gas Company, or defendant.**
14d.ii	At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Van Hampton Oil & Gas Company.	***Denied*** "Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the [area of mutual interest] agreement, including Van Hampton Oil and Gas Company."	
14d.iii	At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than defendant.	***Denied*** "Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the [area of mutual interest] agreement, including Mid-East Oil Company."	

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

Exhibit B

Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-3]*
15a.iii	The rights that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant were collectively defined therein as "*Oil & Gas Property*".	***Denied*** "The agreement and bill of sale utilized the term "*oil and gas property*". The question of determination of the character and nature of the rights transferred under this agreement and bill of sale are for determination by the court and may not be fully characterized by this particular terminology."	**Failure of the denial to "fairly meet" the request (#1).** Therefore, plaintiff's denial is a "***deemed admission***" of the following, since while plaintiff denied the defendant's requests, plaintiff's explanation of the denials expressly admits [*highlighted to the left*] the ***factual*** accuracy of the defendant's request and only argues the legal significance of such plaintiff's admissions of the facts. **Deemed Admission Summary:** **The January 16, 2002 Assignment and bill of sale between Devonian Resources Inc. conveyed the" *Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".**
15b.ii	The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of sale included "*all royalty and/or overriding royalty interests of Devonian within the AMI*", which abbreviation represents the area referred to in the complaint as the Area of Mutual Interest.	***Denied*** "The plaintiff does not deny inclusion of the language in the bill of sale as set forth in the Request for Admission, and further does not deny that the term "AMI" refers to the area of mutual interest. However, plaintiff does deny that this agreement in any way extinguishes plaintiff's right to receive overriding royalty interest as set forth in the complaint."	
15b.iii	The January 16, 2002 Assignment and Bill of sale between Devonian Resources Inc. conveyed the" *Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".	***Denied.*** "The plaintiff admits that the January 16, 2002 assignment and bill of sale contains the language "free and clear of all liens and encumbrances". However, plaintiff denies that the inclusion of this terminology in any way extinguishes his right to obtain oil and gas royalties for all resource production within the [area of mutual interest] as set forth in plaintiff's complaint."	

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

Exhibit B

Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-3]*
16b	Plaintiff did not provide defendant with all of the "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*" with respect to the area of Mutual Interest referred to in the complaint.	***Denied.*** "Plaintiff did provide all services necessary to the development of drilling prospects and technical assistance in preparation of drilling program for the establishment of the [area of mutual interest] and the initial drilling program for Devonian, which entitles plaintiff to ongoing overriding royalty interest payments for all resource development and production within the area of mutual interest."	• **Failure of the denial to "fairly meet" the request (#1).** • **Failure to deny remainder of request. (#2).** **Deemed Admission Summary:** **Therefore, plaintiff's denial is a "*deemed admission*" that plaintiff did *not* provide certain services,** since plaintiff's denial ignored and failed to "*fairly meet*" the portion of the defendant's request [*highlighted to the left*] as follows: Plaintiff ***failed*** to deny that plaintiff did not provide the services described the defendant's request. Plaintiff, instead, denied that plaintiff failed to provide services that the plaintiff considered "***necessary***". Plaintiff ***failed*** to deny that plaintiff did not provide "***...services to... provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development...***"

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Defendant's Preliminary Objections to Amended Complaint"** was sent by U.S. mail, postage prepaid, on January 21, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.

By _____
NATHANIEL C. PARKER, ESQ.

FILED

JAN 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

#9

C17

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant's Preliminary Objections***
Defendant	:	***to Amended Complaint***
	:	
	:	
	:	
	:	Counsel of Record for This Party:
	:	Dom W. Greco, Esq.
	:	Supreme Court I.D. No. 16829
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court I.D. No. 90993
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
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	:	Fax: (240) 465-7135
	:	Pa. I.D. #16829

FILED

JAN 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

#5

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Table Summarizing Preliminary Objections		
#	***Applicable Rule***	***Description***
1	1028(a)(4)	Demurrer as to all counts *(See page #3)*
2	1028(a)(4)	Demurrer as to all counts *(See page #5)*
3	1028(a)(2) & 2227	Failure to join indispensable parties *(See page #11)*
4	Rules1028(a)(2) and 1019(i)	Failure to attach writing *(See page #13)*
5	Rules1028(a)(3)	Insufficient specificity *(See page #14)*
6	1028(a)(2) and 1019(c):	Failure to plead satisfaction of conditions *(See page #28)*
7	Rules 1028(a)(2) and 2128(a):	Misjoinder of defendant *(See page #32)*

***Note As to Applicable Rules*:**

Copies of all of the Rules cited in the above "*Table Summarizing Preliminary Objections*" are attached as Exhibit A (Page #34) to these objections for the convenience of the reader.

Illustrative Timeline & Flowchart		
#	Description	Location
1	Transaction Steps Showing Defendant Not Liable	See page #10
2	Smyers Vs. Mid-East Timeline from Complaint	See page #25

Defendant Mid-East Oil Company, by its undersigned legal counsel, Greco & Lander P.C., hereby asserts the following preliminary objections to the Plaintiff's amended complaint (hereinafter "Complaint"):

Preliminary objection #1: Rule 1028(a)(4): demurrer as to all counts: Failure to allege performance by Plaintiff

1. **Proposed Wells Condition**.

Plaintiff alleged that there was a proposal for plaintiff to be paid a royalty by Van Hampton Oil and Gas Company and Devonian Resources Inc. "*from each well located in a prospect or program* ***proposed by the plaintiff***." (emphasis supplied) Complaint ¶ 3. ("Proposed Wells Requirement")

2. **Acceptance of Terms**.

Plaintiff then alleged that the terms of the proposal were accepted by Van Hampton Oil and Gas Company and Devonian Resources Inc. Complaint ¶ 5.

3. **No allegation condition satisfied**.

   a. However, while plaintiff's complaint made various allegations throughout the complaint about various actions that the plaintiff took, plaintiff's complaint ***never*** alleged that the Proposed Wells Requirement was ever met.

   b. For example, plaintiff never alleged that there was ever any "*well located in a prospect or program* ***proposed*** *by the plaintiff*" (emphasis supplied), which is the required Proposed Wells Requirement, despite the fact that the plaintiff alleged the following in the complaint ***none*** of which allegations constitutes an allegation of satisfaction of the ***required*** Proposed Wells Requirement:

      i. that plaintiff provided services "to ***develop*** a drilling prospect" (emphasis supplied) (complaint ¶ 6),

ii. the plaintiff "***agreed to present***... prospect" (emphasis supplied) (complaint ¶ 8),

iii. "to ***develop*** drilling prospects" (emphasis supplied) (complaint ¶ 10),

iv. "providing geological ***services***" (emphasis supplied) (complaint ¶ 13),

v. "providing geological ***services***" (emphasis supplied) (complaint ¶ 14), and

vi. "performing geological ***services*** including ***preparation*** of a drilling prospects" (emphasis supplied) (complaint ¶ 25), plaintiff.

4. The complaint alleges no valid causes of action, because plaintiff never alleged that he satisfied the Proposed Wells Requirement -- that he made the required proposals to defendant.

5. While complaint included a number of *other* allegations with respect to actions with the plaintiff claimed to have taken, such as doing development work on a drilling prospect, agreeing to make presentations, rendering geological services, and preparing drilling prospects, the complaint did ***not*** allege that plaintiff actually ever made the required proposal of any well, prospect, or program to defendant.

Prayer for relief Preliminary Objection #1:

Wherefore, defendant requests that the court dismiss the complaint for plaintiff's failure to allege that plaintiff performed its obligations under the alleged contract, which obligations plaintiff himself alleged in the complaint.

Preliminary objection #2: Rule 1028(a)(4): demurrer as to all counts

1. **No liability assumed by defendant**.

   a. **No allegation defendant assumed liability.**

      The documentary exhibits that plaintiff attached as exhibits to his complaint as the terms of defendant's alleged obligations to plaintiff do ***not*** provide that defendant ***assumed*** any liability of Devonian Resources, Inc. to make payments to plaintiff.

   b. **Devonian rights "*subject to*" prior agreement**.

      i. **Only "*subject to*" specified the "*prior agreement*".**

         ¶ 2 of the August 23, 2000 joint venture agreement between Devonian Resources Inc. and defendant[1] provides that the leases are "*subject to*" the overriding royalty obligation of Devonian Resources "*as mandated by a prior agreement between Devonian Resources and a third party*".

      ii. **Plaintiff not identified as applicable "*third party*"**.

         That August 23, 2000 joint venture agreement between Devonian Resources Inc. and defendant does ***not*** identify ***who*** that "*third party*" is with whom Devonian Resources Inc. entered into such prior agreement that allegedly mandated such overriding royalty obligations of Devonian.

      iii. **Confidentiality agreement as "*prior agreement*".**

         It appears that the complaint alleges that the February 29, 2000 confidentiality agreement between plaintiff and Devonian

[1] Complaint Exhibit #2.

Resources Inc.[2] is such "*prior agreement*" that plaintiff alleges "*mandated*" such overriding royalty obligations to plaintiff[3].

iv. **Confidentiality agreement *not* mandate royalties payable to plaintiff.**

1. **Complaint does not allege.**

The complaint does ***not*** allege ***what*** in the February 29, 2000 confidentiality agreement between plaintiff and Devonian mandates any such overriding royalty obligations to plaintiff.

2. **Terms of agreement do not provide**.

The terms of the February 29, 2000 confidentiality agreement attached to the complaint do ***not*** in fact mandate any such overriding royalty payments to plaintiff.

v. **Confidentiality agreement *only* expands plaintiff's letter to Van Hampton**.

The relevant portion of the February 29, 2000 confidentiality agreement merely states that:

"*This confidentiality agreement is intended to expand on and supplement the terms of a letter dated August 3, 1999[4] to Van Hampton Oil and Gas Company (receiver) from Larry F. Smyers (offeror) attached herein as exhibit II... This agreement includes Van Hampton Oil and Gas, it's related companies and joint interest activities in the area defined in exhibit I.*"

vi. **Van Hampton not a party.**

Van Hampton Oil and Gas Company is ***not*** a party to the

[2] Complaint Exhibit #1.
[3] See Complaint ¶12.
[4] Complaint Exhibit #1, Page 5.

February 29, 2000 confidentiality agreement between plaintiff and Devonian.

vii. **No Devonian royalty obligation to plaintiff.**

Therefore, there is no overriding royalty obligation of Devonian Resources to plaintiff, because according to the terms of the writings that plaintiff attached to the complaint, there is no prior agreement between Devonian Resources and plaintiff that mandates any such payments to plaintiff.

viii. **Oil & gas rights not "subject to" claims of plaintiff.**

Therefore, ¶ 2 of the August 23, 2000 joint venture agreement neither (i) imposes an obligation upon defendant to pay overriding royalty to plaintiff nor (ii) makes any of the leases "*subject to*" any alleged obligations of Devonian Resources to plaintiff, because the writings attached to the complaint as exhibits indicate that ***if*** anyone has any such overriding royalty obligations to plaintiff it would ***only*** be Van Hampton Oil & Gas Company who would be obligated and ***not*** Devonian Resources.

2. **No privity of contract**.

The complaint does ***not*** allege that defendant was a ***party*** to any contract with plaintiff imposing liability on defendant to make payments to plaintiff.

3. **Failure of plaintiff to timely record**.

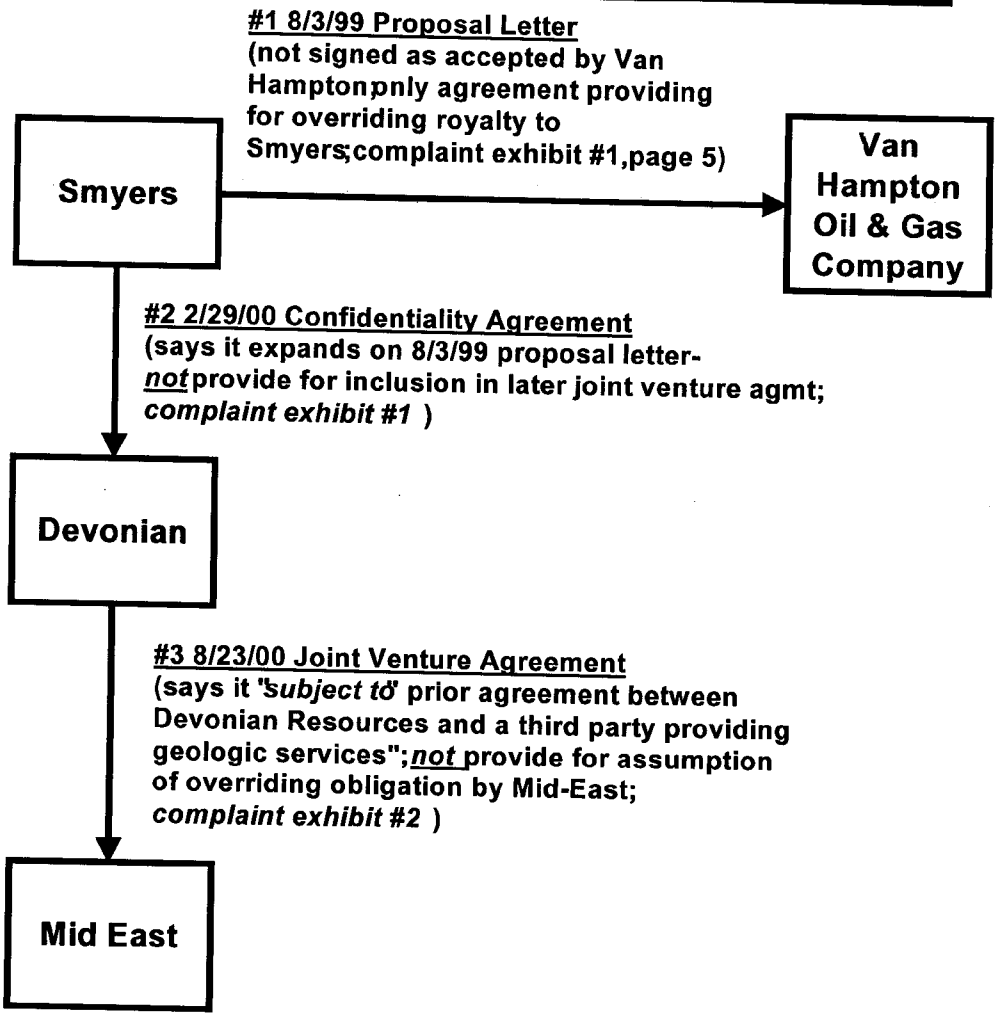
Complaint ¶ 7 is an admission by plaintiff that plaintiff did ***not*** record his alleged agreement with Devonian Resources Inc. with respect to the alleged area of mutual interest until September 24, 2001, which is more than a year ***after*** the August 23,

2000 Joint Venture Agreement that plaintiff alleged in complaint ¶ 7 that defendan entered into with Devonian Resources Inc. with respect to the area of mutual interest.

4. **Illustrative flowchart**.

The following flowchart shows the transactions plaintiff pled in the complaint and illustrates that defendant is ***not*** liable to make the overriding royalty payments to plaintiff that plaintiff claims:

Transaction Steps Showing Defendant *Not* Liable



Facts:

- Defendant Mid East ***only*** had agreement with Devonian (see step #3); not with Van Hampton.
- Devonian as agent for Van Hampton ***only*** had confidentiality agreement with Smyers to expand and supplement the 08/03/99 letter. (See step #2)
- Confidentiality agreement was therefore incorporated into ***earlier*** Letter Proposal to Van Hampton - step # 1
- Letter proposal to Van Hampton step #1 was ***only*** document providing for royalties
- Such royalty payment would have gone ***only*** from Van Hampton (not Devonian) to Smyers
- Smyers letter proposal to Van Hampton (step #1) was ***not*** incorporated into Joint Venture Agmt (step #3)

Conclusion:

The override of the Smyers-Van Hampton letter proposal (#1) was ***not*** assumed by defendant Mid-East in the later Devonian-Defendant Mid- East joint venture agreement (#3).
Therefore, defendant is not liable.

Prayer for relief Preliminary Objection #2:

Wherefore, defendant hereby demurs to all of the causes of action alleged b plaintiff against defendant, and requests that the court dismiss plaintiff's complaint.

Preliminary objection #3: Rules 1028(a)(2) & 2227: failure to join indispensable parties

5. **Indispensable parties by contract**.

   a. Plaintiff's claims against defendant are based upon the terms of agreements that plaintiff alleges that he entered into with:

      i. Van Hampton Oil & Gas Company (Complaint Exhibit 1, Page 5); and

      ii. Devonian Resources, Inc. (Complaint Exhibit 1)

   b. Plaintiff did ***not*** join either Van Hampton Oil & Gas Company or Devonian Resources, Inc. as defendants.

   c. Plaintiff did not allege that either Van Hampton Oil & Gas Company or Devonian Resources, Inc. were released or their rights terminated as non-existent with respect to such alleged agreements.

6. **Indispensable party joint venturer**.

   a. **Joint venture agreement complaint exhibit.**

      The introductory paragraph of the August 23, 2000 joint venture agreement that is attached as in exhibit to the complaint as exhibit #2:

      i. identifies Devonian Resources Inc. as a joint interest owner,

      ii. describes the agreement as establishing "*the joint venture*" , and

      iii. provides that it is the purpose of the joint venture "*to explore for and develop ....*"

   b. Joint interest owner not joined.

      Plaintiff's complaint does ***not*** join Devonian Resources Inc., who is

an indispensable party, since Devonian Resources was a joint interest owner with respect to royalties claimed by Plaintiff.

Prayer for relief Preliminary Objection #3:

Wherefore, defendant requests that the court dismiss the complaint for plaintiff's failure to join indispensable parties Devonian Resources Inc. and Van Hampton Oil & Gas Company as defendants.

Preliminary objection #4: Rules1028(a)(2) and 1019(i): failure to attach writing

7. **August 23, 2001 agreement.**

   a. **Alleged August 23, 2001 agreement**.

   Complaint ¶ 16 alleges that "*Defendant... by virtue of the Joint Venture Agreement dated August 23, 2001, which is attached as an exhibit to the Bill of Sale is obligated to pay a 1/64 overriding royalty to plaintiff....*"

   b. **Failure to attach August 23, 2001 agreement**.

   Plaintiff ***failed*** to attach a copy of such alleged August 23, 2001 Joint Venture Agreement to the complaint, but ***instead*** attached a copy of the year ***earlier*** August 23, 2000 Joint Venture Agreement to the complaint.

Prayer for relief Preliminary Objection #4:

Wherefore, defendant requests that the court dismiss plaintiff's complaint, unless plaintiff files a timely amended complaint to which is attached such August 23, 2001 Joint Venture Agreement.

Preliminary objection #5: Rules 1028(a)(3): insufficient specificity

8. **Complaint ¶ 12**.

   a. **Alleging failure of defendant to pay.**

   Complaint ¶ 20 alleges:

   "*Despite its obligations under the [area of mutual interest] and Joint Venture Agreements, the defendant has failed and refused to make royalty payments due and owing to plaintiff for all other oil and gas wells listed on exhibit "4" as well as any and all other wells developed by defendant within the [area of mutual interest] which are currently not known to plaintiff.*"

   b. **Insufficient specificity of allegations prejudices defendant.**

   Such allegation provides insufficient specificity with respect to:

      i. **What.**

         1. **Obligations**.

         What obligations is plaintiff alleging that defendant owes to plaintiff " *under the [area of mutual interest]* " that is separate and apart from any obligations that the plaintiff is alleging that the defendant owes to plaintiff under the "*Joint Venture Agreements*"?

         2. **Agreements**.

         What is the identity of each of the various joint venture agreements that plaintiff has alleged, in the plural, that is the basis of such alleged obligations of defendant to plaintiff?

ii. **Which.**

1. **Oral or in writing**.

   Which of those alleged various joint venture agreements are oral and which are in writing?

2. **Attached or not**.

   Which of those alleged various joint venture agreements are attached to the complaint as an exhibit and which are not?

3. **Which provision**.

   Which provisions in such alleged joint venture agreements is plaintiff contending is the basis of the obligations that plaintiff is alleging that defendant owes to plaintiff?

iii. **Whose.**

Whose obligation was it to make the payments to plaintiff that plaintiff alleges defendant failed or refused to make the plaintiff?

iv. **Clarification.**

Is plaintiff alleging that all of the "*other oil and gas wells listed on exhibit "4"*" were drilled, developed, or operated *by defendant*?

v. **Why.**

Why is plaintiff claiming that it is defendant ***alone*** who is obligated to pay plaintiff overriding royalty with respect to production from wells located on leases that complaint exhibit #4

shows is being in the name of a lessee ***other than*** Devonian, ***given that*** complaint ¶ 5 and 7 alleged that the joint venture Agreement imposes such obligations on defendant ***only*** with respect to Devonian?

9. **Complaint ¶ 22**.

   a. **Alleged defendant breach.**

   Complaint ¶ 22 alleged that "*Defendant has breached its contractual obligation to plaintiff....* [Followed by subparagraphs listing and describing various obligations that plaintiff alleges defendant owes to plaintiff] "

   b. **Insufficient specificity of allegations prejudices defendant.**

   Such allegation provides insufficient specificity with respect to:

      i. **¶ 22(a) "*contractual obligation to plaintiff*".**

         1. **Contractual obligations to plaintiff.**

            a. What is the source of that alleged defendant "*contractual obligation to plaintiff*"?

            b. Was that "*contractual obligation to plaintiff*" created orally or in writing?

            c. Do any of the writings attached as exhibit to the complaint create or describe such "*contractual obligation to plaintiff*"?

         2. **Controlling agreements.**

            a. Which are the agreements that plaintiff alleged in ¶ 22(a) as the "*controlling agreements*"?

b. Are those "*controlling agreements*" oral agreements or written agreements?

c. Are there any "*controlling agreements*" that are ***not*** attached to the complaint as an exhibit?

3. **Royalty.**

a. **Limited to defendant's 50% interest.**

Is the royalty that plaintiff is alleging that defendant owes to plaintiff based upon:

i. ***all*** of the oil and gas production within the designated geographic area, ***or***

ii. ***only*** that portion of the production in that geographic area allocated to the 50 percent interest of defendant provided for by the August 23, 2000 joint venture Agreement between defendant and Devonian Resources Inc. attached to the complaint as an exhibit?

b. **Whose gross proceeds.**

Is the 1/64 royalty the plaintiff is claiming defendant owes plaintiff being claimed by plaintiff based upon:

i. ***only*** the gross proceeds that defendant itself receives from well production,

ii. the gross proceeds of what ***both*** defendant and Devonian Resources Inc. receive from well production, ***or***

iii. the gross proceeds of ***all*** of what defendant, Devonian Resources Inc., and all others ***combined*** receive from well production?

c. **During what period of time.**

Is plaintiff alleging that the alleged royalty payment obligation that defendant owes to plaintiff:

i. is limited to oil and gas production ***only*** during the term of defendant's ownership of an interest in the wells in the area of mutual interest, ***or***

ii. extends ***beyond*** the term of defendant's ownership of such interest in such wells in such area?

d. **Type of defendant's relationship to wells.**

Is plaintiff alleging that the wells with respect to which plaintiff is alleging defendant owes plaintiff overriding royalty are wells drilled ***or*** operated by defendant?

e. **Relationship to formation of joint venture.**

i. Is plaintiff alleging that the wells with respect to which plaintiff is alleging

defendant owes plaintiff overriding royalty are ***limited to*** only wells drilled after defendant entered into the joint venture agreement with Devonian Resources Inc. on August 23, 2000?

ii. If so, ***which*** of the various joint venture agreements plaintiff refers to in ¶ 20 of the complaint is plaintiff using the formation date of as the date of the commencement of the accrual of plaintiff's alleged claims against defendant?

ii. ¶ 22 (b) "*...failing to provide an accounting of oil and gas production....*"

1. **Source of alleged defendant obligation.**

   Is plaintiff's ¶ 22 (b) allegation of defendant "*...failing to provide an accounting of oil and gas production for all wells located within the [area of mutual interest]....*" a "*contractual obligation*" of defendant to provide such an accounting:

   a. **Written.**

      Provided for or described in any of the writings attached to the complaint, ***or***

b. **Oral.**

Is it an alleged oral obligation of defendant to plaintiff?

2. **Extent of alleged defendant obligation.**

Is the accounting obligation that plaintiff is alleging tha defendant owes to plaintiff an obligation to provide an accounting for:

a. **All production.**

All of the oil and gas production within the designated area, ***or***

b. **Only certain production.**

Only that portion of the production in that area allocated to the 50 percent interest of defendant provided for by the August 23, 2000 joint venture Agreement between defendant and Devonian Resources Inc. attached to the complaint as an exhibit?

iii. **¶ 22 (c) "*...failing to record or otherwise document of record....*"**

1. **Source of alleged defendant obligation.**

Is plaintiff's ¶ 22 (c) allegation of defendant "*...failing to record or otherwise document of record plaintiff's overriding royalty interest in all wells developed within the [area of mutual interest]....*":

a. **Written.**

A "*contractual obligation*" of defendant to provide such "*recording or otherwise document of record*" provided for or described in any of the writings attached to the complaint, ***or***

b. **Oral**.

Is it an alleged oral obligation of defendant to plaintiff?

2. **Extent of alleged defendant obligation.**

Is the obligation " *to record or otherwise document of record plaintiff's overriding royalty interest* " that plaintiff is alleging that defendant an obligation that defendant owes to plaintiff with respect to:

a. **All production.**

All of the oil and gas production within the designated area, ***or***

b. **Only certain production.**

Only that portion of the production in that area allocated to the 50 percent interest of defendant provided for by the August 23, 2000 joint venture Agreement between defendant and Devonian Resources Inc. attached to the complaint as an exhibit?

10. **Complaint ¶ 23**.

a. **Damages allegedly caused by defendant.**

Complaint ¶ 23 alleges "*As a direct result of defendant's breach of their contractual obligations, plaintiff has incurred and continues to incur damages....*"

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **Limited to 50 percent.**

Whether or not the damages the plaintiff alleges are ***limited to*** the 50 percent share of the joint venture described in the joint venture agreement the plaintiff attached to the complaint?

ii. **Limited to time of ownership.**

Whether or not the damages the plaintiff alleges are ***limited to*** the period of time during which defendant owns an interest in the alleged joint venture?

iii. **Limited to existence of joint venture.**

Whether or not the damages the plaintiff alleges are ***limited to*** the period of time during which the joint venture is in existence?

iv. **Method of calculation.**

Is the alleged royalty:

1. **Only defendant's share.**

Calculated on ***only*** defendant's share of any well production, ***or***

2. **Share of production of others.**

Calculated upon the shares of production from wells owned other than by defendant?

v. **Items included.**

Whether the ¶ 23 "*damages*" are:

1. **Only overriding royalty.**

Limited to the overriding royalty described in complaint ¶ 22(a), ***or***

2. **Other items.**

Includes other items?

11. **Complaint ¶ 28.**

a. **Claim defendant unjustly enriched.**

Complaint ¶ 28 alleges that "*Defendant has been unjustly enriched at plaintiff's expense....*"

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **How plaintiff conferred benefits on defendant.**

How did plaintiff confer benefits on defendant that "*unjustly enriched*" defendant, ***given that***:

1. **No alleged dealings between plaintiff and defendant.**

The complaint does ***not*** include any allegations that plaintiff had ***any*** dealings with defendant?

2. **August 9, 1999 letter.**

   a. **Plaintiff's proposal was only to Van Hampton.**

   The complaint alleges in complaint ¶ 3 - ¶5 that plaintiff's August 9, 1999 proposal letter was ***not*** to defendant, but was ***instead*** to Van Hampton Oil & Gas Company and Devonian Resources.

   b. **Plaintiff's proposal was prior to joint venture.**

   The August 9, 1999 letter was ***prior to*** the August 23, 2000 Joint Venture Agreement between Devonian Resources Inc. and defendant.

   c. **Plaintiff not a party to joint venture agreement.**

   The complaint does ***not*** alleged that Plaintiff was a party to the joint venture agreement.

3. **February 29, 2000 agreement.**

   a. **Agreement with Devonian and not defendant.**

   The complaint alleges that plaintiff's February 29, 2000 agreement was ***not*** with defendant, but was instead with Devonian Resources Inc.

   b. **Prior to joint venture Agreement.**

   The February 29, 2000 agreement was ***prior to*** the August 23, 2000 Joint Venture Agreement between Devonian Resources Inc. and defendant.

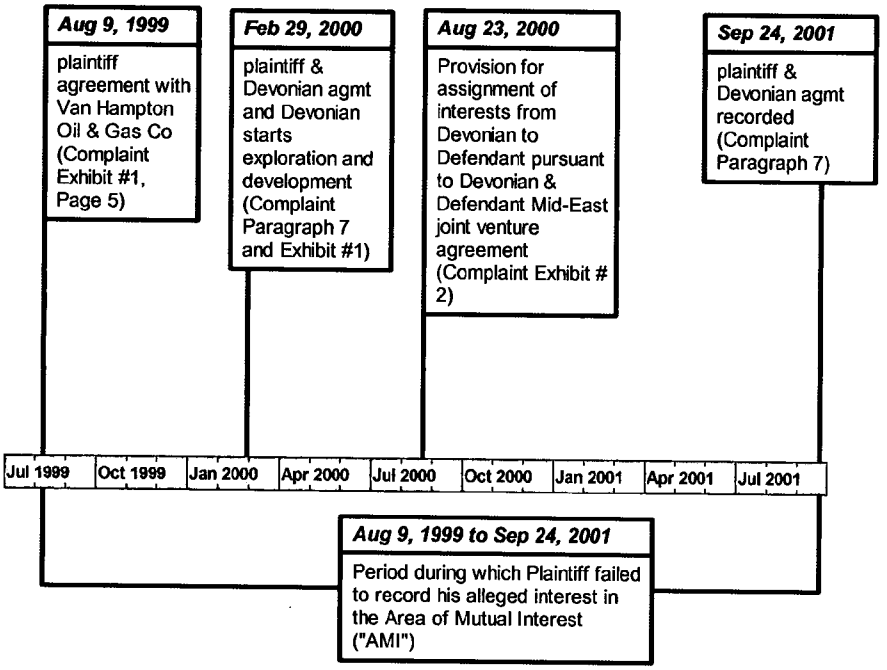
c. **Plaintiff not party to joint venture agreement.**

The complaint does ***not*** alleged that plaintiff was a party to the Joint Venture Agreement.

4. **Plaintiff recorded after joint venture agreement.**

The complaint alleges in complaint ¶ 7 that plaintiff did ***not*** record his February 29, 2000 agreement with Devonian Resources Inc. until September 24, 2001, well ***after*** defendant had previously entered into its August 23, 2000 joint venture Agreement with Devonian Resources Inc., **as shown in the following time line**:

Smyers v. Mid-East Timeline from Complaint



ii. **What expense.**

What was the "*expense*" that plaintiff is alleging plaintiff incurred the plaintiff is alleging "*unjustly enriched*" Defendant?

iii. **How defendant enriched 100 percent.**

In what way was defendant allegedly "*unjustly enriched*" for 100 percent of the amount of the overriding royalties that plaintiff is claiming, ***given that*** the writings attached to the complaint disclose that:

1. **Defendant only had 50% interest.**

   The joint venture agreement ***only*** provided for defendant to have a 50 percent interest in the joint venture?

2. **Significant share of others.**

   ¶ 2 of the August 23, 2000 Joint Venture Agreement attached to the complaint as an exhibit discloses from its discussion of "*the net revenue interest of the leaseholds effecting this joint venture*" that a significant portion of the gross production from the wells from which plaintiff is seeking to impose an obligation upon defendant to make overriding royalty payments to plaintiff is required to be paid to parties ***other than defendant***, and is therefore ***not*** kept or retained by defendant.

iv. **How was defendant enriched by plaintiff.**

In what way was defendant allegedly "*unjustly enriched*" by the plaintiff, ***given that***:

1. **Plaintiff not identified as service provider.**

¶ 2 of the August 23, 2000 Joint Venture Agreement attached as an exhibit to the complaint does ***not*** identify plaintiff as "*a third party providing geologic services for this perspective area*"?

2. **Defendant did not know of plaintiff.**

The complaint does ***not*** allege that at the time that defendant entered into such August 23, 2000 Joint Venture Agreement that defendant knew that plaintiff was" *a third party providing geologic services for this perspective area*"?

3. **No allegation plaintiff proposed prospects.**

The complaint ***fails*** to allege that plaintiff proposed each of the drilling prospects to defendant that were eventually drilled and developed from which the oil and gas production flowed.

Prayer for relief Preliminary Objection #5:

Wherefore, defendant requests that the court dismiss plaintiff's complaint, unless plaintiff files a timely amended complaint that includes sufficient specificity to fully and fairly address and answer all of the questions listed above as part of this preliminary objection #5.

Preliminary objection #6: Rules 1028(a)(2) and 1019(c): failure to plead satisfaction of conditions

12. **Complaint exhibits disclose existence of conditions.**

The exhibits to the complaint disclose that there are numerous important agreed-upon conditions, the performance or occurrence of which are conditions precedent to plaintiff's eligibility to receive overriding royalty payments.

13. **Plaintiff not aver all conditions satisfied.**

The complaint does ***not*** aver generally or specifically that ***all*** such conditions precedent have been performed or have occurred.

14. **For example:**

a. **No specification of required specific services** .

i. **Plaintiff's August 3, 1999 proposal letter to Van Hampton**.

The August 3, 1999 proposed letter from plaintiff to Van Hampton Oil & Gas Company attached to the complaint:

1. ***"petroleum geologist/geophysicist"* were promised**.

Identifies such proposed letter from plaintiff as being from a "*petroleum geologist/geophysicist*", ***and***

2. **Specific services promised.**

With respect to rendering "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development.*"

ii. **Plaintiff failed to allege satisfaction of conditions.**

The complaint does ***not*** allege that the plaintiff was in fact at the time of the execution of the joint venture agreement on August 23, 2000 actually ***then*** providing:

"*petroleum geologist/geophysicist... services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*"

with respect to ***all*** of the wells from which plaintiff's complaint is claiming entitlement to overriding royalties.

b. **No allegation of compliance with noncompetition condition.**

i. **Noncompetition by plaintiff condition.**

The February 29, 2000 confidentiality agreement to which plaintiff is a party expressly provides in the hand written in addition to ¶ 3(c) that the plaintiff, as offeror therein, "*will not lease in [the] geographic area for [the] term of [the] Agreement*".

ii. **No allegation of compliance with noncompetition condition.**

The complaint does ***not*** allege that plaintiff complied with this condition during the term of the Agreement, so it cannot be determined if plaintiffs satisfied this condition precedent.

c. **No allegation of compliance with "*mutually acceptable compensation*" condition.**

i. **Existence of condition.**

The introductory paragraph of February 29, 2000 confidentiality

agreement sets forth the condition that the parties to the Agreement (plaintiff and Devonian Resources Inc.) agree upon "*mutually acceptable compensation*" for Devonian Resources Inc. to pay to plaintiff.

ii. **No allegation of satisfaction condition.**

The complaint does ***not*** allege that this condition of "*mutually acceptable compensation*" was satisfied. The complaint does ***not*** allege that plaintiff and Devonian Resources Inc. arrived at or agreed-upon such required "*mutually acceptable compensation*".

d. No allegation of satisfaction of "*minimum net revenue interest*" condition.

i. **Existence of condition.**

The August 23, 2000 Joint Venture Agreement ¶ 2 provides that "*the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent*".

ii. **No allegation of satisfaction of condition.**

The complaint does ***not*** allege that the payment of the amounts that plaintiff has sued defendant for in the complaint would satisfy this required net revenue interest condition.

Prayer for relief Preliminary Objection #6:

Wherefore, defendant requests that the court dismiss plaintiff's complaint for plaintiff's failure to allege the performance or occurrence of all conditions precedent, unless plaintiff files a timely amended complaint properly alleging

that all conditions precedent have been performed or have occurred as requir by Rule 1019 (c).

Preliminary objection #7: Rules 1028(a)(2) and 2128(a): misjoinder of defendant

15. **Existence of joint venture alleged.**

The introductory paragraph of the August 23, 2000 joint venture agreement refers to "*...the joint venture between Devonian Resources Inc. and [the defendant]*"

16. **Joint venture agreement exhibit evidences partnership.**

The terms of the August 23, 2000 joint venture agreement attached as an exhibit to the complaint disclose that such joint venture is in substance, an association of two or more persons to carry on as co-owners a business for profit and therefore the joint venture constitutes a partnership.

17. **Complaint fails to name partnership as defendant.**

The complaint does ***not*** name the joint venture partnership as a defendant, but instead ***only*** names the defendant partner individually as a defendant.

Prayer for relief Preliminary Objection #7:

Wherefore, defendant requests that the court dismiss the complaint for improperly joining the defendant, rather than the joint venture partnership, as defendant.

Respectfully Submitted:

Dated: January 21, 2004

By _____
DOM W. GRECO, ESQ.
Attorney for Defendant
Greco & Lander, P.C.
1390 East Main Street, Suite 2
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853
Supreme Court #16829

Dated: January 21, 2004

By _____
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Greco & Lander, P.C.
1390 East Main Street, Suite 2
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853
Supreme Court #90993

Exhibit A

Rules cited in the "*Table Summarizing Preliminary Objections*"

Copies of all of the Rules cited in the "*Table Summarizing Preliminary Objections*" contained on page # 1 are as follows, with those portions of such cited rules highlighted in blue for the convenience of the court:

Cited Rules with Page Numbers of Full Text of Rules	
Rule	***Exhibit A Page Number***
Rule 1019. Contents of Pleadings. General and Specific Averments	**Page # 34**
Rule 1028. Preliminary Objections	**Page # 36**
Rule 2128. Actions against Partnerships and Liquidators	**Page # 38**
Rule 2227. Compulsory Joinder	**Page # 13**

Rule 1019. Contents of Pleadings. General and Specific Averments

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer, it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Note: If the agreement is in writing, it must be attached to the pleading. See subdivision (i) of this rule.

(i) When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Rule 1028. Preliminary Objections

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

Note: Of the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by Rule 1006(e). Forum non conveniens and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2).

See Rule of Appellate Procedure 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer); and

Note: The defense of the bar of a statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; and

(6) pendency of a prior action or agreement for alternative dispute resolution.

Note: An agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration pursuant to the Uniform Arbitration Act, 42 Pa.C.S. § 7304, or the common law, 42 Pa.C.S. § 7342(a).

(b) All preliminary objections shall be raised at one time. They shall state specifically the grounds relied upon and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

Note: Preliminary objections raising an issue under subdivision (a)(1), (5) or (6) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

However, preliminary objections raising an issue under subdivision (a)(2), (3) or (4) may be determined from facts of record so that further evidence is not required.

Consult local rules which may contain supplementary procedures governing the filing and disposition of preliminary objections.

(d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty days after notice of the order or within such other time as the court shall fix.

(e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty days after notice of the order or within such other time as the court shall fix.

(f) Objections to any amended pleading shall be made by filing new preliminary objections.

Rule 2128. Actions against Partnerships and Liquidators

(a) An action against a partnership may be prosecuted against one or more partners as individuals trading as the partnership in the manner designated by Rule 2127(a), or against the partnership in its firm name.

(b) If a plaintiff prosecutes an action against a partnership in its firm name only, the partnership may prosecute any setoff, counterclaim or cross-action in its firm name.

(c) An action prosecuted against the liquidator of a dissolved partnership shall be prosecuted in the following manner: "A, Liquidator of A, B and C, late trading as X & Co."

(d) Whenever an action is prosecuted against a partnership in the names of the partners trading in the firm name and the partners or partnership shall have failed to file in the office of the prothonotary of the county or counties in which the partnership business is conducted a statement of membership as required by law, such partners shall not be permitted to plead a misnomer or the omission of the name of a partner of the partnership or the inclusion of the names of persons not partners of said partnership.

Rule 2227. Compulsory Joinder

(a) Persons having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants.

(b) If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

RESPONSE TO REQUEST FOR ADMISSIONS; ANSWERS TO INTERROGATORIES; AND RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

DEC 31 2003

William A. Shaw
Prothonotary/Clerk of Courts

(#1

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,

Plaintiff

vs.

Mid-East Oil Company,

Defendant

No. 03-1598-CD

Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents

The Defendant, pursuant to Rules 4005, 4009.1 et seq. and 4014 of the Pennsylvania Rules of Civil Procedure, hereby request that Plaintiff answer or respond to, in writing and under oath, by an officer or agent, within thirty (30) days after service hereof, the following requests for admissions, interrogatories and requests to produce, and produce for inspection and copying within thirty (30) days after service hereof in the office of the Defendant's counsel at 1390 East Main Street, Suite 2, Clarion, Pennsylvania, the documents requested herein.

In accordance with Rule 4007.4 these requests for admission, interrogatories and requests to produce shall be deemed continuing so as to require the filing of supplemental or amended responses, answers or production of documents prior to trial in the event that additional or different information or documents become available or are obtained in accordance with Rule 4007.4 of the Pennsylvania Rules of Civil Procedure.

The Defendant reserves the right to serve supplemental or additional requests for admission, interrogatories and requests for production of documents.

GENERAL DEFINITIONS

1. ***"Identify"***: As the term is used herein, identify shall have the following meaning:

(a) ***Persons***. When identifying a person to give such person's:

(1) ***Name***. Full name;

(2) ***Address***. Last known business address and last known residence address;

(3) ***Business Affiliation***. Present or last known business affiliation at the time in question; and

(4) ***Telephone***. The business and residence telephone numbers of such person.

(b) ***Documents***. When identifying a document or writing to:

(1) ***Author & Parties***. Identify the author thereof, any and all parties thereto, and, if the case, the name of the person who signed the document;

(2) ***Identification***. State its title, number, code or other identifying data;

(3) ***Pages***. State the number of pages, if the document contains more than one page;

(4) ***Attachments & Supplements***. Identify any attachments or supplemental items incorporated with the document;

(5) ***Date Of Preparation***. State the date on which the document was prepared but if not known the approximate date;

(6) ***Date On Documents***. State the date appearing on the document;

(7) ***Transaction & Substance***. State the transaction, act or occurrence to which each such document relates and the substance of the document;

(8) ***General Description***. State the general description of the document;

(9) ***Disposition Of Document***. If such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it; and

(10) ***Custodian***. Identify the present custodian of such writing or document.

(c) ***Oral Communication***. When identifying an oral communication:

(1) ***Persons***. Identify the person who made the communication and the person to whom the communication was directed;

(2) ***Date***. Give the date, time and place of the communication;

(3) ***Content***. Give the content of the communication in as verbatim a form as possible;

(4) ***Context***. Give the conversational context in which such statement or utterance was made;

(5) ***Other Persons***. Identify any other persons present when the communication was made;

(6) ***Reduction To Writing***. State whether such statement or utterance was later reduced to writing, in whole or in part, and, if so, identify such writing; and

(7) ***Related Documents***. Identify each document relating or referring to such oral statement or utterance.

2. ***"Document" or "Documents"*** means the originals, or any copies when originals are not available, unless otherwise stated, and any non-identical copies, whether different from originals because of notes made on such copies or otherwise, and writings of every kind and description, whether inscribed by hand or by mechanical, electronic, photographic, or other means, as well as phonic, such as tape recordings, or visual representations or oral statements, conversations or events and including, but not limited to, correspondence, letters, agreements, reports, records, price lists, quotations, memoranda, financial statements, telephone call slips, information stored in computers, teletype messages, internal memoranda, notes, reports, contracts, records of meetings, conferences or telephone or other conversations or communications, photographs, computer printouts, computer stored data, plans, maps, drawings, diaries, calendars, books, minutes of meetings, known to you or any of your employees, agents, consultants, contractors, or any person acting or purporting to act on its behalf.

3. ***"Oral Communication"*** as the term is used herein shall include any utterance heard by any person, whether in person, by telephone, or otherwise.

4. ***"Person" or "Persons"*** The term "person" or "persons" means natural persons, firms, partnerships, governmental entities, associations and corporations, and divisions, departments or units thereof.

5. ***"And/Or"*** When used in the course of an enumeration of items as to which documents or information is required, the words "or" and "and" are to be construed as requesting documents or information as to each item in the enumeration, the same as if the entire request had been addressed solely to that item.

6. ***Use Of Documents In Place Of An Answer***. Whenever a full and complete answer to any interrogatory or part of an interrogatory is contained in a document or documents, the documents, if appropriately identified as answering a specific numbered interrogatory or part of any interrogatory, may be supplied in place of a written answer at the time of answering, and only the author, date and type need be provided.

7. ***Numeral Information***. Interrogatories calling for numeral or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it shall be identified as such together with a source of information underlying the estimate.

8. ***Sources Of Information***. In answering these interrogatories, every source of information to which you have access shall be consulted, regardless of whether the source is within Defendants' immediate possession or control. All documents or other information in the possession of experts or consultants should be consulted.

9. ***Partial Answers***. If any interrogatory cannot be answered fully, as full an answer as possible should be provided. State the reason for your inability to answer fully, and give any information, knowledge or belief you have regarding the portion unanswered.

10. ***Deletions From Documents***. Where anything has been deleted from a document produced in response to the requests for production:

(a) ***Nature***. Specify the nature of the material deleted;

(b) ***Reason***. Specify the reason for the deletion; and

(c) ***Person***. Identify the person responsible for the deletion.

11. ***Claim Of Privilege Or Exclusion***. If objection is made to answering any interrogatory or disclosing the substance of any document on the basis of any claim of privilege or exclusion, specify in writing the nature of such information or documents, along with the nature of the privilege claim, so that the Court may rule on the proprietary of the objection. In case of documents, state:

(a) ***Title***. The title of the document;

(b) ***Notice***. The nature of the document (interoffice memorandum, correspondence, report, etc.);

(c) ***Author Or Sender***. The author or sender;

(d) ***Addressee***. The addressee;

(e) ***Date***. The date of the document;

(f) ***Others***. The name of each person to whom the original or a copy was shown or circulated;

(g) ***Circulation List***. The names appearing on any circulation list relating to the document;

(h) ***Basis Of Privilege Claim***. The base upon which privilege is claimed; and

(i) ***Subject Matter***. A summary statement of the subject matter of the document in sufficient detail to permit the Court to rule on the propriety of the objections.

12. ***"Relating to"*** means constituting, defining, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

INSTRUCTIONS

1. If your answer to any Request for Admission which follows is any response other than an unqualified admission, then please copy, answer and complete the following "Interrogatory" and " Request To Produce" as part of your response to each such Request for Admission.

Then for each such Interrogatory and Request To Produce, please insert the number of the Request for Admission to which each such Interrogatory and Request To Produce answer and response relates:

INTERROGATORY NO.__:

A. *State The Facts*. If your answer to the Request for Admission is any response other than an unqualified admission, state with particularity and in detail all facts (not opinions) on which you have relied, and on which you intend to rely at trial, to support any such response to the admission requested.

B. *Identify Documents & Communications*. Identify all documents, notes, reports, memorandums, electronic and/or tape recordings, photographs, oral statements, communications, or any other tangible or intangible thing that supports in any manner your refusal to admit or your qualification of your admission.

C. *Custodians*. The name and address of a custodian of all tangible or intangible things identified in response to B. above.

D. *Identify All Persons*. The name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or the qualification of your admission.

ANSWER TO INTERROGATORY NO. __:

REQUEST TO PRODUCE NO.__:

Produce for inspection and copying each document referred to in your response to Request for Admission No. 1 and Interrogatory No. 1 at the time and place aforesaid.

RESPONSE TO REQUEST TO PRODUCE NO. __:

***Additional Documents*:**

2. **In answering each interrogatory;**

(a) *Document Identification*. Identify the date, sender, recipient, location and custodian of each document relied upon or which corroborates the answer given or the substance of what is given in answer to the interrogatories.

(b) *Personal Knowledge*. State whether the information furnished is within your personal knowledge and, if not, the name, if known, of each person to whom the information is a matter of personal knowledge; and

(c) *Other Persons*. Identify each person who assisted or participated in preparing or supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories.

(d) *Additional Space Needed*. If more space is needed for your answer to any interrogatory, insert extra pages.

(e) *Grouping & Labeling Documents*. Where request is made for production of documents, group and label the documents produced according to each specific request for the production of document.

(f) *Required Execution & Verification Of Answers*. The answers must be signed and verified as required by Rules 4006 and 4009.12 of the Pennsylvania Rules of Civil Procedure.

1. ***Representation Made by Plaintiff.***

Plaintiff's August 3, 1999 letter to Van Hampton Oil & Gas Company, attached to the complaint as exhibit #1, p. 5 of 5, represented plaintiff as "*AAPG certified petroleum geologist #4774*".

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

2. ***Representation As American Association of Petroleum Geologist.***

The designation "*AAPG*" in the phrase "*AAPG certified petroleum geologist #4774*" referred to in Plaintiff's August 3, 1999 letter to Van Hampton Oil & Gas Company refers to the American Association of Petroleum Geologist.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

3. ***Plaintiff's General Duties.***

The following provision is (and was on August 3, 1999) contained in the

American Association of Petroleum Geologist Code of Ethics:

"Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every member as professional obligations."

(American Association of Petroleum Geologist Code of Ethics, General Principles § 2)

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

4. ***Duty to Disclose Competitive or Conflicting Interests.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Code of Ethics:

"Members shall disclose to prospective employers or clients the existence of any pertinent competitive or conflicting interests."

(American Association of Petroleum Geologist Code of Ethics, Relation of Members to Employers and Clients § 1)

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

5. ***Duty of Nondisclosure.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Code of Ethics:

"Members shall not use or divulge any employer's or client's confidential information without their permission and shall avoid conflicts of interest that may arise from information gained during geological investigations."

(American Association of Petroleum Geologist Code of Ethics, Relation of Members to Employers and Clients § 2)

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED

INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

6. ***Duty to Protect.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

" (a) A member shall protect, to the fullest extent possible, the interest of his employer or client so far as is consistent with the public welfare and his professional obligations and ethics."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (a))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

7. ***Duty to Correct or Resign.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(b) A member who finds that his obligations to his employer or client conflict with his professional obligations or ethics should have such objectionable conditions corrected or resign."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (b))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

8. ***Duty to Disclose Mineral Interests.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(c) A member will offer to disclose to his prospective employer or client the existence of any oil, gas, or other mineral interest which he holds, either directly or indirectly, having a pertinent bearing on such employment."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (c))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

9. ***Prohibition against Use of Confidential Information.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(d) A member will not use, directly or indirectly, any employer's or client's confidential information in any way which is competitive, adverse, or detrimental to the interest of employer or client."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (d))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

10. ***Duty to Reject Conflicting Engagements.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(e) A member retained by one client will not accept, without client's consent, and engagement by another if the interest of the two is in any manner conflicting."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (e))

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

11. ***Prohibition against Use of Confidential Information for Personal Profit.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(f) A member who has made an investigation for any employer or client will not seek to profit economically from the information gained, unless permission to do so is granted, or until it is clear that there can no longer be conflict of interest with original employer or client."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (f))

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

12. ***Duty of Nondisclosure of Confidential Information.***

The following provision is (and was on August 3, 1999) contained in the American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics:

"(g) A member will not divulge information given to him in confidence."

(The American Association of Petroleum Geologist Constitution and Bylaws, Article for, Code of Ethics, § 3 (g))

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

13. ***Plaintiff As Devonian Resources Inc. Consultant***.

a. On August 3, 1999 plaintiff was a consultant for Devonian Resources Inc.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. On August 3, 1999 plaintiff was a consultant for Devonian Resources Inc. with respect to the area that plaintiff's complaint ¶ 4 describes as the Area of Mutual Interest.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

c. At the time that plaintiff filed his complaint in this action plaintiff was an employee of Devonian Resources Inc..

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

d. Plaintiff is presently an employee of Devonian Resources Inc.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

e. On August 3, 1999 Devonian Resources Inc. was a legal entity separate and apart from Van Hampton Oil & Gas Company.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

14. ***Donald Sbarra.***

Answer to Interrogatory No. 13(d).

As of December 26, 2003, Plaintiff is no longer an employee of Devonian Resources.

Answer to Interrogatory No. 13(e).

It is Plaintiff's belief that Van Hampton Oil and Gas Company is directly related to, owned by, controlled by, a subsidiary of, alte ego of, or otherwise controlled by Devonian Resources, Inc. on August 3, 1999.

a. ***Communication of information about Area of Mutual Interest.***

i. On one or more occasion between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff communicated with Donald Sbarra.

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. On one or more occasion between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff communicated information to Donald Sbarra about the geology of and/or wells drilled on what plaintiff's complaint describes in ¶ 4 of the complaint as the Area of Mutual Interest.

Admitted: ____x____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. ***Lack of relationships with Donald Sbarra.***

i. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Devonian Resources Inc.

Admitted: _____ Denied: ____x____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of Van Hampton Oil & Gas Company.

Admitted: _____ Denied: ____x____

Answer to Interrogatory No. 14

(a)(i) Plaintiff believes that all communications that he had with Donald Sbarra were undertaken at the request of, under the direction of, and with full knowledge of the CEO of Mid-East Oil Company and the management of Devonian Resources, Inc. and Van Hampton Oil and Gas Company. Donald Sbarra was identified by Mark Thompson as an investor in Mid-East Oil Company's energy development projects, including wells within the AMI. Any information provided by Plaintiff to Donald Sbarra was at the request of, and with full knowledge and consent of Mark Thompson and Stanley Thompson, who are believed to be the officers and CEO's of Mid-East Oil Company, Van Hampton Oil and Gas Company and Devonian Resources, Inc.

(b)(i) Plaintiff is unaware of the relationship between Donald Sbarra and Devonian Resources, Inc. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing resources for development for oil and gas prospects within the AMI.

(b)(ii) Plaintiff is unaware of the relationship between Donald Sbarra and Van Hampton Gas and Oil Company. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing resources for development for oil and gas prospects within the AMI.

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. Between August 3, 1999 and the day that plaintiff filed his complaint in this action Donald Sbarra was not an owner, director, officer, agent, partner, employee, or representative of defendant.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

c. ***Intended use of information by Donald Sbarra or others.***

i. At the time of plaintiff's communications with Donald Sbarra between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Devonian Resources Inc.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than Van Hampton Oil & Gas Company.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Answer to Interrogatory No. 14

(b)(iii) Plaintiff is unaware of the relationship between Donald Sbarra and Mid-East Oil Company. As stated above, it is believed that Donald Sbarra was an investor or a representative of an investor's group providing resources for development for oil and gas prospects within the AMI.

(c)(i) All information provided by Plaintiff to Donald Sbarra was done so with the belief that Plaintiff was acting at the request and consent of Devonian Resources and for purposes of fostering continued investment in natural resource production within the AMI.

(c)(ii) All information provided by Plaintiff to Donald Sbarra was done so with the belief that Plaintiff was acting at the request of and with the consent of Van Hampton Oil and Gas Company and for purposes of fostering continued investment in natural resource production within the AMI.

iii. At the time of plaintiff's communications with Donald Sbarra about the Area of Mutual Interest between August 3, 1999 and the day that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra intended to use the information from that communication for the benefit of someone other than defendant.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

d. ***Actual use of information by Donald Sbarra.***

i. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Devonian Resources Inc.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than Van Hampton Oil & Gas Company.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. At the time that plaintiff filed his complaint in this action plaintiff knew or suspected that Donald Sbarra or someone other than Devonian Resources Inc. used information that

Answer to Interrogatory No. 14

(c)(iii) All information provided by Plaintiff to Donald Sbarra was done so with the belief that Plaintiff was acting at the request and consent of Mid-East Oil Company and for purposes of fostering continued investment in natural resource production within the AMI.

(d)(i) Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the AMI agreement, including Devonian Resources, Inc.

(d)(ii) Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the AMI agreement, including Van Hampton Oil and Gas Company.

Donald Sbarra had obtained from plaintiff about the Area of Mutual Interest for the benefit of one or more individuals or entities other than defendant.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

e. ***Donald Sbarra payment to plaintiff.***

Donald Sbarra or a payor other than Devonian Resources Inc. made payment or gave other consideration to plaintiff during the period of time between August 3, 1999 and the day that plaintiff filed his complaint in this action in full or partial consideration for assistance or information that plaintiff provided to Donald Sbarra or someone other than Devonian Resources Inc. with regard to what ¶ 4 of plaintiff's complaint describes as the Area of Mutual Interest.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

15. **January 16, 2002 Assignment and Bill of Sale**.

a. ***Agreement conveyed rights to defendant.***

i. On January 16, 2002 Devonian Resources Inc. and defendant entered into an "*Assignment and Bill of Sale*".

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. The January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant is exhibit 3 to the plaintiff's complaint in this action.

Admitted: X Denied: _____

Answer to Interrogatory No. 14

(d)(iii) Plaintiff believes that any information provided to Donald Sbarra was done so for the benefit of the parties to the AMI agreement, including Mid-East Oil Company.

(e) Plaintiff provided geological information to Donald Sbarra regarding various drilling programs of the Defendant and/or Devonian with the full knowledge and consent of Devonian and/or Defendant. Plaintiff was compensated by Donald Sbarra for his time expenditure in providing this geological information with full knowledge and consent of Mid-East Oil Company and/or Devonian Resources, Inc.

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

iii. The rights that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale between Devonian Resources Inc. and defendant were collectively defined therein as "*Oil & Gas Property*".

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. <u>Conveyance of area of Mutual Interest rights to defendant free & clear.</u>

i. The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of Sale included all of the rights of Devonian Resources Inc. with respect to the area referred to in the complaint as the Area of Mutual Interest.

Admitted: X Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

ii. The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of sale included "*all royalty and/or overriding royalty interests of Devonian within the AMI*", which abbreviation represents the area referred to in the complaint as the Area of Mutual Interest.

Admitted: _____ Denied: X

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Answer to Interrogatory No. 15

(a)(iii) The agreement and bill of sale utilize the term "oil and gas property". The question of determination of the character and nature of the rights transferred under this agreement and bill of sale are for determination by the Court and may not be fully characterized by this particular terminology.

(b)(i) All rights transferred to Devonian Resources, Inc. by Agreement of January 16, 2002 also convey to the assignee the obligation to pay overriding royalty interests to the Plaintiff as set forth in the Complaint.

(b)(ii) The Plaintiff does not deny inclusion of the language in the bill of sale as set forth in the Request for Admission, and further does not deny that the term "AMI" refers to the Area of Mutual Interest. However, Plaintiff does deny that this agreement in any way extinguishes Plaintiff's right to receive overriding royalty interests as set forth in the Complaint.

iii. The January 16, 2002 Assignment and Bill of sale between Devonian Resources Inc. conveyed the"*Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".

Admitted: _____ Denied: ___x___

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

16. **Scope of plaintiff's services regarding Area of Mutual Interest.**

a. The August 3, 1999 letter from plaintiff to Van Hampton Oil & Gas Company attached as part of exhibit #1 to the complaint included a proposal by plaintiff that plaintiff would provide "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development.*"

Admitted: ___x___ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

b. Plaintiff did not provide defendant with all of the "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*" with respect to the area of Mutual Interest referred to in the complaint.

Admitted: _____ Denied: ___x___

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

FOR DEFENDANT:
Mid-East Oil Company

_____
DOM W. GRECO, ESQ.

Answer to Interrogatory No. 15

(b)(iii) The Plaintiff admits that the January 16, 2002 Assignment and Bill of Sale contains the language "free and clear of all liens and encumbrances". However, the Plaintiff denies that the inclusion of this terminology in any way extinguishes his right to obtain oil and gas royalties for all resource production within the AMI as set forth in Plaintiff's Complaint.

Answer to Interrogatory No. 16

(b) Plaintiff did provide all services necessary to the development of drilling prospects and technical assistance in preparation of drilling program for the establishment of the AMI and the initial drilling program for Devonian, which entitles Plaintiff to ongoing overriding royalty interest payments for all resource development and production within the area of mutual interest.

Response to Request for Production of Documents Nos. 3 - 12

Code of Ethics

General Principles

a. Geology is a profession, and the privilege of professional practice requires professional morality and professional responsibility.
b. Honesty, integrity, loyalty, fairness, impartiality, candor, fidelity to trust, and inviolability of confidence are incumbent upon every member as professional obligations.
c. Each member shall be guided by high standards of business ethics, personal honor, and professional conduct. The word "member" as used throughout this code includes all classes of membership.

Relation of Members to the Public

a. Members shall not make false, misleading, or unwarranted statements, representations or claims in regard to professional matters, nor shall they engage in false or deceptive advertising
b. Members shall not permit the publication or use of their reports or maps for any unsound or illegitimate undertakings.
c. Members shall not give professional opinions, make reports or give legal testimony without being as thoroughly informed as reasonably required.

Relation of Members to Employers and Clients

a. Members shall disclose to prospective employers or clients the existence of any pertinent competitive or conflicting interests.
b. Members shall not use or divulge any employer's or client's confidential information without their permission and shall avoid conflicts of interest that may arise from information gained during geological investigations.

Relation of Members to One Another

a. Members shall not falsely or maliciously attempt to injure the reputation or business of others.
b. Members shall freely recognize the work done by others, avoid plagiarism, and avoid the acceptance of credit due others.
c. Members shall endeavor to cooperate with others in the profession and shall encourage the ethical dissemination of geological knowledge.

Duty to the Association

a. Members of the Association shall aid in preventing the election to membership of those who are unqualified or do not meet the standards set forth in this *Code of Ethics*.
b. By applying for or continuing membership in the Association each member agrees to uphold the ethical standards set forth in this *Code of Ethics*.
c. Members shall not use AAPG membership to imply endorsement, recommendation, or approval by the Association of specific projects or proposals.

Discipline for Violations of Standards

Members violating any standard prescribed in this Article shall be subject to discipline as provided by the Bylaws.

VERIFICATION

I, LARRY SMYERS, do hereby verify that I have read the foregoing RESPONSE TO REQUEST FOR ADMISSIONS, INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 12-24-03

L. L. Smyers

Larry Smyers

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

No. 03-1598-CD

CERTIFICATE OF SERVICE

I certify that on the 30th day of December, 2003, a true and correct copy of Plaintiff's Response to Request for Admissions was forwarded by FAX transmission and mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214
(240) 465-7135

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers, Plaintiff vs. Mid-East Oil Company, Defendant	:	No. 03-1598-CD

CERTIFICATE OF SERVICE

I, Dom W. Greco, Esq., hereby certify that a true and correct copy of the foregoing **"Notice of Deposition of Party Larry F. Smyers"** was sent by U.S. mail, postage prepaid, on December 29, 2003, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By_____
DOM W. GRECO, ESQ.

DEC 3 1 2003

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: AMENDED COMPLAINT Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED
DEC 31 2003
Clerk of Courts

#1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641, Ext. 1300

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby brings the within Amended Complaint against the Defendant averring as follows:

1. Plaintiff is Larry F. Smyers an individual of 300 East Second Avenue, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant is Mid East Oil Company, a Pennsylvania corporation with offices and principle place of business at 255 Airport Road, Indiana, Indiana County, Pennsylvania 15701.

3. On or about August 3, 1999, Plaintiff met with Stan Thompson, believed to be an officer and representative of Van Hampton Oil and Gas Company and Devonian Resources, Inc. to discuss a propsal of oil and gas prospects. In accordance with the proposal, Plaintiff was to be paid a 1/64th overriding royalty interest from sale of all natural gas, associated liquids or crude oil from each well located in a prospect or program proposed by the Plaintiff.

4. The terms of the August 3, 1999 proposal were set forth in a written proposal letter from Larry Smyers to Stan

Thompson, c/o Van Hampton Oil and gas Company, in which the Plaintiff offered his services to develop drilling prospects in consideration for a 1/64th ORRI of the gross from the sale of natural gas, associated liquids, or crude oil from each well located in a prospect, or program, proposed by the Plaintiff.

5. The terms of Plaintiff's proposal of August 3, 1999 were orally accepted by Stan Thompson, President of Van Hampton Oil and Gas Company and Devonian Resources, Inc.

6. Thereafter Plaintiff proceeded to invest his time, effort, expertise and knowledge as a professional geologist to develop a drilling prospect in areas located in Centre and Clearfield Counties, Pennsylvania, known collectively as Pine Glen Prospect and hereinafter referred to as AMI (Area of Mutual Interest).

7. By Confidentiality Agreement dated February 29, 2000 the Plaintiff and Devonian Resources, Inc., a related company of Van Hampton Oil and Gas Company, confirmed and supplemented the Agreement of August 3, 1999, identifying the general area which includes an exhibit depicting the approximate geographical boundaries of the Pine Glen Prospect. This document was notarized on September 21, 2000 and subsequently recorded, with attachments and exhibits consisting of a total of five pages in the Office of Register and Recorder of Deeds of Clearfield County on September 24, 2001 as Instrument No. 200115082. The recorded document is attached hereto as Exhibit "1".

8. Per the terms of the written Confidentiality Agreement, the Plaintiff, Larry Smyers (Offeror) agreed to present to Devonian Resources, Inc. (Receiver) and oil and gas exploration prospect for the defined geographical area, in exchange for compensation to the Plaintiff/Offeror. (Exhibit "1")

9. The Confidentiality Agreement included an addenda in which the parties agreed to and accepted the terms of the August 3, 1999 proposal letter. The addenda to the Confidentiality Agreement provides:

> This Confidentiality Agreement is intended to expand on and supplement the terms of a letter dated August 3, 1999 to Van Hampton Oil and Gas Company (Receiver) from Larry F. Smyers (Offeror) attached hereto as Exhibit 2. This letter outlines terms to provide technical assistance to explore for and develop natural gas and associated hydrocarbons in the geographical area outlined in Exhibit No. 1. This agreement includes Van Hampton Oil and Gas, it (sic) related companies and joint interest activities in the area defined in Exhibit 1.

The August 3, 1999 written proposal letter is attached hereto as an exhibit to the Confidentiality Agreement (Exhibit 1).

10. Plaintiff proceeded to provide his services for Devonian pursuant to the Confidentiality Agreement, and continued to invest his time, effort, expertise and knowledge as a professional geologist to develop drilling prospects for the AMI.

11. On or about February 29, 2000, Devonian Resources began exploration and development of natural resources in the AMI.

12. On or about August 23, 2000, Devonian Resources, Inc. entered into a Joint Venture Agreement with Defendant, Mid East

Oil Company, whereby Mideast and Devonian would mutually develop the AMI. The Joint Venture Agreement provides for payment of an overriding royalty interest to Larry Smyers, referenced therein as "a third party providing geological services" as follows:

> All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area . . . .

A true and correct copy of this Joint Venture Agreement is attached hereto as Exhibit "2".

13. Defendant, as a party to the Joint Venture Agreement, agreed to compensate the Plaintiff, who is the "third party providing geological services", with a 1/64th ORRI as mandated by the prior Devonian Agreement. The Defendant agreed to the terms of the Joint Venture Agreement which subjects all leases in the AMI to 1/64th ORRI payable to the third party geologist/Plaintiff.

14. At all times relative hereto, Defendant knew or should have known that Plaintiff was the "third party providing geological services for the prospective area" under the Confidentiality Agreement and was therefore a third party beneficiary of the Joint Venture Agreement.

15. By agreement and Bill of Sale dated January 16, 2002, Devonian Resources, Inc., conveyed and transferred all its interest in the AMI to Defendant, Mid East Oil Company. A true and correct copy of the Assignment and Bill of Sale and its attached Exhibits A, B and C are appended hereto as Exhibit "3".

16. Defendant, by virtue of its position as successor and assign of Devonian Resources, Inc., and by virtue of the Joint Venture Agreement dated August 23, 2001, which is attached as an exhibit to the Bill of Sale, is obligated to pay a 1/64 overriding royalty to Plaintiff on all mineral resources produced within the AMI.

17. Based on information obtained from the Pennsylvania Department of Environmental Protection, Plaintiff believes and therefore avers that there exists within the AMI multiple gas and/or oil wells which are set forth in Exhibit "4". The well numbers in the shaded area of this exhibit represent wells for which Plaintiff received royalties through December 2, 2003.

18. By letter dated December 2, 2003, Defendant advised Plaintiff that it was no longer making any royalty payments to Plaintiff for wells located within the AMI. (Copy of this letter is attached as Exhibit 5.)

19. In addition, Plaintiff believes and therefore avers that Defendant has developed additional wells within the AMI which Defendant is obligated for royalty payments to the Plaintiff.

20. Despite its obligation under the AMI and Joint Venture Agreements, the Defendant has failed and refused to make royalty payments due and owing to Plaintiff for all other oil and gas wells listed on Exhibit "4" as well as any and all other wells developed by Defendant within the AMI which are currently not known to Plaintiff. Information required to specifically calculate the royalty amounts due and owing to Plaintiff, the dates upon which these

payments became due, and the production information on which these payments are based is within the exclusive possession and control of Defendant, and therefore, damages cannot be specifically calculated at present.

COUNT I
BREACH OF CONTRACT

21. Plaintiff realleges the averments set forth in Paragraphs 1 through 20 of this Complaint.

22. Defendant has breached its contractual obligation to Plaintiff as follows:

(a) In failing to pay 1/64 overriding royalty interests on all oil and gas production within the AMI as set forth in the controlling agreements;

(b) In failing to provide an accounting of oil and gas production for all wells located within the AMI; and

(c) In failing to record or otherwise document of record Plaintiff's overriding royalty interest in all wells developed within the AMI.

23. As a direct result of Defendant's breach of their contractual obligations, Plaintiff has incurred and continues to incur damages in excess of Twenty-five Thousand and 00/100 ($25,000.00) Dollars.

WHEREFORE, Plaintiff demands relief as follows:

(a) Immediate payment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff;

(b) An immediate and ongoing accounting of oil and gas production for all oil and gas wells within the AMI; and

(c) Interest, costs of suit and all other interest which the Court deems to be just and equitable.

COUNT II
UNJUST ENRICHMENT

24. Plaintiff realleges the averments set forth in Paragraphs 1 through 23 of this Complaint.

25. Plaintiff conferred benefits on the Defendant by performing geological services including preparation of a drilling prospect for the AMI in which Defendant is drilling.

26. Defendant's retention of proceeds from the wells located in the AMI without payment of royalties to the Plaintiff is inequitable.

27. Defendant has been unjustly enriched and Plaintiff is entitled to receive the agreed upon value for his professional services.

28. Defendant has been unjustly enriched at Plaintiff's expense because of the following:

(a) Defendant's failure to honor Plaintiff's 1/64 overriding royalty interest in all oil and gas wells located within the AMI; and

(b) Defendant's failure or refusal to provide an accounting to production from all oil and gas wells within the AMI.

WHEREFORE, Plaintiff demands relief as follows:

(a) Immediate payment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff;

(b) An immediate and ongoing accounting of oil and gas production for all oil and gas wells within the AMI;

(c) Interest, costs of suit and all other interest which the Court deems to be just and equitable;

(d) Judgment in an amount in excess of $25,000.00.

COUNT III
CONSTRUCTIVE TRUST

29. Plaintiff realleges the averments set forth in Paragraphs 1 through 28 of this Complaint.

30. By virtue of the transactions and agreement referenced herein, the Plaintiff has an equitable interest in royalties which are being retained by the Defendant. The Defendant is retaining all proceeds from drilling operations in the area of mutual interest.

31. Defendant has refused to pay Plaintiff the royalties which Plaintiff is owed by virtue of the transactions and agreements referenced herein.

WHEREFORE, Plaintiff demands equitable relief in the form of a constructive trust imposed upon Defendant for attachment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff.

JURY TRIAL DEMANDED.

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

VERIFICATION

I, LARRY SMYERS, do hereby verify that I have read the foregoing AMENDED COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 12-24-03

Larry Smyers

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 30th day of December, 2003, a true and correct copy of Plaintiff's Amended Complaint was forwarded by FAX transmission and mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214
FAX: (240) 465-7135

Matthew B. Taladay
Attorney for Plaintiff

DPA / SIPES

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of the American Association
of Petroleum Geologists and
Society of Independent
Professional Earth Scientists

CONFIDENTIALITY AGREEMENT

This Agreement is between LARRY F. SMYERS ("Offeror") and Devonian Resources, Inc. ("Receiver") and sets forth the terms for the presentation to Receiver of an oil and gas exploration prospect (the "Prospect") which will provide Receiver with the opportunity to evaluate the Prospect and to acquire an oil and gas interest (including - but not limited to - drilling or leasing, royalty, and purchase of producing properties) in the Prospect lands on the basis of mutually acceptable compensation to the Offeror.The Prospect is located in the geographical area set forth below and in Exhibit "A", if attached hereto. Since the Prospect, the Prospect information and the geographical area related to the Prospect is secret, proprietary and confidential information developed by Offeror over time and at great expense, Receiver, as consideration for the opportunity to evaluate the Prospect, agrees to the following:

1. **The Geographical Area.** As used in this Agreement, the geographical area on which the Prospect is located ("Geographical Area") is agreed to mean the following:

Certain areas located in Burnside Twp., Centre Co., PA and Cooper Twp., Clearfield Co., PA and Boggs Twp., Clearfield County, PA and West Decatur Clearfield Co., PA. This AREA OF INTEREST CAN be AMENDED by MUTUAL CONSENT between OFFEROR AND RECEIVER.

A Detailed Geographic AREA will be outlined AND ATTACHED AS Exhibit I

EXHIBIT "A" IS/IS NOT ATTACHED HERETO.

2. **Proprietary and Confidential Information.** The term "Proprietary and Confidential Information" ("PCI") as used in this Agreement is agreed to mean all oral disclosures and information, data and knowledge contained in the documents (whether geological, geophysical, economic, financial or management and whether in the form of maps, charts, logs, seismographs, interpretations, calculations, summaries, opinions or other written or charted means) which are related, directly or indirectly, to the Prospect or to the exploration potential of the Geographical Area, and which are now or hereafter delivered or disclosed by or on behalf of the Offeror to the Receiver. However, the PCI shall not include information to the extent it (a) is now or subsequently becomes part of the public domain through no acts or omissions attributable to Receiver or (b) as shown by Receiver's written records, was rightfully in Receiver's possession prior to disclosure by the Offeror. The Receiver acknowledges that Offeror intends to maintain the confidential, proprietary and secret nature of the PCI.

3. **Restrictions on Receiver's Future Activities.** For the period of ONE (1) years after the date on which Receiver has signed this Agreement, Receiver agrees:

(a) To keep the PCI secret and not to disclose the PCI to any entity or person except to Receiver's employees or consultants necessary to evaluate the Prospect, unless specific written authorization is received from the Offeror; OFFEROR ALSO AGREES TO KEEP CONFIDENTIAL GEOGRAPHIC AREA FOR TERM OF AGREEMENT. (LFS)

(b) To use the PCI solely for the purpose of evaluating the Prospect and not to use the PCI for Receiver's financial advantage without compensation to the Offeror;

(c) Not to purchase or acquire in any manner, directly or indirectly, any oil or gas ownership, leasehold, royalty or other interest within the Geographical Area unless it shall be deemed by such action or otherwise that Receiver has accepted the terms of the Offeror in conjunction with the presentation of the Prospect; OFFEROR will NOT lease (subsequent) IN geographic AREA FOR Term of Agreement. SOME ROYALITIES AND OWNERSHIP in previous drilling programs by Another OPERATOR are OWNED BY OFFEROR but do not conflict with THIS Agreement (LFS)

~~(a) Not to reproduce or make any copies of any of the PCI unless specific written authorization is received from the Offeror except copies used in conjunction with the evaluation of the PCI; and~~ LFS

~~(b) Immediately at the request of the Offeror or within fifteen (15) days of Receiver's rejection of the Prospect, to return to the Offeror all PCI which has been delivered or disclosed to Receiver and to destroy all other related documents (except a copy of this Agreement) including, without limitation, all documents, memoranda, notes, interpretations, data, copies and other written material prepared by Receiver or others utilizing any PCI or in evaluating the Prospect, certifying to the Offeror in writing that Receiver has destroyed all such documents.~~ Not Applicable LFS

4. Remedies for Breach of this Agreement by Receiver. Receiver agrees that if this Agreement is breached by Receiver the remedy at law may be inadequate and therefore an injunction, specific performance or other forms of equitable relief or money damages or any combination thereof shall be available. All rights, powers and remedies provided for herein are cumulative, and not exclusive, of any and all rights, powers and remedies at law or in equity as may now or hereafter exist. However, and not withstanding the foregoing, Offeror and Receiver agree that if Receiver shall breach paragraph 3(c) of this Agreement, the remedy shall be only as stated therein, namely, acceptance of terms. The Offeror shall be entitled to recover the cost and expenses incurred in enforcing this Agreement including any attorney's fees.

5. Binding Effect on Receiver and Others. This Agreement entered into by Receiver shall be binding on Receiver and Receiver's officers, directors, employees, agents, attorneys, accountants and representatives. Receiver agrees to inform all such persons and entities of this Agreement and to be liable to the Offeror for the acts of such persons and entities if this Agreement is breached by any one of them. If any part of this Agreement is declared void or unenforceable, the Receiver agrees to be bound by the remaining part of this Agreement.

6. Miscellaneous. The following are also agreed to by Offeror and Receiver:

(a) THIS AGREEMENT AND THE RELATIONSHIP THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF Pennsylvania WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PROVISION;

(b) The Prospect is offered subject to prior sale; and

(c) This Agreement is not intended to and does not create a partnership, joint venture or any other business combination between Receiver and Offeror.

Addenda: This confidentiality Agreement is intended to expand on and Supplement the terms of a letter dated August 3, 1999 to Van Hamotow Oil and Gas Company (RECEIVER) from Larry F. Snyers (OFFEROR) ATTACHED herein as Exhibit II. This letter OUTLINES terms to provide technical ASSISTANCE to explore for and develop NATURAL GAS AND ASSOCIATED hydrocarbons in the geographical AREA OUTLINED IN Exhibit #1. This Agreement INCLUDES VAN HAMTON OIL and GAS, it related companies And JOINT INTEREST ACTIVITIES IN THE AREA DEFINED IN EXHIBIT I

AGREED TO AND ACCEPTED:

STAN Thompson Title: President (RECEIVER)

By: _____ Date: _____

Larry F Snyers DATE 2/29/00 (OFFEROR)

LARRY Snyers

6/2/00

Page 2 of 5

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF Crawford :

On this, the 21st day of September 2001, before me a Notary Public, the undersigned officer, personally appeared S.R. Thompson - President - Devonian Resources

known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notarial Seal
Cecilia R. Adams, Notary Public
City of Titusville, Crawford County
My Commission Expires May 14, 2005
Member, Pennsylvania Association of Notaries

Cecilia R. Adams
Notary Public

STATE OF Pennsylvania :

COUNTY OF Crawford :

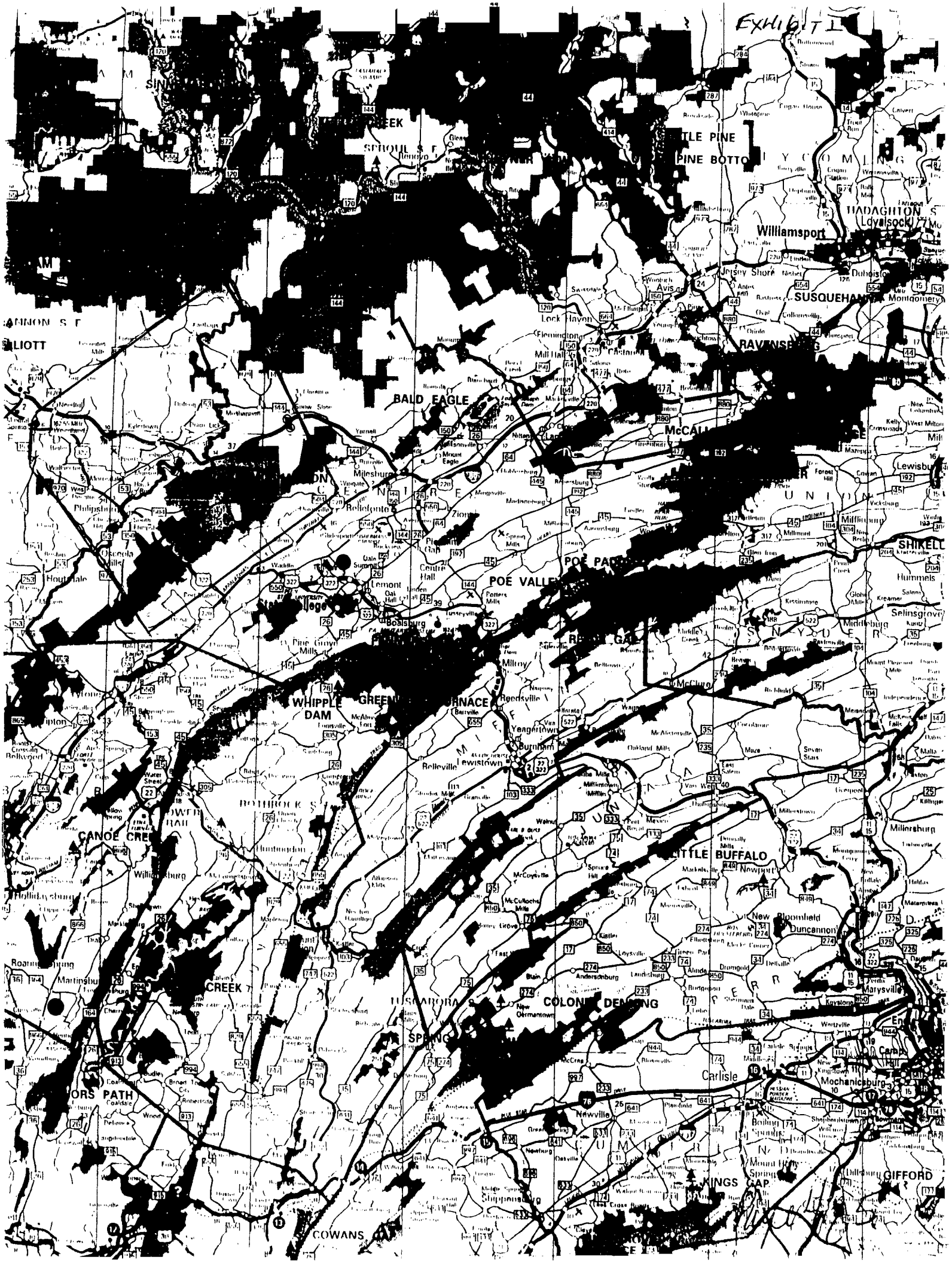
On this, the 21st day of September 2001, before me a Notary Public, the undersigned officer, personally appeared Larry F. Smyers

known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Cecilia R. Adams
Notary Public

Notarial Seal
Cecilia R. Adams, Notary Public
City of Titusville, Crawford County
My Commission Expires May 14, 2005
Member, Pennsylvania Association of Notaries


EXHIBIT 1
Williamsport
Jersey Shore
SUSQUEHANNA
BALD EAGLE
Lock Haven
Mill Hall
Lewisburg
Milton
Milesburg
Bellefonte
Centre Hall
Lemont
Boalsburg
POE VALLEY
Selinsgrove
Middleburg
Milroy
Reedsville
Yeagertown
Lewistown
Burnham
WHIPPLE DAM
CANOE CREEK
Williamsburg
Huntingdon
Mifflintown
Millerstown
Newport
LITTLE BUFFALO
New Bloomfield
Duncannon
Marysville
Carlisle
Mechanicsburg
Newville
Shippensburg
KINGS GAP
GIFFORD
COWANS GAP
Martinsburg
Roaring Spring
Hollidaysburg
Tyrone
Philipsburg
Houtzdale
Osceola Mills
Clearfield
Coalport
Coalmont
Woodland
Kylertown
Snow Shoe
Port Matilda
Julian
Fleming
Mount Eagle
Yarnell
Milroy
Oak Hall
Pine Grove Mills
Tusseyville
Penns Creek
Selinsgrove
Hummels Wharf
Shikellamy
Lewisburg
Mifflinburg
Millmont
Laurelton
Forest Hill
Cowan
Vicksburg
Kelly Crossroads
West Milton
Loyalsock
Montgomery
Jersey Shore
Avis
Duboistown
Montoursville
Muncy
Hughesville
Picture Rocks
Trout Run
Calvert
Cogan House
Whitepine
Liberty
Ralston
Trout Run
Waterville
Cammal
Slate Run
Blackwell
Jersey Mills
Nisbet
Oval
Collomsville
Linden
Allenwood
Milton
Watsontown
Turbotville
Montgomery
Danville
Riverside
Bloomsburg
Catawissa
Berwick
Nescopeck
Shickshinny
Wapwallopen
Harveys Lake
Dallas
Kingston
Wilkes-Barre
Pittston
Wyoming
Forty Fort
Plymouth
Nanticoke
Hanover
Glen Lyon
Shavertown
Dallas
Lehman
Harveys Lake
Sweet Valley
Orange
Fernbrook
Ricketts Glen
Red Rock
Mocanaqua
Espy
Briar Creek
Stillwater
Light Street
Orangeville
Benton
Forks
Sugarloaf
Conyngham
Centralia
Mount Carmel
Shamokin
Coal Township
Kulpmont
Marion Heights
Northumberland
Sunbury
Shamokin Dam
Selinsgrove
Penns Creek
Beaver Springs
Middleburg
Freeburg
Kreamer
Kissimmee
Globe Mills
Salem
Port Trevorton
Paxtonville
Adamsburg
Laurelton
Millmont
Hartleton
Glen Iron
Weikert
Rebuck
Dalmatia
Elysburg
Ranshaw
Paxinos
Herndon
Dornsife
Upper Augusta
Sunbury
Northumberland
Point Township
Watsontown
Milton
Turbotville
Montgomery
Muncy
Hughesville
Picture Rocks
Trout Run
Waterville
Cammal
Slate Run
Blackwell
Jersey Mills
Nisbet
Oval
Collomsville
Linden
Allenwood
Milton
Watsontown
Turbotville
Montgomery
Danville
Riverside
Bloomsburg
Catawissa
Berwick
Nescopeck
Shickshinny
Wapwallopen
Harveys Lake
Dallas
Kingston
Wilkes-Barre
Pittston
Wyoming
Forty Fort
Plymouth
Nanticoke
Hanover
Glen Lyon
Shavertown
Dallas
Lehman
Harveys Lake
Sweet Valley
Orange
Fernbrook
Ricketts Glen
Red Rock
Mocanaqua
Espy
Briar Creek
Stillwater
Light Street
Orangeville
Benton
Forks
Sugarloaf
Conyngham
Centralia
Mount Carmel
Shamokin
Coal Township
Kulpmont
Marion Heights
Northumberland
Sunbury
Shamokin Dam
Selinsgrove
Penns Creek
Beaver Springs
Middleburg
Freeburg
Kreamer
Kissimmee
Globe Mills
Salem
Port Trevorton
Paxtonville
Adamsburg
Laurelton
Millmont
Hartleton
Glen Iron
Weikert
Rebuck
Dalmatia
Elysburg
Ranshaw
Paxinos
Herndon
Dornsife
Upper Augusta

Larry F. Smyers
Petroleum Geologist/Geophysicist

AAPG Certified Petroleum Geologist # 4774
Lic. Prof. Geologist WY, # 221
Reg. Professional Geologist PA, 320G

300 E. Second Ave.
DuBois, PA 15801

Telephone/Fax
814.371.7450

August 3, 1999

Mr. Stan Thompson
Van Hampton Oil & Gas Company
Route 36
Pleasantville, PA

Dear Stan:

It was a pleasure to meet with you to discuss the potential of some areas for natural gas drilling, and my availability to aid you in developing drilling programs.

The following is a brief summary of my proposal to retain my services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development. It is my intention to keep it as simple as possible and start working towards some significant drilling projects:

1. Retainer fee of ~~$ 2,500~~ 1500 LFS, from which a $ 175/ day fee will be deducted for each day worked on a project (plus necessary expenses). This retainer fee is renewable when the balance from the previous payment is depleted. Prospects and/or programs will be developed as efficiently as professional prudence and economics allow.
2. A 1/64 interest (ORRI) of the gross from the sale of natural gas, associated liquids, or crude oil from each well located in a prospect, or program, I propose.
3. Cost of maps, seismic data, or that data necessary for prospect, and program development, will be borne by Van Hampton and will remain their property. Any information used in prospect and/or program development from my personal files of which copies will become the property of Hampton Oil & Gas.
4. The areas of interest will adhere to the AAPG DPA/ SIPES Confidentiality Agreement attached.
5. When drilling programs develop, my professional services will be retained ongoing project technical development (i.e. site geological consulting etc.).

Details can be worked out at a later date in respect to areas of interest, data necessary for project development, fee renewal schedule, etc. as the projects develop.

I trust this proposal is sufficient to begin discussion towards a rewarding working relationship. Please call me if you have any questions.

Sincerely,

Larry Smyers

Larry Smyers

Exhibit II

Letter re: "retain my services"

DEVONIAN RESOURCES, INC.

P.O. Box 329
Pleasantville, PA 16341
(814) 589-7061
(814) 589-7936 Fax

August 23, 2000

Mr. Mark Thompson
Mid East Oil Company
P.O. Box 1378
Indiana, PA 15701

RE: JOINT VENTURE AGREEMENT (Pine Glen Prospect)

Dear Mark:

This Letter Agreement when accepted by you shall govern the terms and conditions of the joint venture between Devonian Resources, Inc. and Mid East Oil Company (the Parties) which shall be established to explore for and develop Devonian sandstone formations, principally in the Townships of Burnside and Snowshoe of Centre County, Pennsylvania.

1. An Area of Mutual Interest (AMI), shall be established that will include all of Devonians leasehold position in the Pine Glen and all of Mid East leasehold position in this area, in addition to any new acreage that may be acquired by the Parties which lies within the boundaries of the AMI as delineated on the attached Exhibit "A".

2. All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area, however, the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent. All current leases held by Devonian Resources and Mid East at the time of the signing of this Joint Venture Agreement, shall be cross assigned to both parties to effectuate an undivided ~~Fifty-Percent~~ (50%) interest into each parties leasehold estate. All new leases shall be taken in the name of Mid East Oil Company. Devonian Resources, Inc. shall be assigned a 50% interest in said new leases acquired. Any leases acquired from another company shall be taken by that party as deemed appropriate. Such lease acquisitions, however, will not be made without the consent of both parties. A leasing budget may be proposed by either party and at the mutual consent of both parties, a leasing program will be undertaken and directed by Mid East. The cost of any and all lease acquisition will be borne jointly in accordance with each parties working interest. Any lease acreage proposed by either party not mutually consented to, shall not be a part of the AMI of this Joint Venture Agreement.

3. The initial acreage being contributed by each party going into the AMI will be cost balanced to effectuate a 50%/50% equal costs. Whichever party has an imbalance, the imbalance shall be corrected by a cash payment to the other party. All future costs related to the Joint Venture acreage and wells will be borne jointly in accordance with each parties working interest. Each parties working interest shall be as follows:

Mid East Oil Company - 50%
Devonian Resources, Inc. - 50%

4. Prospect evaluation and the terms and conditions that shall apply are as follows:

A. Mid East desires to use funding from outside this joint venture at no cost to Mid East or Devonian, to drill and complete if warranted, certain location that Devonian and Mid East have mutually agreed upon within the prospect area, and shall do so by drilling a minimum of 8 wells but not more than 15 wells, commencing by September 1, 2000 and having at least the minimum number of wells (8) drilled within 1 year from September 1, 2000.

B. Mid East shall be designated as operator with respect to the drilling, completion, hookup and producing for the first 15 wells. Operator for all subsequent wells drilled will be determined on a mutual basis. Operating fee for any well that can be commercially produced shall be $175.00 per month.

C. After the initial 8 well minimum lease evaluation has been completed, Devonian and Mid-East agree to drill and complete, if warranted, 8 wells per year under the terms of this Joint Venture Agreement and the Operating Agreement.

D. Should either party propose the drilling and development of additional wells above the 8 wells per year specified in subparagraph C. above, and should one of the parties elect not to participate in any or all the proposed additional wells. Then the non-participating party shall be compensated for the loss of future development location(s) in the amount of Five Thousand Dollars ($5,000.00) per location. The election to not participate shall only effect the parties on a location by location basis, and does not change the terms or conditions of this Joint Venture Agreement.

5. **Gas Marketing** - Mid East and Devonian will mutually agree on the gas marketing strategy and price to be received for the joint venture gas. It is anticipated that the joint venture will sell gas through a third party gas marketing company, and that the produced gas will be sales metered on the Columbia Gas Transmission System or Columbia Gas of Pennsylvania System.

6. **Field Gathering and Compression System**

A. Mid East and Devonian shall design, construct and operate the gas gathering and compression system. Since joint venture gas will be commingled with Mid East (Investor) gas, the joint venture gas will only be charged and pay its pro-rated share of the actual monthly compression cost.

B. Mid East and Devonian will agree on a gathering and compression fee which will be charged to third-party gas, including Mid East or Devonian investor gas. The gathering and compression fee shall be distributed to Mid East and Devonian in accordance with each parties ownership in the gathering and compression system.

7. For volume allocation purposes, all joint venture gas shall be measured at the receipt point meters (wellhead) and pro-rated along with non-joint venture gas meters connected to Mid East's gathering system back to sales volume. Sales volume will be that volume as measured at the delivery point master sales meter where Mid East's gathering system interconnects to Columbia Gas Transmission or Columbia Gas of Pennsylvania.

8. **Drilling and Operating** - All wells in the joint venture will be drilled and operated at cost, subject to those terms and conditions mandated in an Operating Agreement which shall be executed prior to drilling the first joint venture well. The initial term for the joint venture shall be five (5) years unless mutually extended, commencing July 1, 2000.

A. It understood and agreed that both Devonian Resources and Mid East have the right to perform certain field services in regards to the drilling, completion and operations of the joint venture wells and any wells that may be drilled on the joint venture acreage in evaluation. Specifically, Mid East shall have the right to do all service rig work, water hauling and pipeline and well head hookups.

Devonian Resources shall have the right to do all dozer work, drilling and trucking. All of the above services shall be performed at the competitive rates for the same services provided for in the area of this work.

9. Should either party decide to sell their interest in any or all wells drilled on acreage within the boundaries of the AMI, whether they were wells drilled under this joint venture or wells that were drilled to evaluate the acreage within the AMI, the non-selling party shall have the right of first refusal to purchase the interest at the bonafide offer that the selling party received. This right of first refusal shall be for a thirty (30) day period from the time non-selling party has received in writing the terms of any such bonafide offer to purchase.

However, full operating rights shall transfer and revert to the non-selling party, whether non-selling party purchases the selling parties interest or not.

10. If any terms and conditions of this letter conflict with any terms or conditions of a later Operating Agreement set forth in Paragraph 8. above, then the terms and conditions of this letter shall prevail.

11. This Agreement may not be assigned without the express written consent of the non-assigning party.

Very truly yours,
DEVONIAN RESOURCES, INC.

STANLEY R. THOMPSON
President

I, _____ on behalf of Mid East Oil Company, agree to and accept the terms and conditions as set forth in this letter on this 7th day of August 2000.

ASSIGNMENT AND BILL OF SALE

Devonian Resources, Inc., a Pennsylvania business corporation, hereinafter referred to as "Devonian", with an office address of P. O. Box 329, Pleasantville, PA 16341, for valuable consideration, and with the intent to be legally bound hereby, has assigned, transferred, sold, conveyed and set-over, and by the presents does hereby assign, transfer, sell, convey and set-over, unto Mid-East Oil Company, a Pennsylvania business corporation, hereinafter referred to as "Mid-East", with offices at 255 Airport Road, Indiana, PA 15701, all of the right, title and interest of Devonian in and to all oil and gas property of any kind or nature situate or relating to lands within the political boundaries of Burnside Township, Center County, Pennsylvania (hereinafter the "AMI"), including but not limited to all lease rights, working interests and/or fee interests, all easements and other interests in real estate held in connection with same, all oil and/or gas wells thereon together with all downhole equipment, all production equipment, machinery, fixtures, pipelines and compressors connected thereto, and all tools, maps, electronic mapping data, digital document imaging, tracings, surveys, engineering and engineering work product, seismic, geophysical, geological, geochemical and other geotechnical information and data, logs, contracts, contract rights, licenses, permits, bonds, and all records and documents relating thereto, and all claims and causes of action as relate to any of the same, and further including without limitation by way of enumeration, all of the right, title and interest of Devonian in and to (a) the oil and gas lease and leasehold known as the Commonwealth of Pennsylvania, Pennsylvania Game Commission, State Game Lands No. 100, Tract 100A-00, (b) the Confer lease and leasehold, (c) all right, title and interest of Devonian in and to the leasehold estates,

EXHIBIT 3

oil and gas ownership rights and rights-of-way (the "Oil & Gas Agreements") situate in Centre County, Pennsylvania, more particularly set forth and described on Exhibit A attached hereto and made a part hereof, (d) all the right, title and interest of Devonian in the AMI established to explore for and develop Devonian sandstone formations in the Townships of Burnside and Snow Shoe, Centre County, Pennsylvania, and known as the Pine Glen Prospect, the terms and conditions of the AMI being more fully set forth and described in a letter dated August 23, 2000, a copy of which is attached hereto as Exhibit B and made a part hereof, (e) all of the fractional working interests of Devonian and all of the right, title and interest of Devonian in all those certain oil and gas "Wells" situate in Burnside Township, Centre County, Pennsylvania, more particularly designated and described on Exhibit C attached hereto and made a part hereof, (f) all royalty and/or overriding royalty interests of Devonian within the AMI, (g) all right, title and interest of Devonian in and to the natural gas gathering system within the AMI, consisting of all pipelines, compressors and other machinery and equipment used in connection with the transportation of gas production from the flow lines of the wells drilled within the AMI to the transmission lines of the purchasers of gas, as now and hereafter constituted, including all additions, replacements and extensions thereof (the "Gathering System") and (h) all other assets ("Assets") of Devonian that are the subject of the Asset Purchase Agreement between Devonian and Mid-East, dated November 15, 2001, all of the foregoing hereinafter described as the "Oil & Gas Property".

Assignor hereby warrants specially that it has complete legal title to its undivided interest in the Oil & Gas Property free and clear of all liens and encumbrances.

It is further specially warranted that the said leases and agreements are in fu force and effect and contain all covenants and obligations of Assignor concerning the oil and gas operations on the leased premises. Assignor disclaims all warrantie concerning the quality and quantity of oil and gas that may be produced in the futu from the subject oil and gas Well.

Devonian shall have the right to receive payment for all oil and gas produce and marketed from the leases described herein up to the date of the chart change o or about December 27, 2001. Devonian shall also make payment of all expenses incurred in the operation of the subject Wells including the payment of royalties through such production period. Mid-East shall receive payment of all proceeds from the sale of oil and gas form the subject Wells and shall be responsible for all expenses thereafter.

This Assignment and Bill of Sale shall be binding upon and shall enure to t benefit of the parties hereto and their successors and assigns.

TO HAVE AND TO HOLD the entire interest of Devonian and all claims o Devonian in and to the Assets and their hereditaments and the premises herein granted and mentioned, and intending so to be with the appurtenances unto Mid-East, its successors and assigns forever.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Assignment and Bill of Sale this 16th day of January 2002.

ATTEST:

Secretary

(CORPORATE SEAL)

DEVONIAN RESOURCES, INC.:

By: _____
President

ATTEST:

Secretary

(CORPORATE SEAL)

MID-EAST OIL COMPANY:

By: _____
MARK A. THOMPSON - President

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Clarion :

On this the 16th day of January, 2002, before me, the undersigned officer, personally appeared Stanley R. Thompson, who acknowledged himself to be President of DEVONIAN RESOURCES, INC., a Pennsylvania corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notarial Seal
Stefanie S. Haines, Notary Public
Clarion Boro, Clarion County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

_____(SEAL)
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Clarion :

On this the 16th day of January, 2002, before me, the undersigned officer, personally appeared MARK A. THOMPSON, who acknowledged himself to be President of MID-EAST OIL COMPANY, a Pennsylvania corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Stefanie S. Haines (SEAL)
NOTARY PUBLIC

Notarial Seal
Stefanie S. Haines, Notary Public
Clarion Boro, Clarion County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*
CONFER, WILLIAM C.					
D725	Centre	Burnside	PA	03/01/00	1144/0365
		Lessor: William C Confer and Mary E Confer			
		Lessee: Devonian Resources			
RENOE					
D721	Centre	Burnside	PA	08/01/99	1127/0025
MID2039		*Lessor:* Donna Renoe, et al			
		Lessee: Devonian Resources, Inc.			
STATE GAME LANDS NO. 100					
D727	Centre	Burnside	PA	05/25/00	1303/955
MID2049		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission			
		Lessee: Devonian Resources, Inc.			

EXHIBIT A

DEVONIAN RESOURCES, INC.

P.O. Box 329
Pleasantville, PA 16341
(814) 589-7061
(814) 589-7936 Fax

August 23, 2000

Mr. Mark Thompson
Mid East Oil Company
P.O. Box 1378
Indiana, PA 15701

RE: JOINT VENTURE AGREEMENT (Pine Glen Prospect)

Dear Mark:

This Letter Agreement when accepted by you shall govern the terms and conditions of the joint venture between Devonian Resources, Inc. and Mid East Oil Company (the Parties) which shall be established to explore for and develop Devonian sandstone formations, principally in the Townships of Burnside and Snowshoe of Centre County, Pennsylvania.

1. An Area of Mutual Interest (AMI), shall be established that will include all of Devonians leasehold position in the Pine Glen and all of Mid East leasehold position in this area, in addition to any new acreage that may be acquired by the Parties which lies within the boundaries of the AMI as delineated on the attached Exhibit "A".

2. All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area, however, the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent. All current leases held by Devonian Resources and Mid East at the time of the signing of this Joint Venture Agreement, shall be cross assigned to both parties to effectuate an undivided Fifty Percent (50%) interest into each parties leasehold estate. All new leases shall be taken in the name of Mid East Oil Company. Devonian Resources, Inc. shall be assigned a 50% interest in said new leases acquired. Any leases acquired from another company shall be taken by that party as deemed appropriate. Such lease acquisitions, however, will not be made without the consent of both parties. A leasing budget may be proposed by either party and at the mutual consent of both parties, a leasing program will be undertaken and directed by Mid East. The cost of any and all lease acquisition will be borne jointly in accordance with each parties working interest. Any lease acreage proposed by either party not mutually consented to, shall not be a part of the AMI of this Joint Venture Agreement.

3. The initial acreage being contributed by each party going into the AMI will be cost balanced to effectuate a 50%/50% equal costs. Whichever party has an imbalance, the imbalance shall be corrected by a cash payment to the other party. All future costs related to the Joint Venture acreage and wells will be borne jointly in accordance with each parties working interest. Each parties working interest shall be as follows:

Mid East Oil Company - 50%
Devonian Resources, Inc. - 50%

4. Prospect evaluation and the terms and conditions that shall apply are as follows:

A. Mid East desires to use funding from outside this joint venture at no cost to Mid East or Devonian, to drill and complete if warranted, certain location that Devonian and Mid East have mutually agreed upon within the prospect area, and shall do so by drilling a minimum of 8 wells but not more than 15 wells, commencing by September 1, 2000 and having at least the minimum number of wells (8) drilled within 1 year from September 1, 2000.

B. Mid East shall be designated as operator with respect to the drilling, completion, hookup and producing for the first 15 wells. Operator for all subsequent wells drilled will be determined on a mutual basis. Operating fee for any well that can be commercially produced shall be $175.00 per month.

C. After the initial 8 well minimum lease evaluation has been completed, Devonian and Mid-East agree to drill and complete, if warranted, 8 wells per year under the terms of this Joint Venture Agreement and the Operating Agreement.

D. Should either party propose the drilling and development of additional wells above the 8 wells per year specified in subparagraph C. above, and should one of the parties elect not to participate in any or all the proposed additional wells. Then the non-participating party shall be compensated for the loss of future development location(s) in the amount of Five Thousand Dollars ($5,000.00) per location. The election to not participate shall only effect the parties on a location by location basis, and does not change the terms or conditions of this Joint Venture Agreement.

5. **Gas Marketing** - Mid East and Devonian will mutually agree on the gas marketing strategy and price to be received for the joint venture gas. It is anticipated that the joint venture will sell gas through a third party gas marketing company, and that the produced gas will be sales metered on the Columbia Gas Transmission System or Columbia Gas of Pennsylvania System.

6. **Field Gathering and Compression System**

A. Mid East and Devonian shall design, construct and operate the gas gathering and compression system. Since joint venture gas will be commingled with Mid East (Investor) gas, the joint venture gas will only be charged and pay its pro-rated share of the actual monthly compression cost.

B. Mid East and Devonian will agree on a gathering and compression fee which will be charged to third-party gas, including Mid East or Devonian investor gas. The gathering and compression fee shall be distributed to Mid East and Devonian in accordance with each parties ownership in the gathering and compression system.

7. For volume allocation purposes, all joint venture gas shall be measured at the receipt point meters (wellhead) and pro-rated along with non-joint venture gas meters connected to Mid East's gathering system back to sales volume. Sales volume will be that volume as measured at the delivery point master sales meter where Mid East's gathering system interconnects to Columbia Gas Transmission or Columbia Gas of Pennsylvania.

8. **Drilling and Operating** - All wells in the joint venture will be drilled and operated at cost, subject to those terms and conditions mandated in an Operating Agreement which shall be executed prior to drilling the first joint venture well. The initial term for the joint venture shall be five (5) years unless mutually extended, commencing July 1, 2000.

A. It understood and agreed that both Devonian Resources and Mid East have the right to perform certain field services in regards to the drilling, completion and operations of the joint venture wells and any wells that may be drilled on the joint venture acreage in evaluation. Specifically, Mid East shall have the right to do all service rig work, water hauling and pipeline and well head hookups.

Devonian Resources shall have the right to do all dozer work, drilling and trucking. All of the above services shall be performed at the competitive rates for the same services provided for in the area of this work.

9. Should either party decide to sell their interest in any or all wells drilled on acreage within the boundaries of the AMI, whether they were wells drilled under this joint venture or wells that were drilled to evaluate the acreage within the AMI, the non-selling party shall have the right of first refusal to purchase the interest at the bonafide offer that the selling party received. This right of first refusal shall be for a thirty (30) day period from the time non-selling party has received in writing the terms of any such bonafide offer to purchase.

However, full operating rights shall transfer and revert to the non-selling party, whether non-selling party purchases the selling parties interest or not.

10. If any terms and conditions of this letter conflict with any terms or conditions of a later Operating Agreement set forth in Paragraph 8. above, then the terms and conditions of this letter shall prevail.

11. This Agreement may not be assigned without the express written consent of the non-assigning party.

Very truly yours,
DEVONIAN RESOURCES, INC.

STANLEY R. THOMPSON
President

I, _____, on behalf of Mid East Oil Company, agree to and accept the terms and conditions as set forth in this letter on this 21st day of August 2000.

EXHIBIT C

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*
MID-EAST OIL COMPANY						(W998B)	
BARNYAK, LOUIS E. #1							
CR-28	Centre	Burnside	PA	10/29/00	1195/1022	37-027-20701	69
MID2020		*Lessor:* Louis E Barnyak					
		Lessee: Mid-East Oil Company					
BARNYAK, LOUIS E. #2							
CR-28	Centre	Burnside	PA	10/29/00	1195/1022	37-027-20702	69
MID2021		*Lessor:* Louis E Barnyak					
		Lessee: Mid-East Oil Company					
BARNYAK, SHANE #1							
CR-27	Centre	Burnside	PA	10/29/00	1195/1026	37-027-20735	28.6
MID2033		*Lessor:* Shane L Barnyak and Michelle L Barnyak					
		Lessee: Mid-East Oil Company					
CONFER, WILLAIM C. #1							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20684	700
MID2011		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
CONFER, WILLIAM C. #10							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20704	700
MID2062		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #11							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20705	700
MID2067		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #18							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20747	700
MID2042		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #19							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20748	700
MID2040		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #2							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20691	700
MID2012		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage

MID-EAST OIL COMPANY (W998B)

CONFER, WILLIAM C. #20

D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20749	700

MID2041

Lessor: William C Confer and Mary E Confer

Lessee: Devonian Resources, Inc.

CONFER, WILLIAM C. #3

D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20695	700

MID2013

Lessor: William C Confer and Mary E Confer

Lessee: Devonian Resources, Inc.

CONFER, WILLIAM C. #4

D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20696	700

MID2014

Lessor: William C Confer and Mary E Confer

Lessee: Devonian Resources, Inc.

CONFER, WILLIAM C. #5

D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20697	700

MID2015

Lessor: William C Confer and Mary E Confer

Lessee: Devonian Resources, Inc.

CONFER, WILLIAM C. #6

D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20698	700

MID2016

Lessor: William C Confer and Mary E Confer

Lessee: Devonian Resources, Inc.

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
CONFER, WILLIAM C. #7							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20699	700
MID2017		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #8							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20700	700
MID2018		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #9							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20703	700
MID2019		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CRAWFORD #1							
CR-16	Centre	Burnside	PA	03/21/00	1152/0037	37-027-20777	61.03
MID2057		*Lessor:* Robert D Crawford					
		Lessee: Mid-East Oil Company					
ETTERS #1							
CR-12	Centre	Burnside	PA	03/20/00	1152/0022	37-027-20690	54.10
MID2022		*Lessor:* Grant D Etters					
		Lessee: Mid-East Oil Company					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

FORESMAN #1

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20755	441

MID2046

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #2

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20754	441

MID2044

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #4

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20757	441

MID2051

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #5

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20758	441

MID2047

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #6

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20759	441

MID2048

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY					(W998B)		
FYE #1							
CR-9	Centre	Burnside	PA	02/16/00	1152/0013	37-027-20689	105.88
MID2007		*Lessor:* Gilbert L Fye and Gloria J Fye					
		Lessee: Mid-East Oil Company					
HAWLEY/FORESMAN #2							
PP	Centre	Burnside	PA	09/05/95	836/305	37-027-20745	660
MID2037		*Lessor:* David W Foresman, Cynthia A Hawley, Norman L Hawley					
		Lessee: Phillips Production Company					
HOOVER, MELVIN E. #1							
CR-2	Centre	Burnside	PA	01/31/00	1152/0004	37-027-20712	103.42
MID2008		*Lessor:* Melvin E Hoover and R Lucille Hoover					
		Lessee: Mid-East Oil Company					
LIVERGOOD #1							
CR-30	Centre	Burnside	PA	01/30/01	1210/0983	37-027-20736	385.82
MID2035		*Lessor:* Robert L Livergood and Margaret J Livergood					
		Lessee: Mid-East Oil Company					
MCCULLOUGH #1							
CR-21	Centre	Burnside	PA	08/02/00	1175/0920	37-027-20685	94.0
MID2006		*Lessor:* Robert Goldwin McCullough, Travis R McCullough and Matthew R McCullough as tennants in comi					
		Lessee: Mid-East Oil Company					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*
MID-EAST OIL COMPANY						(W998B)	
MULL #1							
CR-6	Centre	Burnside	PA	02/11/00	1152/53	37-027-20686	66.04
MID2005		***Lessor:*** County National Bank, Trustee under agreement for Anthony P Mull					
		Lessee: Mid-East Oil Company					
RENOE #1							
D721	Centre	Burnside	PA	08/01/99	1127/0025	37-027-20688	626.5
MID2039		***Lessor:*** Donna Renoe, et al					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #19							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20751	3787.6
MID2052		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #20							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20750	3787.6
MID2050		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #21							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20753	3787.6
MID2049		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

STATE GAME LANDS NO. 100 #22

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20752	3787.6
MID2053		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

STATE GAME LANDS NO. 100 #23

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20763	3787.6
MID2061		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

STATE GAME LANDS NO. 100 #24

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20762	3787.6
MID2064		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

STATE GAME LANDS NO. 100 #25

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20761	3787.6
MID2065		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

STATE GAME LANDS NO. 100 #26

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20760	3787.6
MID2055		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

STATE GAME LANDS NO. 100 #27

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20764	3787.6

MID2063

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #28

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20766	3787.6

MID2060

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #29

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20765	3787.6

MID2066

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #32

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20771	3787.6

MID2058

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #33

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20772	3787.6

MID2056

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY					(W998B)		
STATE GAME LANDS NO. 100 #36							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20774	3787.6
MID2068		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #5							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20710	3787.6
MID2054		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO.100 #1							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20692	3787.6
MID2045		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO.100 #10							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20720	3787.6
MID2024		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO.100 #11							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20721	3787.6
MID2028		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

STATE GAME LANDS NO.100 #12

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20722	3787.6

MID2030

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #13

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20723	3787.6

MID2029

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #17

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20740	3787.6

MID2036

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #2

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20693	3787.6

MID2027

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #3

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20694	3787.6

MID2026

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

STATE GAME LANDS NO.100 #6

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20711	3787.6

MID2023 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #8

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20718	3787.6

MID2043 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #9

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20719	3787.6

MID2025 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

WARNER/FORESMAN #1

PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20726	1425

MID2034 *Lessor:* Loran D Foresman, et ux / Robert A Warner et ux
Lessee: Phillips Production Company

WARNER/FORESMAN #2

PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20727	1425

MID2032 *Lessor:* Loran D Foresman, et ux / Robert A Warner et ux
Lessee: Phillips Production Company

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY					(W998B)		
WARNER/FORESMAN #5							
PP	Centre	Burnside	PA	08/17/97	949/446	37-027-20730	1425
MID2038		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					
WARNER/FORESMAN #7							
PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20732	1425
MID2031		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					
WARNER/FORESMAN #9							
PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20734	1425
MID2059		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					

	Wells drilled by	MID EAST	L F SMYERS		AMI		
API #	WELL NAME	COUNTY As of	STATUS March	TIL 7th, 2003	PAYMENT	SPUD	COMPLETION
20923	Carlin 1	Centre	?			3/5/2002	yes
20921	Carlin 3	Centre	?			3/6/2002	yes
20684	CONFER 1	Centre	Producing		x	8/23/2000	
20691	CONFER 2	Centre	Producing		x	12/19/2002	
20695	CONFER 3	Centre	Producing		x	1/2/2002	
20696	CONFER 4	Centre	Producing		x	1/2/2002	
20697	CONFER 5	Centre	Producing		x	1/10/2001	
20698	CONFER 6	Centre	Producing		x	1/6/2001	
20699	CONFER 7	Centre	Producing		x	1/12/2001	
20700	CONFER 8	Centre	Producing		x	1/12/2001	
20703	CONFER 9	Centre	Producing		x	9/28/2001	
20704	CONFER 10	Centre	Producing		x	2/16/2001	
20705	CONFER 11	Centre	Producing		x	10/11/2001	
	CONFER 18	Centre	Producing		x	10/11/2001	
20748	CONFER 19	Centre	Producing		x	6/19/2001	
	CONFER 20	Centre	Producing		x	6/27/2001	
20792	CONFER 21	Centre	?			10/31/2001	yes
20791	CONFER 22	Centre	?			10/24/2001	yes
20690	ETTERS 1	Centre	Producing		x	1/7/2001	
20701	Barnyak, L 1	Centre	Producing		x	2/1/2001	
20702	Barnyak L 2	Centre	Producing		x	2/23/2001	
20735	Barnyak S 1	Centre	Producing		x	4/17/2001	
20777	Crawford 1	Centre	Producing		x	9/18/2001	
20755	Foresman 1	Centre	Producing		x	7/25/2001	
20754	Foresman 2	Centre	Producing		x	7/18/2001	
20756	Foresman 3	Centre	Producing		x	9/26/2001	5/29/2002
20757	Foresman 4	Centre	?			9/6/2001	
20758	Foresman 5	Centre	Producing		x	7/29/2001	
20759	Foresman 6	Centre	Producing		x	8/8/2001	
20986	Foresman 7	Centre	?			8/10/2002	
20985	Foresman 8	Centre	?			8/6/2002	
20991	Foresman 9	Centre	?			8/11/2002	
21030	Foresman 11	Centre	?			11/24/2002	
21028	Foresman 12	Centre	?			12/10/2002	
21029	Foresman 13	Centre	?			12/5/2002	
20632	Gulf USA 2	Centre	?	drilled earlier by Eastern States taken over by Mid			
20362	Gulf USA 3	Centre	?	""			
20954	Gulf USA 5	Centre	?			2/19/2002	
21042	Gulf USA 19	Centre	?			12/31/2002	

EXHIBIT 4

20929	Litke 1	Centre	?		1/24/2002	
20928	Litke 2	Centre	?		2/11/2002	
20199	Litke 23	Centre	?	drilled earlier by Eastern States taken over by Mid		
20976	Litke 25	Centre	?		7/19/2002	
20977	Litke 26	Centre	?		8/28/2002	
20978	Litke 28	Centre	?		7/25/2002	
20979	Litke 29	Centre	?		8/5/2002	
20992	Litke 35	Centre	?		8/24/2002	
20996	Litke 36	Centre	?		8/24/2002	
20995	Litke 37	Centre	?		7/29/2002	
20994	Litke 38	Centre	?		12/21/2002	
20993	Litke 39	Centre	?		9/8/2002	
20997	Litke 40	Centre	?		9/12/2002-	1/7/2003
20998	Litke 41	Centre	?		9/4/2002	
21033	Litke 43	Centre	?		12/11/2002	
21034	Litke 44	Centre	?		12/17/2002	
21081	Litke 45	Centre	?		2/5/2003	
21063	Litke 46	Centre	?		12/28/2002	
21064	Litke 47	Centre	?		1/13/2003	
21065	Litke 48	Centre	?		1/3/2003	
21092	Litke 52	Centre	?		3/5/2003	
21083	Litke 53	Centre	?		2/12/2003	
21085	Litke 57	Centre	?		2/26/2003	
21088	Litke 61	Centre	?		2/24/2003	
21089	Litke 62	Centre	?		1/31/2003	
21090	Litke 63	Centre	?		2/4/2003	
20644	Litke W.W. D 1	Centre	?	drilled earlier by Eastern States taken over by Mid		
20689	Fye 1	Centre	?		1/17/2001	
20894	Fye 2	Centre	?		6/3/2002	
20745	Hawley/Foresman 2	Centre	?		5/16/2001	
20712	Hoover 1	Centre	? P&A		2/23/2001	
20736	Livergood 1	Centre	? P&A		5/2/2001	
20685	McCullough 1	Centre	?		9/7/2000	
20686	Mull 1	Centre	?		9/1/2000	
24836	Neidrick 1	Centre	? prod PA		8/1/2001	
21062	Pine Glen FD 1	Centre	?		1/10/2003	
20688	Renoe 2	Centre	?		5/26/2001	
20726	Warner/Foresman 1	Centre	Producing	x	4/24/2001	
20727	Warner/Foresman 2	Centre	Producing	x	4/11/2001	
20730	Warner/Foresman 5	Centre	?		5/20/2001	
20732	Warner/Foresman 7	Centre	Producing	x	4/4/2001	
20734	Warner/Foresman 9	Centre	Producing	x	9/23/2001	

24819	Brown 1	Clearfield	P&A ?		07-04-01`	
24891	Brown 6	Clearfield	P&A ?		8/1/2001	
20692	SGL 100-1	Centre	Producing	x	1/19/2001	
20693	SGL 100-2	Centre	Producing	x	1/25/2001	
20694	SGL 100-3	Centre	Producing	x		
20710	SGL 100-5	Centre	Producing	x	9/11/2001	
20711	SGL 100-6	Centre	Producing	x	2/16/2001	
20718	SGL 100-8	Centre	Producing	x	7/6/2001	
20719	SGL 100-9	Centre	Producing	x	3/4/2001	
20720	SGL 100-10	Centre	Producing	x	3/14/2001	
20721	SGL 100-11	Centre	Producing	x	3/17/2001	
20722	SGL 100-12	Centre	Producing	x	3/28/2001	
20723	SGL 100-13	Centre	Producing	x	3/23/2001	
	SGL 100-17	Centre	Producing	x	5/8/2001	
20751	SGL 100-19	Centre	Producing	x	9/7/2001	
20750	SGL 100-20	Centre	Producing	x	9/4/2001	
20753	SGL 100-21	Centre	Producing	x	8/27/2001	
20752	SGL 100-22	Centre	Producing	x	9/10/2001	
20763	SGL 100-23	Centre	Producing	x	9/27/2001	
20762	SGL 100-24	Centre	Producing	x	10/3/2001	
20761	SGL 100-25	Centre	Producing	x	10/7/2001	
20760	SGL 100-26	Centre	Producing	x		
20764	SGL 100-27	Centre	Producing	x	9/27/2001	
20766	SGL 100-28	Centre	Producing	x	9/24/2001	
20765	SGL 100-29	Centre	Producing	x	10/10/2001	
20769	SGL 100-30	Centre	Producing	x	1/5/2002	
20770	SGL 100-31	Centre	Producing	x	1/2/2002	
20771	SGL 100-32	Centre	Producing	x	9/22/2001	
20772	SGL 100-33	Centre	Producing	x	9/19/2001	
20776	SGL 100-34	Centre	Producing	x	1/14/2002	
20775	SGL 100-35	Centre	Producing	x	1/19/2002	
20774	SGL 100-36	Centre	Producing	x	10/17/2001	
20773	SGL 100-37	Centre	?		6/17/2002	
21046	SGL 100-38	Centre	?		12/31/2002	
20779	SGL 100-40	Centre	?		6/25/2002	
20778	SGL 100-41	Centre	?		6/21/2002	
20789	SGL 100-42	Centre	?		8/15/2002	
20788	SGL 100-43	Centre	?		6/19/2002	
20790	SGL 100-44	Centre	Producing	x	1/21/2002	
20785	SGL 100-50	Centre	?		6/21/2002	7/9/2002
20899	SGL 100-51	Centre	?		5/13/2002	
20898	SGL 100-52	Centre	?		6/10/2002	
20897	SGL 100-53	Centre	?		5/17/2002	
20896	SGL 100-54	Centre	?		6/14/2002	
20895	SGL 100-55	Centre	?		5/21/2002	
20909	SGL 100-56	Centre	Producing	x	1/5/2002	
20912	SGL 100-57	Centre	Producing	x	1/9/2002	
20911	SGL 100-58	Centre	?		5/13/2002	
20910	SGL 100-59	Centre	Producing	x	12/30/2001	

20917	SGL 100-60	Centre	Producing		x	1/15/2002	
20940	SGL 100-62	Centre	Producing		x	1/18/2002	
20960	SGL 100-70	Centre	?			5/30/2002	
20959	SGL 100-71	Centre	?			5/23/2002	
20957	SGL 100-72	Centre	?			6/30/2002	7/10/2002
20966	SGL 100-73	Centre	?			5/7/2002	
20965	SGL 100-74	Centre	?			6/7/2002	
20970	SGL 100-75	Centre	?			6/11/2002	
20969	SGL 100-76	Centre	?				
21052	SGL 100-96	Centre	?			12/28/2002	
21051	SGL 100-97	Centre	?			1/4/2003	
20789	SGL 100-100	Centre	?			6/24/2002	
21055	SGL 100-101	Centre	?			12/17/2002	
21054	SGL 100-102	Centre	?			12/22/2002	
21073	SGL 100-104	Centre	?			1/16/2003	
21074	SGL 100-105	Centre	?			1/16/2003	
21095	SGL 100-106	Centre	?				
20958	SGL 100 B01- 64	Centre	?			2/1/2003	
20962	SGL 100 B01-66	Centre	?			9/16/2002	
20400	COP 706-1	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20401	COP 706-2	Centre	Proucing	Drilled by	Eastern Sta es purchasec by Mid East		
20466	COP 706-3	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20467	COP 706-4	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20468	COP 706-5	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20448	COP 706-7	Centre	?				
20901	COP 706-8	Centre	?			6/30/2002	
20905	COP 706-9	Centre	?			8/24/2002	
20900	COP 706-10	Centre	?			6/25/2002	
20968	COP 706-19	Centre	?			12/3/2002	
21019	COP 706-22	Centre	?			1/13/2003	

Mid-East Oil Company

PO Box 1378
Indiana, PA 15701

(724) 349-6690
Fax (724) 349-6711

December 2, 2003

Mr. Larry Smyers
300 East Second Avenue
DuBois, PA 15801

Notice of discontinuance of payments from Mideast to Larry Smyers

Dear Mr. Smyers:

1. The purpose of this letter is to notify you that we are discontinuing making any further payments to you. We believe that you may not have been entitled to any payments that may have been made to you in the past.

2. Based upon the information that we have seen, it also appears to us that you have seriously breached numerous material professional duties and obligations to Devonian Resources Inc. with respect to a certain area of mutual interest.

3. Those professional duties and obligations are duties and obligations owed to Devonian pursuant to:

    a. Your consulting/employment relationship with Devonian.

    b. The rules of ethics of the American Association of Petroleum Geologists, to which you have held yourself out as being a member.

    c. Pennsylvania statutory and regulatory law with respect to licensed geologists.

    d. Rules of ethics applicable to geophysicists.

4. As you know, Devonian previously assigned all of its rights and claims with respect to that area of mutual interest to Mideast.

5. Therefore, Mideast now holds all of Devonian's claims against you for those breaches of your professional duties and obligations.

6. Your breaches of your duties have caused substantial injury and damages.

7. The damages that you caused appear to us to exceed the amount of the payments that you are claiming from us.

EXHIBIT 5

8. Therefore, we are discontinuing making any payments to you at this time and we are considering the appropriateness of our asserting a counterclaim against you not only for the damages that have been suffered, but also for a return of payments previously made to you.

9. We are proceeding forward with our further investigation of these matters, including the initial discovery requests that we submitted to you through your attorney in connection with the pending lawsuit that you filed against us.

10. Once we conclude our investigation and our assessment of your breaches and any injuries and damages that your breaches caused, we will then be better able to assess our claims against you and the relationship of our claims to the claims that you are asserting against us for payments.

Mideast Oil Company

Mark Thompson

President

Cc: Matthew Taladay

In The Court of Common Pleas of Clearfield County, Pennsylvania

SMYERS, LARRY F.
VS.
MID EAST OIL COMPANY
COMPLAINT

Sheriff Docket # 14718
03-1598-CD

SHERIFF RETURNS

NOW OCTOBER 28, 2003 DONALD BECKWITH, SHERIFF OF INDIANA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MID EAST OIL COMPANY, DEFENDANT.

NOW OCTOBER 30, 2003 SERVED THE WITHIN COMPLAINT ON MID EAST OIL COMPANY, DEFENDANT BY DEPUTIZING THE SHERIFF OF INDIANA COUNTY. THE RETURN OF SHERIFF BECKWITH IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED BETTY PAULINA, SECRETARY.

Return Costs

Cost	Description
30.13	SHERIFF HAWKINS PAID BY: ATTY CK# 13017
10.00	SURCHARGE PAID BY: ATTY K# 13018
39.00	INDIANA CO. SHFF. PAID BY: ATTY. CK# 13019

Sworn to Before Me This

17 Day Of Dec. 2003

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

by Marilyn Hamm

Chester A. Hawkins
Sheriff

FILED

DEC 17 2003
01:00
William A. Shaw
Prothonotary/Clerk of Courts

#5

14718

INDIANA COUNTY SHERIFF'S OFFICE

PLAINTIFF SMYERS LARR

date recieved: 10 /03 **status:** C

VS

case number: 031598CD

DEFENDANT MID EAST OIL C

paper type: COMPLAINT

ATTORNEY,S NAME: CLEARFIELD CTY SHF

ATTORNEY'S ADDRESS:

LAST DAY OF SERVICE: 11/26/03

# of services: 1

ADVANCE CHARGED:	$39.00		
RECEIVING DOCKETING:	$9.00	**SURCHARGE:**	$0.00
FOUND SERVICE:	$9.00	**NOTARY FEE:**	$3.00
NOT FOUND	$0.00	**MILEAGE:**	$18.00
ADDITIONAL DEFENDANTS SERVED	$0.00	**POSTAGE:**	$0.00
DEPUTIZATION	$0.00		

TOTAL COSTS: $39.00

REFUND DUE: $0.00

RETURN OF SERVICE:

NOW 10/30/03 AT 2:00PM SERVED MID EAST OIL CO BY HANDING

TO BETTY PAULINA SECRETARY AT 255 AIRPORT RD INDIANA PA-

SMITH

SWORN AND SUBSCRIBED BEFORE ME
THIS 31 **DAY OF** Oct 2003

Loretta J. Wissinger

NOTARIAL SEAL
LORETTA J. WISSINGER, NOTARY PUBLIC
INDIANA, INDIANA CO
MY COMMISSION EXPIRES MARCH 6, 2006

Donald L. Beckwith

DONALD L. BECKWITH, SHERIFF

BY:

DEPUTY WILLIAM SMITH

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Dom W. Greco, Esq., hereby certify that a true and correct copy of the foregoing **"Defendant's November 19, 2003 Request for Admissions, Interrogatories & Requested Production of Documents"** was sent by U.S. mail, postage prepaid, on November 20, 2003, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By _____
DOM W. GRECO, ESQ.

FILED

NOV 24 2003

William A. Shaw
Prothonotary/Clerk of Courts

#11

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Dom W. Greco, Esq., hereby certify that a true and correct copy of the foregoing **"Preliminary Objections to Complaint"** was sent by U.S. mail, postage prepaid, on November 17, 2003, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By _____
DOM W. GRECO, ESQ.

FILED

NOV 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

#3

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant's Preliminary Objections***
Defendant	:	***to Complaint***
	:	
	:	
	:	
	:	Counsel of Record for This Party:
	:	Dom W. Greco, Esq.
	:	
	:	Supreme Court I.D. No. 16829
	:	
	:	Dom W. Greco, Esq.
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6843
	:	Fax: (240) 465-7135
	:	Pa. I.D. #16829

FILED

NOV 1 8 2003

William A. Shaw
Prothonotary/Clerk of Courts

#2

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

PRELIMINARY OBJECTIONS TO COMPLAINT

Table Summarizing Preliminary Objections		
#	***Applicable Rule***	***Description***
1	1028(a)(4)	Demurrer as to all counts *(See page #4)*
2	1028(a)(2) & 2227	Failure to join joint interest owner *(See page #12)*
3	Rules1028(a)(2) and 1019(h)	Oral or written agreement *(See page #13)*
4	Rules1028(a)(2) and 1019(i)	The to attach writing *(See page #14)*
5	Rules1028(a)(3)	Insufficient specificity *(See page #17)*
6	1028(a)(4)	demurrer as to unjust enrichment count *(See page #35)*
7	1028(a)(2) and 1019(c):	Failure to plead satisfaction of conditions *(See page #36)*
8	Rules 1028(a)(2) and 2128(a):	Misjoinder of defendant *(See page #40)*

***Note As to Applicable Rules*:**

Copies of all of the Rules cited in the above "*Table Summarizing Preliminary Objections*" are attached as Exhibit A (Page #42) to these objections for the convenience of the reader.

Illustrative Timeline & Flowchart		
#	**Description**	**Location**
1	Transaction Steps Showing Defendant Not Liable	See page #10
2	Smyers Vs. Mideast Timeline from Complaint	See page #32

Defendant Mid East Oil Company, by its undersigned legal counsel, Greco & Lander P.C., hereby asserts the following preliminary objections to the complaint:

Preliminary objection #1: Rule 1028(a)(4): demurrer as to all counts

1. **No liability assumed by defendant**.

   a. **No obligation defendant assumed liability.**

      The complaint does ***not*** allege that defendant ***assumed*** any liability to make payments to plaintiff.

   b. **Devonian rights "*subject to*" prior agreement**.

      i. **Only "*subject to*" specified the "*prior agreement*".**

         ¶ 2 of the August 23, 2000 joint venture agreement between Devonian Resources Inc. and defendant provides that the leases are "*subject to*" the overriding royalty obligation of Devonian Resources "*as mandated by a prior agreement between Devonian Resources and a third party*".

      ii. **Plaintiff not identified as applicable "*third party*"**.

         The August 23, 2000 joint venture agreement between Devonian Resources Inc. and defendant does ***not*** identify ***who*** that "*third party*" is with whom Devonian Resources Inc. entered into such prior agreement that mandated such overriding royalty obligations of Devonian.

      iii. **Confidentiality agreement as "*prior agreement*".**

         It appears that the complaint alleges that the February 29, 2000 confidentiality agreement between plaintiff and Devonian Resources Inc. is such "*prior agreement*" that plaintiff alleges "*mandated*" such overriding royalty obligations to plaintiff.

iv. **Confidentiality agreement *not* mandate royalties payable to plaintiff.**

1. **Complaint does not allege.**

   The complaint does ***not*** allege what in the February 29, 2000 confidentiality agreement between plaintiff and Devonian mandates any such overriding royalty obligations to plaintiff.

2. **Terms of agreement do not provide**.

   The terms of the February 29, 2000 confidentiality agreement attached to the complaint do ***not*** mandate any such overriding royalty payments to plaintiff.

v. **Confidentiality agreement *only* expands plaintiff's letter to Van Hampton**.

The relevant portion of the February 29, 2000 confidentiality agreement merely states that:

"*This confidentiality agreement is intended to expand on and supplement the terms of a letter dated August 3, 1999 to Van Hampton Oil and Gas Company (receiver) from Larry F. Smyers (offeror) attached herein as exhibit II... This agreement includes Van Hampton Oil and Gas, it's related companies and joint interest activities in the area defined in exhibit I.*"

vi. **Van Hampton not a party.**

Van Hampton Oil and Gas Company is ***not*** a party to the February 29, 2000 confidentiality agreement between plaintiff and Devonian.

vii. **Plaintiff letter to Van Hampton not a contract.**

Such August 3, 1999 proposal letter from plaintiff to Van Hampton Oil and Gas Company:

1. **No contract.**

   Is not a contract, and

2. **Merely plaintiff's proposal.**

   By its own terms is merely a "*proposal... to begin discussions toward a rewarding working relationship.*"

viii. **No Devonian royalty obligation to plaintiff.**

1. **No plaintiff-defendant agreement mandating payments to plaintiff**.

   Therefore, there is no overriding royalty obligation of Devonian Resources to plaintiff, because according to the terms of the writings that plaintiff attached to the complaint, there is no prior agreement between Devonian Resources and plaintiff that mandates any such payments to plaintiff.

2. **Merely confidentiality agreement**.

   At most ***all*** there is between Devonian Resources and plaintiff is a February 29, 2000 confidentiality agreement.

ix. **No Van Hampton royalty obligation to plaintiff.**

While the August 3, 1999 "*proposal*" letter from plaintiff to Van Hampton Oil and Gas Company does make mention of the possibility of overriding royalty payments under certain

circumstances from Van Hampton Oil and Gas Company to plaintiff, the complaint does ***not*** allege that:

1. **No acceptance.**

   The August 3, 1999 proposal letter was accepted by Van Hampton Oil & Gas Company, ***and***

2. **Not party to confidentiality agreement.**

   That Van Hampton Oil & Gas Company was a party to the February 29, 2000 confidentiality agreement between plaintiff and Devonian Resources.

x. **Oil & gas rights not "subject to" claims of plaintiff.**

Therefore, ¶ 2 of the August 23, 2000 joint venture agreement not only does ***not*** impose an obligation upon defendant to pay overriding royalty to plaintiff, but such ¶ 2 does ***not*** even make any of the leases "*subject to*" any alleged obligations of the Devonian Resources to plaintiff, ***since***:

1. **Only Van Hampton could have royalty obligation to plaintiff.**

   The writings attached to the complaint indicate that ***if*** anyone has any such overriding royalty obligations to plaintiff it would ***only*** be Van Hampton Oil & Gas Company who would be obligated, ***and***

2. **Writings not show Van Hampton accepted royalty obligation.**

   It is doubtful that Van Hampton would even have any such

liability to plaintiff, ***given that*** the writings attached to the complaint:

a. do ***not*** show that the August 3, 1999 plaintiff proposal letter Van Hampton was even accepted by Van Hampton, ***or***

b. do ***not*** show that Van Hampton was a party to the February 29, 2000 confidentiality agreement.

2. **No privity of contract**.

The complaint does ***not*** allege that defendant was a ***party*** to any contract with plaintiff imposing liability on defendant to make payments to plaintiff.

3. **No privity of estate**.

The complaint does ***not*** allege that at any time after the August 23, 2000 joint venture agreement, or even at the time of the filing of the complaint, that defendant ***owned*** any interest in any of the properties with respect to which plaintiff seeks payments from defendant.

4. **No allegation of defendant's knowledge.**

The complaint does ***not*** allege that at the time of the August 23, 2000 joint venture agreement that defendant ***knew*** that plaintiff was "*a third party providing geologic services for this perspective area*".

5. **Failure of plaintiff to timely record**.

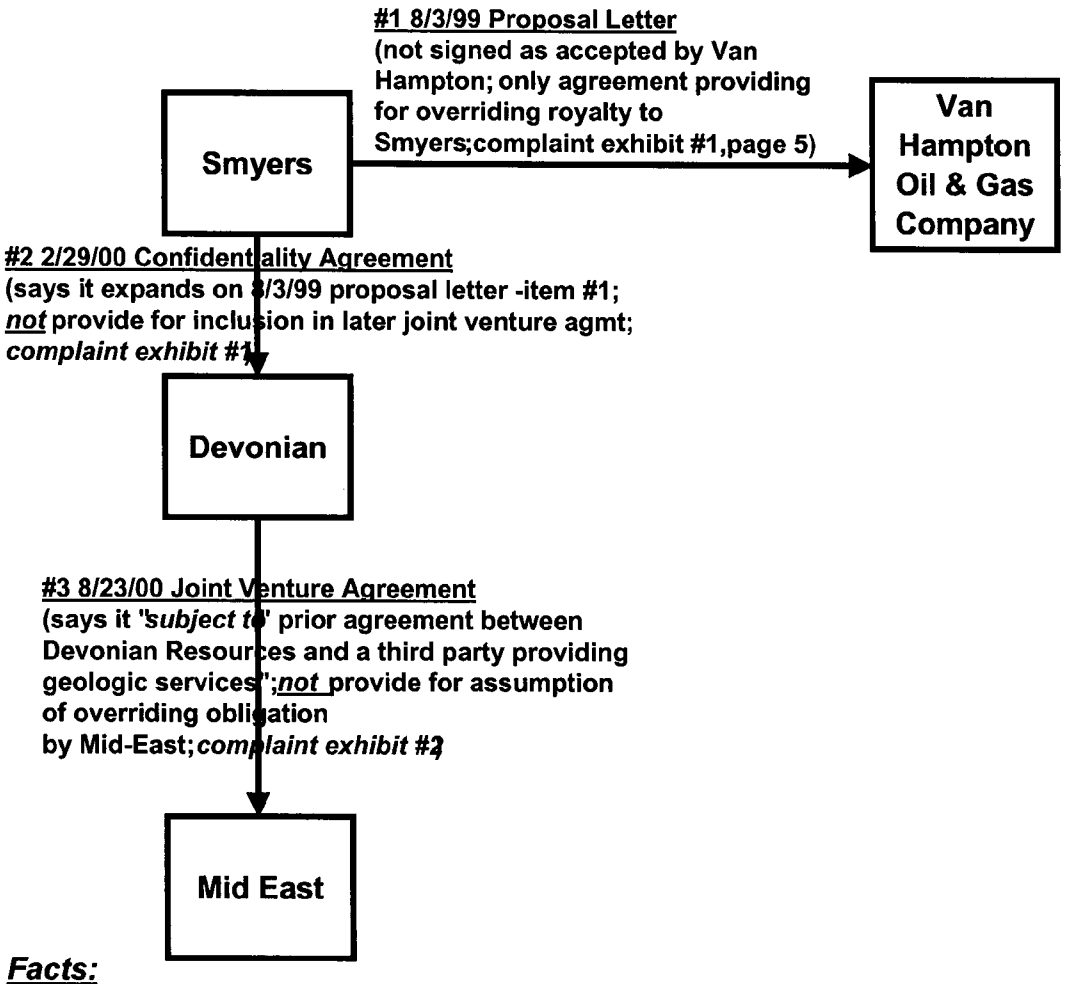
Complaint ¶ 5 is an admission by plaintiff that plaintiff did ***not*** record his alleged agreement with Devonian Resources Inc. with respect to the alleged area of mutual interest until September 24, 2001, which is more than a year ***after*** the August 23, 2000 Joint Venture Agreement that plaintiff alleged in complaint ¶ 7 that defendant

entered into with Devonian Resources Inc. with respect to the area of mutual interest.

6. **Illustrative flowchart**.

The following flowchart shows the transactions plaintiff pled in the complaint and illustrates that defendant is ***not*** liable to make the overriding royalty payments to plaintiff that plaintiff claims:

Transaction Steps Showing Defendant *Not* Liable



Facts:

- Defendant Mid East ***only*** had agreement with Devonian (see step #3)
- Devonian ***only*** had confidentiality agreement with Smyers (See step #2)
- Confidentiality agreement did ***not*** provide for royalties from Devonian to Smyers
- Confidentiality agreement was incorporated into ***earlier*** Letter Proposal to Van Hampton - step # 1
- Letter proposal to Van Hampton step #1 was ***only*** document providing for royalties
- Such royalty payment would have gone ***only*** from Van Hampton to Smyers
- Smyers letter proposal to Van Hampton (step #1) was ***not*** incorporated into Joint Venture Agmt (step #3)

Conclusion:

The override of the Smyers-Van Hampton letter proposal (#1) was ***not*** incorporated into the later Devonian-Defendant Mid- East joint venture agreement (#3). **Therefore, defendant is not liable.**

Prayer for relief Preliminary Objection #1:

Wherefore, defendant hereby demurs to all of the causes of action alleged by plaintiff against defendant, and requests that the court dismiss plaintiff's complaint.

Preliminary objection #2: Rules 1028(a)(2) & 2227: failure to join joint interest owner

7. **Complaint identifies other joint interest owner**.

   a. **Confidentiality agreement complaint exhibit.**

      The addenda following ¶ 6(c) of the February 29, 2000 confidentiality agreement that is attached as in exhibit to the complaint contains plaintiff's acknowledgment that plaintiff knows that plaintiff's claims are with respect to "*joint interest activities*".

   b. **Joint venture agreement complaint exhibit.**

      The introductory paragraph of the August 23, 2000 joint venture agreement that is attached as in exhibit to the complaint as exhibit #2:

      i. identifies Devonian Resources Inc. as a joint interest owner,

      ii. describes the agreement as establishing "*the joint venture*" , and

      iii. provides that it is the purpose of the joint venture "*to explore for and develop ....*"

8. **Joint interest owner not joined**.

Plaintiff's complaint does ***not*** join Devonian Resources Inc. as a party.

Prayer for relief Preliminary Objection #2:

Wherefore, defendant requests that the court dismiss the complaint for plaintiff's failure to join necessary joint interest party Devonian Resources Inc. as a defendant.

Preliminary objection #3: Rules1028(a)(2) and 1019(h): Oral or written agreement

9. **August 3, 1999 agreement**.

Complaint ¶ 3 alleges that "*On or about August 3, 1999, the plaintiff entered into an agreement with Van Hampton Oil and Gas Company....*" , but does ***not*** state specifically if the agreement is oral or written.

10. August 3, 1999 letter.

An August 3, 1999 letter from plaintiff to Van Hampton Oil and Gas Company is attached as an exhibit to the complaint, but the complaint does ***not*** allege that such letter is such alleged August 3, 1999 agreement between plaintiff and Van Hampton Oil and Gas Company.

Prayer for relief Preliminary Objection #3:

Wherefore, defendant requests that the court dismiss the complaint, unless plaintiff files a timely amended complaint alleging specifically if the alleged August 3, 1999 agreement of plaintiff with Van Hampton Oil and Gas Company was oral or written.

Preliminary objection #4: Rules1028(a)(2) and 1019(i): failure to attach writing

11. **Confidentiality Agreement Exhibit I.**

a. **February 29, 2000 confidentiality agreement**.

Plaintiff attached a copy of a February 29, 2000 confidentiality agreement between plaintiff and Devonian Resources Inc. as exhibit #1 to the complaint. Page #2 of that confidentiality agreement included and written notes indicating that the confidentiality agreement included exhibits I and II.

b. **Failure to Attach Exhibit I**.

i. **Attached one but not other exhibit**.

However, plaintiff ***failed*** to attach exhibit I, although plaintiff did attach exhibit II.

ii. **Prejudice to defendant**.

Plaintiff's failure to attach such exhibit I is prejudicial to defendant's ability to plead in response to plaintiff's complaint, since such missing exhibit I defines the important geographic parameters of the scope of the rights for which plaintiff is suing defendant in the complaint.

12. **August 3, 1999 agreement.**

a. **Alleged August 3, 1999 agreement**.

Complaint ¶ 3 alleges that "*On or about August 3, 1999, the plaintiff entered into an agreement with Van Hampton Oil and Gas Company....*"

b. **Failure to Attach August 3, 1999 Agreement**.

Plaintiff ***failed*** to attach a copy of such alleged August 3, 1999 agreement from plaintiff to Van Hampton Oil and Gas Company to the complaint.

13. **August 23, 2001 agreement.**

a. **Alleged August 23, 2001 agreement**.

Complaint ¶ 9 alleges that "*Defendant... by virtue of the Joint Venture Agreement dated August 23, 2001, which is attached as an exhibit to the Bill of Sale is obligated to pay a 1/64 overriding royalty to plaintiff....*"

b. **Failure to attach August 23, 2001 agreement**.

Plaintiff ***failed*** to attach a copy of such alleged August 23, 2001 Joint Venture Agreement to the complaint, but ***instead*** attached a copy of the year ***earlier*** August 23, 2000 Joint Venture Agreement to the complaint.

14. **Plaintiff's fractional interest.**

a. **Alleged oil & gas rights**.

Complaint ¶ 10 alleges that "*plaintiff owns a fractional interest...of a certain oil and gas wells....*"

b. **Failure to attach agreement creating alleged rights**.

Plaintiff failed to attach a copy of the writing by which plaintiff obtained such alleged ownership of such interest.

Prayer for relief Preliminary Objection #4:

Wherefore, defendant requests that the court dismiss plaintiff's

complaint, unless plaintiff files a timely amended complaint to which is attached:

i. **such August 3, 1999 agreement,**

ii. **such August 23, 2001 Joint Venture Agreement, and**

iii. **such writing by which plaintiff obtained such alleged ownership of such fractional interest of such oil and gas wells.**

Preliminary objection #5: Rules1028(a)(3): insufficient specificity

15. **Complaint ¶ 10**.

a. **Alleged plaintiff fractional interest in wells**.

Complaint ¶ 10 alleges that "*...plaintiff owns a fractional interest... of a certain oil and gas wells located on tract 706 within the AMI.*"

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **Which**.

1. Which wells are those "*certain oil and gas wells*"?
2. Which portion of the said area of mutual interest premises constitutes "*tract 706*"?
3. Which one of the documents attached as an exhibit to the complaint is the source of plaintiff's claimed ownership of such "*fractional interest*"?

ii. **On what basis.**

1. On what basis is plaintiff contending that defendant has payments obligations to plaintiff with respect to such alleged plaintiff interest in such "*certain oil and gas wells*"?
2. On what basis is plaintiff contending that defendant has an obligation to provide plaintiff with the prayed for accounting with respect to such wells?

iii. **What nature of interest.**

Is the "*fractional interest*" alleged by plaintiff a royalty interest, and overriding royalty interest, a working interest, a production payment, or some other type of "*fractional interest*"?

16. **Complaint ¶ 11**.

a. **Particular wells.**

Complaint ¶ 11 alleges in part "*The well numbers in the shaded area of this exhibit represent wells for which plaintiff has been receiving royalties.*"

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **Who.**

Who the person or entity is that has been making such alleged payments to plaintiff?

ii. **What**.

1. What is the nature and extent of the rights that plaintiff claims to receive such alleged payments?
2. What document is the source of plaintiff's claim to be entitled to receive such payments?

17. **Complaint ¶ 12**.

a. **Alleging failure of defendant to pay.**

Complaint ¶ 12 alleges:

"*Despite its obligations under the [area of mutual interest] and Joint Venture Agreements, the defendant has failed and refused to make royalty payments due and owing to plaintiff for all other oil and gas wells listed on exhibit "4" as well as any and all other wells developed*

by defendant within the [area of mutual interest] which are currently not known to plaintiff."

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **What.**

1. What obligations is plaintiff alleging that defendant owes to plaintiff " *under the [area of mutual interest]* " that is separate and apart from any obligations that the plaintiff is alleging that the defendant owes to plaintiff under the "*Joint Venture Agreements*"?
2. What is the identity of each of the various joint venture agreements that plaintiff has alleged, in the plural, that is the basis of such alleged obligations of defendant to plaintiff?

ii. **Which.**

1. Which of those alleged various joint venture agreements are oral and which are in writing?
2. Which of those alleged various joint venture agreements are attached to the complaint as an exhibit and which are not?
3. Which provisions in such alleged joint venture agreements is plaintiff contending is the basis of the obligations that plaintiff is alleging that defendant owes to plaintiff?

iii. **Whose.**

Whose obligation was it to make the payments to plaintiff that

plaintiff alleges defendant failed or refused to make the plaintiff?

iv. **Clarification.**

Is plaintiff alleging that all of the "*other oil and gas wells listed on exhibit "4""* were drilled, developed, or operated by defendant?

v. **Why.**

Why is plaintiff claiming that it is defendant who is obligated to pay plaintiff overriding royalty with respect to production from wells located on leases that complaint exhibit #4 shows is being in the name of a lessee ***other than*** Devonian, ***given that*** complaint ¶ 5 and 7 alleged that the joint venture Agreement imposes such obligations on defendant ***only*** with respect to Devonian?

18. **Complaint ¶ 14.**

a. **Alleged defendant breach.**

Complaint ¶ 14 alleged that "*Defendant has breached its contractual obligation to plaintiff....* [Followed by subparagraphs listing and describing various obligations that plaintiff alleges defendant owes to plaintiff] "

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **¶ 14(a) "*contractual obligation to plaintiff*".**

1. **Contractual obligations to plaintiff.**

a. What is the source of that alleged defendant "*contractual obligation to plaintiff*"?

b. Was that "*contractual obligation to plaintiff*" created orally or in writing?

c. Do any of the writings attached as exhibit to the complaint create or describe such "*contractual obligation to plaintiff*"?

2. **Controlling agreements.**

a. Which are the agreements that plaintiff alleged in ¶ 14(a) as the "*controlling agreements*"?

b. Are those "*controlling agreements*" oral agreements or written agreements?

c. Are there any "*controlling agreements*" that are ***not*** attached to the complaint as an exhibit?

3. **Royalty.**

a. **Limited to defendant's 50% interest.**

Is the royalty that plaintiff is alleging that defendant owes to plaintiff based upon:

i. ***all*** of the oil and gas production within the designated geographic area, ***or***

ii. ***only*** that portion of the production in that geographic area allocated to the 50 percent interest of defendant provided for by the August 23, 2000 joint venture Agreement

between defendant and Devonian Resources Inc. attached to the complaint as an exhibit?

b. **Whose gross proceeds.**

Is the 1/64 royalty the plaintiff is claiming defendant owes plaintiff being claimed by plaintiff based upon:

i. ***only*** the gross proceeds that defendant itself receives from well production,

ii. the gross proceeds of what ***both*** defendant and Devonian Resources Inc. receive from well production, ***or***

iii. the gross proceeds of ***all*** of what defendant, Devonian Resources Inc., and all other royalty interest holders ***combined*** receive from well production?

c. **During what period of time.**

Is plaintiff alleging that the alleged royalty payment obligation that defendant owes to plaintiff:

i. is limited to oil and gas production only during the term of defendant's ownership of an interest in the wells in the area of mutual interest, ***or***

ii. extends beyond the term of defendant's ownership of such interest in such wells in such area?

d. **Type of defendant's relationship to wells.**

Is plaintiff alleging that the wells with respect to which plaintiff is alleging defendant owes plaintiff overriding royalty are wells drilled ***or*** operated by defendant?

e. **Relationship to formation of joint venture.**

i. Is plaintiff alleging that the wells with respect to which plaintiff is alleging defendant owes plaintiff overriding royalty are ***limited to*** only wells drilled after defendant entered into a joint venture agreement with Devonian Resources Inc.?

ii. If so, ***which*** of the various joint venture agreements plaintiff refers to in ¶ 12 of the complaint is plaintiff using the formation date of as the date of the commencement of the accrual of plaintiff's alleged claims against defendant?

ii. **¶ 14(b) Tract 706 "*pre-existing employee investment program*"**

1. **Which.**

   Which portion of the said area of mutual interest premises constitutes tract 706 referred to in complaint ¶ 14 (b)?

2. **The plaintiff's interest in tract 706.**

   Is plaintiff alleging that the alleged royalty payment obligation that defendant owes to plaintiff with respect to tract 706:

   a. **Term**.

      i. Is limited to oil and gas production from such tract ***only*** during the term of defendant's ownership of an interest in the wells in tract 706, ***or***

      ii. extending beyond the term of defendant's ownership of such interest in such tract 706 wells?

3. **Pre-existing employee investment program.**

   a. What is the "*pre-existing employee investment program*" referred to in ¶ 14 (b)?

   b. What is the source of that alleged defendant "*contractual obligation to plaintiff*" to make payments to plaintiff with respect to such "*pre-existing employee investment program*"?

   c. Is the alleged "*pre-existing employee investment program*" and oral or written agreement?

d. Are the terms of that alleged "*pre-existing employee investment program*" set forth in any of the writings attached as exhibits to the complaint?

e. Is plaintiff alleging himself to be or have been a "*pre-existing employee*"?

f. Is plaintiff alleging himself to be or have been an employee of defendant?

g. Is plaintiff alleging that he is entitled to royalty payments with respect to such "*pre-existing employee investment program*" during any period of time when plaintiff is ***not*** an employee of defendant?

h. Is plaintiff alleging that the alleged royalty payment obligation that defendant owes to plaintiff with respect to the alleged "*pre-existing employee investment program*":

   i. is limited to oil and gas production ***only*** during the term of defendant's ownership of an interest in the wells in the area of mutual interest of such "*pre-existing employee investment program*", ***or***

   ii. extends beyond the term of defendant's ownership of such interest in such wells

through or by such "*pre-existing employee investment program*"?

4. **Calculation.**

Is the overriding royalty the the plaintiff is alleging in complaint ¶ 14 (b) that defendant owes to plaintiff:

a. **All Production.**

Based upon ***all*** of the production from the designated wells ***regardless*** of the time period during which such production occurred, ***or***

b. **Only certain production.**

Related ***only*** to well production after some certain date or during a certain periof of time?

iii. ***¶ 14 (c) "...failing to provide an accounting of oil and gas production...."***

1. **Source of alleged defendant obligation.**

Is plaintiff's ¶ 14 (c) allegation of defendant "*...failing to provide an accounting of oil and gas production for all wells located within the [area of mutual interest]....*" a "*contractual obligation*" of defendant to provide such an accounting:

a. **Written.**

Provided for or described in any of the writings attached to the complaint, ***or***

b. **Oral.**

Is it an alleged oral obligation of defendant to plaintiff?

2. **Extent of alleged defendant obligation.**

Is the accounting obligation that plaintiff is alleging that defendant owes to plaintiff an obligation to provide an accounting for:

a. **All production.**

All of the oil and gas production within the designated area, ***or***

b. **Only certain production.**

Only that portion of the production in that area allocated to the 50 percent interest of defendant provided for by the August 23, 2000 joint venture Agreement between defendant and Devonian Resources Inc. attached to the complaint as an exhibit?

iv. **¶ 14 (d) "*...failing to record or otherwise document of record....*"**

1. **Source of alleged defendant obligation.**

Is plaintiff's ¶ 14 (d) allegation of defendant "*...failing to record or otherwise document of record plaintiff's overriding royalty interest in all wells developed within the [area of mutual interest]....*":

a. **Written.**

A "*contractual obligation*" of defendant to provide such "*recording or otherwise document of record*" provided for or described in any of the writings attached to the complaint, ***or***

b. **Oral**.

Is it an alleged oral obligation of defendant to plaintiff?

2. **Extent of alleged defendant obligation.**

Is the obligation " *to record or otherwise document of record plaintiff's overriding royalty interest* " that plaintiff is alleging that defendant an obligation that defendant owes to plaintiff with respect to:

a. **All production.**

All of the oil and gas production within the designated area, ***or***

b. **Only certain production.**

Only that portion of the production in that area allocated to the 50 percent interest of defendant provided for by the August 23, 2000 joint venture Agreement between defendant and Devonian Resources Inc. attached to the complaint as an exhibit?

19. **Complaint ¶ 15**.

a. **Damages allegedly caused by defendant.**

Complaint ¶ 15 alleges "*As a direct result of defendant's breach of their contractual obligations, plaintiff as incurred and continues to incur damages....*"

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **Limited to 50 percent.**

Whether or not the damages the plaintiff alleges is ***limited to*** the 50 percent share of the joint venture described in the joint venture agreement the plaintiff attached to the complaint?

ii. **Limited to time of ownership.**

Whether or not the damages the plaintiff alleges is ***limited to*** the period of time during which defendant owns an interest in the alleged joint venture?

iii. **Limited to existence of joint venture.**

Whether or not the damages the plaintiff alleges is ***limited to*** the period of time during which the joint venture is in existence?

iv. **Method of calculation.**

Is the alleged royalty:

1. **Only defendant's share.**

Calculated on ***only*** one defendant's share of any well production, ***or***

2. **Share of production of others.**

Calculated upon the shares of production from wells owned other than by defendant?

v. **Items included.**

Whether the ¶ 15 "*damages*" is:

1. **Only overriding royalty.**

Limited to the overriding royalty described in complaint ¶ 14(a) and (b), ***or***

2. **Other items.**

Includes other items?

20. **Complaint ¶ 17**.

a. **Claim defendant unjustly enriched.**

Complaint ¶ 17 alleges that "*Defendant has been unjustly enriched at plaintiff's expense....*"

b. **Insufficient specificity of allegations prejudices defendant.**

Such allegation provides insufficient specificity with respect to:

i. **How plaintiff conferred benefits on defendant.**

How did plaintiff confer benefits on defendant that "*unjustly enriched*" defendant, ***given that***:

1. **No alleged dealings between plaintiff and defendant.**

The complaint does ***not*** include any allegations that plaintiff had ***any*** dealings with defendant?

2. **August 9, 1999 letter.**

a. **Plaintiff's proposal was only to Van Hampton.**

The complaint alleges in complaint ¶ 3 that plaintiff's August 9, 1999 proposal letter was ***not*** to defendant, but was ***instead*** to Van Hampton Oil & Gas Company.

b. **Plaintiff's proposal was prior to joint venture.**

The August 9, 1999 letter was ***prior to*** the August 23, 2000 Joint Venture Agreement between Devonian Resources Inc. and defendant.

c. **Plaintiff not a party to joint venture agreement.**

The complaint does ***not*** alleged that Plaintiff was a party to the joint venture agreement.

3. **February 29, 2000 agreement.**

a. **Agreement with Devonian and not defendant.**

The complaint alleges that plaintiff's February 29, 2000 agreement was ***not*** with defendant, but was instead with Devonian Resources Inc.

b. **Prior to joint venture Agreement.**

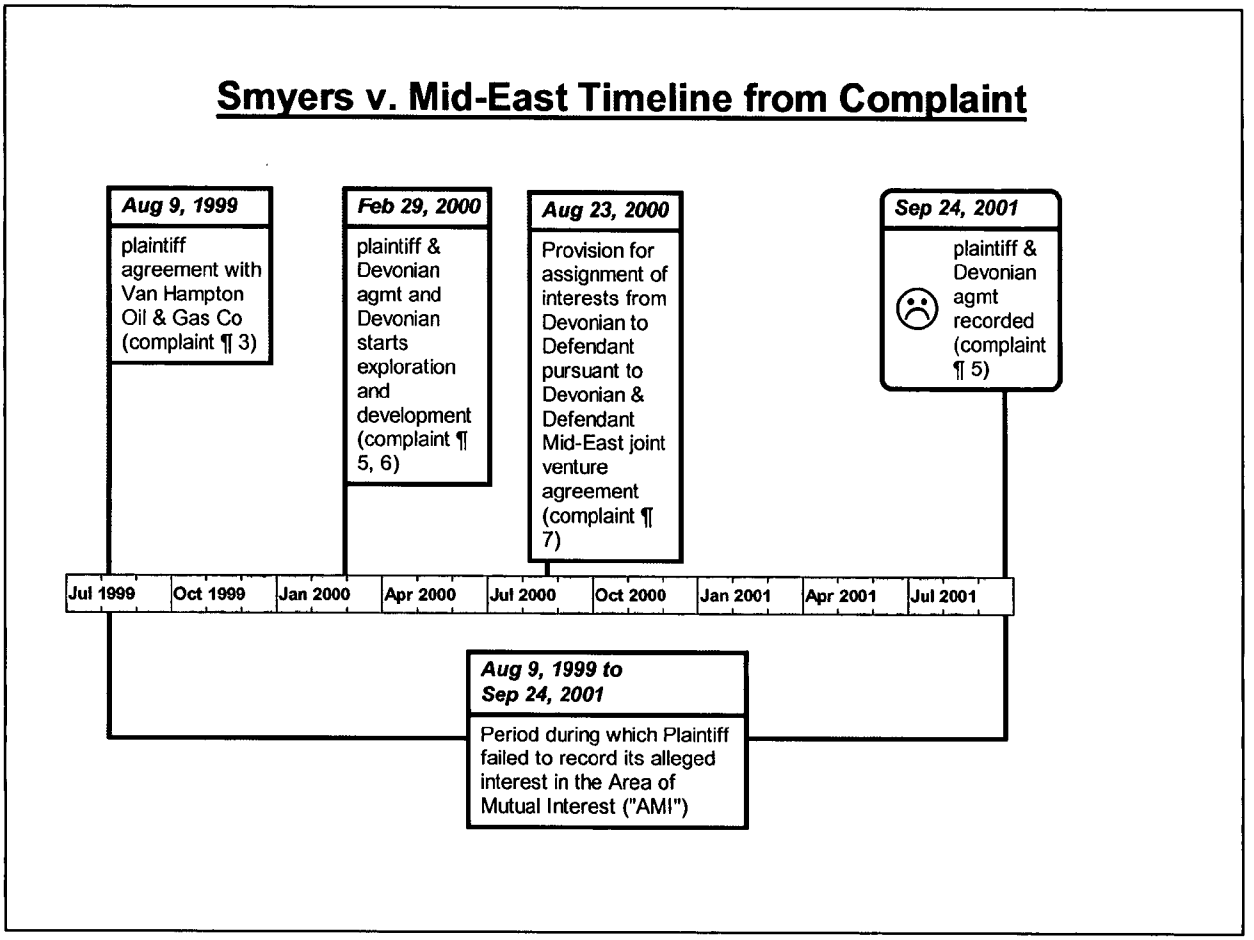
The February 29, 2000 agreement was ***prior to*** the August 23, 2000 Joint Venture Agreement between Devonian Resources Inc. and defendant.

c. **Plaintiff not party to joint venture agreement.**

The complaint does ***not*** alleged that plaintiff was a party to the Joint Venture Agreement.

4. **Plaintiff recorded after joint venture agreement.**

The complaint alleges in complaint ¶ 5 that plaintiff did ***not*** record his February 29, 2000 agreement with Devonian Resources Inc. until September 24, 2001, well ***after*** defendant had previously entered into its August 23, 2000 joint venture Agreement with Devonian Resources Inc., **as shown in the following time line**:



ii. **What expense.**

What was the "*expense*" that plaintiff is alleging plaintiff incurred the plaintiff is alleging "*unjustly enriched*" Defendant?

iii. **How defendant enriched 100 percent.**

In what way was defendant allegedly "*unjustly enriched*" for 100 percent of the amount of the overriding royalties that plaintiff is claiming, ***given that*** the writings attached to the complaint disclose that:

1. **Defendant only had 50% interest.**

   The joint venture agreement ***only*** provided for defendant to have a 50 percent interest in the joint venture?

2. **Significant share of others.**

   ¶ 2 of the August 23, 2000 Joint Venture Agreement attached to the complaint as an exhibit discloses from its discussion of "*the net revenue interest of the leaseholds effecting this joint venture*" that a significant portion of the gross production from the wells from which plaintiff is seeking to impose an obligation upon defendant to make overriding royalty payments to plaintiff is required to be paid to parties ***other than defendant***, and is therefore ***not*** kept or retained by defendant.

iv. **How was defendant enriched by plaintiff.**

In what way was defendant allegedly "*unjustly enriched*" by the plaintiff, ***given that***:

1. **Plaintiff not identified as service provider.**

   ¶ 2 of the August 23, 2000 Joint Venture Agreement attached as an exhibit to the complaint does ***not*** identify plaintiff as "*a third party providing geologic services for this perspective area*"?

2. **Defendant did not know of plaintiff.**

   The complaint does ***not*** alleged that at the time that defendant entered into such August 23, 2000 Joint Venture Agreement that defendant knew that plaintiff was"*a third party providing geologic services for this perspective area*"?

3. **No allegation plaintiff proposed prospects.**

   The complaint ***fails*** to allege that plaintiff proposed each of the drilling prospects to defendant that were eventually drilled and developed from which the oil and gas production flowed.

Prayer for relief Preliminary Objection #5:

Wherefore, defendant requests that the court dismiss plaintiff's complaint, unless plaintiff files a timely amended complaint that includes sufficient specificity to fully and fairly address and answer all of the questions listed above as part of this preliminary objection #5.

Preliminary objection #6: Rule 1028(a)(4): demurrer as to unjust enrichment count

21. **Unjust enrichment count**.

    Count II of the complaint alleges a cause of action for "unjust enrichment" against defendant.

22. **No benefit conferred by Plaintiff on Defendant**.

    The complaint fails to allege that plaintiff ***himself*** conferred any benefit directly upon defendant.

Prayer for relief Preliminary Objection #6:

Wherefore, defendant hereby demurs to the Count II "Unjust Enrichment" cause of action alleged by plaintiff against defendant, and requests that such Count II for "Unjust Enrichment" be dismissed.

Preliminary objection #7: Rules 1028(a)(2) and 1019(c): failure to plead satisfaction of conditions

23. **Complaint exhibits disclose existence of conditions.**

The exhibits to the complaint disclose that there are numerous important agreed-upon conditions the performance or occurrence of which such conditions are conditions precedent to plaintiff's eligibility to receive overriding royalty payments.

24. **Plaintiff not aver all conditions satisfied.**

The complaint does ***not*** aver generally or specifically that ***all*** such conditions precedent have been performed or have occurred.

25. **For example:**

a. **No Identification of Plaintiff As Service Provider**.

i. **Override limited to those "*providing geologic services*".**

The August 23, 2000 Joint Venture Agreement exhibit ¶ 2 provides that the overriding royalty referred to in such paragraph is with respect to "*a third party providing geologic services for this perspective area*".

ii. **Complaint failed to allege plaintiff satisfied conditions.**

The complaint did ***not*** allege that plaintiff was at the time of the execution of the August 23, 2000 Joint Venture Agreement then ***both***:

1. **Providing specific type of required services.**

"*providing geologic services*", ***and***

2. **For specific geographic areas.**

Providing such geologic services for the geographic areas identified in such joint venture agreement as "*this perspective area*".

b. **No specification of required specific services** .

i. **Plaintiff's August 3, 1999 proposal letter to Van Hampton**.

The August 3, 1999 proposed letter from plaintiff to Van Hampton Oil & Gas Company attached to the complaint:

1. ***"petroleum geologist/geophysicist"* were promised**.

Identifies such proposed letter from plaintiff as being from a "*petroleum geologist/geophysicist*", ***and***

2. **Specific services promised.**

With respect to rendering "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development.*"

ii. **The failed to allege satisfaction of conditions.**

The complaint does ***not*** allege that the plaintiff was in fact at the time of the execution of the joint venture agreement on August 23, 2000 actually ***then*** providing:

"*petroleum geologist/geophysicist... services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*"

with respect to ***all*** of the wells from which plaintiff's complaint is claiming entitlement to overriding royalties.

c. **No allegation of compliance with noncompetition condition.**

i. **Noncompetition by plaintiff condition.**

The February 29, 2000 confidentiality agreement to which plaintiff is a party expressly provides in the hand written in addition to ¶ 3(c) that the plaintiff, as offeror therein, "*will not lease in [the] geographic area for [the] term of [the] Agreement*".

ii. **No allegation of compliance with noncompetition condition.**

The complaint does ***not*** allege that plaintiff complied with this condition during the term of the Agreement, so it cannot be determined if plaintiffs satisfied this condition precedent.

d. **No allegation of compliance with "*mutually acceptable compensation*" condition.**

i. **Existence of condition.**

The introductory paragraph of February 29, 2000 confidentiality agreement sets forth the condition that the parties to the Agreement (plaintiff and Devonian Resources Inc.) agree upon "*mutually acceptable compensation*" for Devonian Resources Inc. to pay to plaintiff.

ii. **No allegation of satisfaction condition.**

The complaint does ***not*** allege that this condition of "*mutually acceptable compensation*" was satisfied. The complaint does ***not***

allege that plaintiff and Devonian Resources Inc. arrived at or agreed-upon such required "*mutually acceptable compensation*".

e. **No allegation of satisfaction of "*minimum net revenue interest*" condition.**

i. **Existence of condition.**

The August 23, 2000 Joint Venture Agreement ¶ 2 provides that "*the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent*".

ii. **No allegation of satisfaction of condition**.

The complaint does ***not*** allege that the payment of the amounts that plaintiff has sued defendant for in the complaint would satisfy this required net revenue interest condition.

Prayer for relief Preliminary Objection #7:

Wherefore, defendant requests that the court dismiss plaintiff's complaint for plaintiff's failure to allege the performance or occurrence of all conditions precedent, unless plaintiff files a timely amended complaint properly alleging that all conditions precedent have been performed or have occurred as required by Rule 1019 (c).

Preliminary objection #8: Rules 1028(a)(2) and 2128(a): misjoinder of defendant

26. **Existence of joint venture alleged.**

The introductory paragraph of the August 23, 2000 joint venture agreement refers to "*...the joint venture between Devonian Resources Inc. and [the defendant]*"

27. **Joint venture agreement exhibit evidences partnership.**

The terms of the August 23, 2000 joint venture agreement attached as an exhibit to the complaint disclose that such joint venture is in substance an association of two or more persons to carry on as co-owners a business for profit and therefore the joint venture constitutes a partnership.

28. **Complaint fails to name partnership as defendant.**

The complaint does ***not*** name the joint venture partnership as a defendant, but instead ***only*** names the defendant partner individually as a defendant.

Prayer for relief Preliminary Objection #8:

Wherefore, defendant requests that the court dismiss the complaint for improperly joining the defendant, rather than the joint venture partnership, as defendant.

Respectfully Submitted:

Dated: November 17, 2003

By _____

DOM W. GRECO, ESQ.
Attorney for Plaintiff
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Supreme Court #16829

Exhibit A

Rules cited in the "*Table Summarizing Preliminary Objections*"

Copies of all of the Rules cited in the "*Table Summarizing Preliminary Objections*" contained on page # 2 are as follows, with those portions of such cited rules highlighted in blue for the convenience of the court:

Cited Rules with Page Numbers of Full Text of Rules	
Rule	***Exhibit A Page Number***
Rule 1019. Contents of Pleadings. General and Specific Averments	**Page # 42**
Rule 1028. Preliminary Objections	**Page # 44**
Rule 2128. Actions against Partnerships and Liquidators	**Page # 46**
Rule 2227. Compulsory Joinder	**Page # 47**

Rule 1019. Contents of Pleadings. General and Specific Averments

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer, it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Note: If the agreement is in writing, it must be attached to the pleading. See subdivision (i) of this rule.

(i) When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Rule 1028. Preliminary Objections

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

Note: Of the three grounds available to challenge venue, only improper venue may be raised by preliminary objection as provided by Rule 1006(e). Forum non conveniens and inability to hold a fair and impartial trial are raised by petition as provided by Rule 1006(d)(1) and (2).

See Rule of Appellate Procedure 311(b) for interlocutory appeals as of right from orders sustaining jurisdiction and venue.

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer); and

Note: The defense of the bar of a statute of frauds or statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030.

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action; and

(6) pendency of a prior action or agreement for alternative dispute resolution.

Note: An agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration pursuant to the Uniform Arbitration Act, 42 Pa.C.S. § 7304, or the common law, 42 Pa.C.S. § 7342(a).

(b) All preliminary objections shall be raised at one time. They shall state specifically the grounds relied upon and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.

Note: Preliminary objections raising an issue under subdivision (a)(1), (5) or (6) cannot be determined from facts of record. In such a case, the preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d).

However, preliminary objections raising an issue under subdivision (a)(2), (3) or (4) may be determined from facts of record so that further evidence is not required.

Consult local rules which may contain supplementary procedures governing the filing and disposition of preliminary objections.

(d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty days after notice of the order or within such other time as the court shall fix.

(e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty days after notice of the order or within such other time as the court shall fix.

(f) Objections to any amended pleading shall be made by filing new preliminary objections.

Rule 2128. Actions against Partnerships and Liquidators

(a) An action against a partnership may be prosecuted against one or more partners as individuals trading as the partnership in the manner designated by Rule 2127(a), or against the partnership in its firm name.

(b) If a plaintiff prosecutes an action against a partnership in its firm name only, the partnership may prosecute any setoff, counterclaim or cross-action in its firm name.

(c) An action prosecuted against the liquidator of a dissolved partnership shall be prosecuted in the following manner: "A, Liquidator of A, B and C, late trading as X & Co."

(d) Whenever an action is prosecuted against a partnership in the names of the partners trading in the firm name and the partners or partnership shall have failed to file in the office of the prothonotary of the county or counties in which the partnership business is conducted a statement of membership as required by law, such partners shall not be permitted to plead a misnomer or the omission of the name of a partner of the partnership or the inclusion of the names of persons not partners of said partnership.

Rule 2227. Compulsory Joinder

(a) Persons having only a joint interest in the subject matter of an acticn must be joined on the same side as plaintiffs or defendants.

(b) If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

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JURY TRIAL DEMANDED

FILED

OCT 27 2003

William A. Shaw
Prothonotary/Clerk of Courts

#1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. _____
MID EAST OIL COMPANY, Defendant	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641, Ext. 1300

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. _____
MID EAST OIL COMPANY, Defendant	:	

COMPLAINT

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby brings the within Complaint against the Defendant averring as follows:

1. Plaintiff is Larry F. Smyers an individual of 300 East Second Avenue, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant is Mid East Oil Company, a Pennsylvania corporation with offices and principle place of business at 255 Airport Road, Indiana, Indiana County, Pennsylvania 15701.

3. On or about August 3, 1999, the Plaintiff entered into an Agreement with Van Hampton Oil and Gas Company for development of oil and gas prospects. In accordance with the agreement, Plaintiff was to be paid a 1/64th overriding royalty interest from sale of all natural gas, associated liquids or crude oil from each well located in a prospect or program proposed by the Plaintiff.

4. Thereafter Plaintiff proceeded to invest his time, effort, expertise and knowledge as a professional geologist to develop a drilling prospect in areas located in Centre and Clearfield Counties,

Pennsylvania, known collectively as Pine Glen Prospect and hereinafter referred to as AMI (Area of Mutual Interest).

5. By Confidentiality Agreement dated February 29, 2000 the Plaintiff and Devonian Resources, Inc., a related company of Van Hampton Oil and Gas Company, confirmed and supplemented the Agreement of August 3, 1999, identifying the general area which includes an exhibit depicting the approximate geographical boundaries of the Pine Glen Prospect. This document was notarized on September 21, 2000 and subsequently recorded, with attachments and exhibits consisting of a total of five pages in the Office of Register and Recorder of Deeds of Clearfield County on September 24, 2001 as Instrument No. 200115082. The recorded document is attached hereto as Exhibit "1".

6. On or about February 29, 2000, Devonian Resources began exploration and development of natural resources in the AMI.

7. On or about August 23, 2000, Devonian Resources, Inc. entered into a Joint Venture Agreement with Defendant, Mid East Oil Company, whereby Mideast and Devonian would mutually develop the AMI. The Joint Venture Agreement provides for payment of an overriding royalty interest to Larry Smyers, referenced therein as "a third party providing geological services" as follows:

> All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area . . . .

A true and correct copy of this Joint Venture Agreement is attached hereto as Exhibit "2".

8. By agreement and Bill of Sale dated January 16, 2002, Devonian Resources, Inc., conveyed and transferred all its interest in the AMI to Defendant, Mid East Oil Company. A true and correct copy of the Assignment and Bill of Sale and its attached Exhibits A, B and C are appended hereto as Exhibit "3".

9. Defendant, by virtue of its position as successor and assign of Devonian Resources, Inc., and by virtue of the Joint Venture Agreement dated August 23, 2001, which is attached as an exhibit to the Bill of Sale, is obligated to pay a 1/64 overriding royalty to Plaintiff on all mineral resources produced within the AMI.

10. In addition, Plaintiff owns a fractional interest representing .0417% of a certain oil and gas wells located on Tract 706 within the AMI.

11. Based on information obtained from the Pennsylvania Department of Environmental Protection, Plaintiff believes and therefore avers that there exists within the AMI multiple gas and/or oil wells which are set forth in Exhibit "4". The well numbers in the shaded area of this exhibit represent wells for which Plaintiff has been receiving royalties.

12. Despite its obligation under the AMI and Joint Venture Agreements, the Defendant has failed and refused to make royalty payments due and owing to Plaintiff for all other oil and gas wells listed on Exhibit "4" as well as any and all other wells developed by Defendant within the AMI which are currently not known to Plaintiff.

COUNT I
BREACH OF CONTRACT

13. Plaintiff realleges the averments set forth in Paragraphs 1 through 12 of this Complaint.

14. Defendant has breached its contractual obligation to Plaintiff as follows:

(a) In failing to pay 1/64 overriding royalty interests on all oil and gas production within the AMI as set forth in the controlling agreements;

(b) In failing to pay overriding royalty interests due and payable to Plaintiff for oil and gas production from wells located in Tract 706 of the AMI and wells 027-20400, 027-20401, 027-20448, 027-20466, 027-20467 and 027-20468 from a pre-existing employee investment program;

(c) In failing to provide an accounting of oil and gas production for all wells located within the AMI; and

(d) In failing to record or otherwise document of record Plaintiff's overriding royalty interest in all wells developed within the AMI.

15. As a direct result of Defendant's breach of their contractual obligations, Plaintiff has incurred and continues to incur damages in excess of Twenty-five Thousand and 00/100 ($25,000.00) Dollars.

WHEREFORE, Plaintiff demands relief as follows:

(a) Immediate payment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff;

(b) An immediate and ongoing accounting of oil and gas production for all oil and gas wells within the AMI;

(c) Immediate payment for all royalties due and payable to Plaintiff arising from his 0.417% ownership interest in Well Number 467621 located in Tract 706;

(d) Interest, costs of suit and all other interest which the Court deems to be just and equitable.

COUNT II
UNJUST ENRICHMENT

16. Plaintiff realleges the averments set forth in Paragraphs 1 through 12 of this Complaint.

17. Defendant has been unjustly enriched at Plaintiff's expense because of the following:

(a) Defendant's failure to honor Plaintiff's 1/64 overriding royalty interest in all oil and gas wells located within the AMI;

(b) Defendant's failure or refusal to provide an accounting to production from all oil and gas wells within the AMI;

(c) Defendant's refusal to pay royalty interests from oil and gas produced by wells 027-20400, 027-20401, 027-20448, 027-20466, 027-20467 and 027-

20468 located on Tract 706 in which Plaintiff has an additional .0417% interest from a pre-existing employee investment program.

WHEREFORE, Plaintiff demands relief as follows:

(a) Immediate payment of all unpaid overriding royalty interest for oil and gas produced within the AMI which are due and owing to Plaintiff;

(b) An immediate and ongoing accounting of oil and gas production for all oil and gas wells within the AMI;

(c) Immediate payment for all royalties due and payable to Plaintiff arising from his .0417% ownership interest in Well Number 467621 located in Tract 706;

(d) Interest, costs of suit and all other interest which the Court deems to be just and equitable.

(e) Judgment in an amount in excess of $25,000.00.

JURY TRIAL DEMANDED.

HANAK, GUIDO and TALADAY

By 
Matthew B. Taladay
Attorney for Plaintiff

VERIFICATION

I, LARRY SMYERS, do hereby verify that I have read the foregoing COMPLAINT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 10-23-03

Larry Smyers

DPA / SIPES

Copyright © 1991
Division of Professional Affairs
of the American Association
of Petroleum Geologists and
Society of Independent
Professional Earth Scientists

CONFIDENTIALITY AGREEMENT

This Agreement is between LARRY F. SMYERS ("Offeror") and Devonian Resources, Inc. ("Receiver") and sets forth the terms for the presentation to Receiver of an oil and gas exploration prospect (the "Prospect") which will provide Receiver with the opportunity to evaluate the Prospect and to acquire an oil and gas interest (including - but not limited to - drilling or leasing, royalty, and purchase of producing properties) in the Prospect lands on the basis of mutually acceptable compensation to the Offeror. The Prospect is located in the geographical area set forth below and in Exhibit "A", if attached hereto. Since the Prospect, the Prospect information and the geographical area related to the Prospect is secret, proprietary and confidential information developed by Offeror over time and at great expense, Receiver, as consideration for the opportunity to evaluate the Prospect, agrees to the following:

1. **The Geographical Area.** As used in this Agreement, the geographical area on which the Prospect is located ("Geographical Area") is agreed to mean the following:

Certain areas located in Burnside Twp., Centre Co., PA and Cooper Twp., Clearfield Co., PA and Boggs Twp., Clearfield County, PA and West Decatur Clearfield Co., PA. This AREA OF INTEREST CAN be AMENDED by MUTUAL CONSENT between OFFEROR AND RECEIVER.

A Detailed Geographic AREA will be outlined AND ATTACHED AS Exhibit I

EXHIBIT "A" IS/IS NOT ATTACHED HERETO.

2. **Proprietary and Confidential Information.** The term "Proprietary and Confidential Information" ("PCI") as used in this Agreement is agreed to mean all oral disclosures and information, data and knowledge contained in the documents (whether geological, geophysical, economic, financial or management and whether in the form of maps, charts, logs, seismographs, interpretations, calculations, summaries, opinions or other written or charted means) which are related, directly or indirectly, to the Prospect or to the exploration potential of the Geographical Area, and which are now or hereafter delivered or disclosed by or on behalf of the Offeror to the Receiver. However, the PCI shall not include information to the extent it (a) is now or subsequently becomes part of the public domain through no acts or omissions attributable to Receiver or (b) as shown by Receiver's written records, was rightfully in Receiver's possession prior to disclosure by the Offeror. The Receiver acknowledges that Offeror intends to maintain the confidential, proprietary and secret nature of the PCI.

3. **Restrictions on Receiver's Future Activities.** For the period of ONE (1) years after the date on which Receiver has signed this Agreement, Receiver agrees:

(a) To keep the PCI secret and not to disclose the PCI to any entity or person except to Receiver's employees or consultants necessary to evaluate the Prospect, unless specific written authorization is received from the Offeror; OFFEROR ALSO AGREES TO KEEP CONFIDENTIAL GEOGRAPHIC AREA For term of Agreement. (LFS)

(b) To use the PCI solely for the purpose of evaluating the Prospect and not to use the PCI for Receiver's financial advantage without compensation to the Offeror;

(c) Not to purchase or acquire in any manner, directly or indirectly, any oil or gas ownership, leasehold, royalty or other interest within the Geographical Area unless it shall be deemed by such action or otherwise that Receiver has accepted the terms of the Offeror in conjunction with the presentation of the Prospect; OFFEROR will NOT lease (subsequent) in geographic AREA FOR Term of Agreement. Some royalities AND ownership in previous drilling programs by Another operator are owned by OFFEROR but do not Conflict with THIS Agreement. (LFS)

Page 1 of 5

~~(a) Not to reproduce or make any copies of any of the PCI unless specific written authorization is received from the Offeror except copies used in conjunction with the evaluation of the PCI; and~~ LFS

~~(b) Immediately at the request of the Offeror or within fifteen (15) days of Receiver's rejection of the Prospect, to return to the Offeror all PCI which has been delivered or disclosed to Receiver and to destroy all other related documents (except a copy of this Agreement) including, without limitation, all documents, memoranda, notes, interpretations, data, copies and other written material prepared by Receiver or others utilizing any PCI or in evaluating the Prospect, certifying to the Offeror in writing that Receiver has destroyed all such documents.~~ Not Applicable LFS

4. **Remedies for Breach of this Agreement by Receiver.** Receiver agrees that if this Agreement is breached by Receiver the remedy at law may be inadequate and therefore an injunction, specific performance or other forms of equitable relief or money damages or any combination thereof shall be available. All rights, powers and remedies provided for herein are cumulative, and not exclusive, of any and all rights, powers and remedies at law or in equity as may now or hereafter exist. However, and not withstanding the foregoing, Offeror and Receiver agree that if Receiver shall breach paragraph 3(c) of this Agreement, the remedy shall be only as stated therein, namely, acceptance of terms. The Offeror shall be entitled to recover the cost and expenses incurred in enforcing this Agreement including any attorney's fees.

5. **Binding Effect on Receiver and Others.** This Agreement entered into by Receiver shall be binding on Receiver and Receiver's officers, directors, employees, agents, attorneys, accountants and representatives. Receiver agrees to inform all such persons and entities of this Agreement and to be liable to the Offeror for the acts of such persons and entities if this Agreement is breached by any one of them. If any part of this Agreement is declared void or unenforceable, the Receiver agrees to be bound by the remaining part of this Agreement.

6. **Miscellaneous.** The following are also agreed to by Offeror and Receiver:

(a) THIS AGREEMENT AND THE RELATIONSHIP THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF Pennsylvania WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PROVISION;

(b) The Prospect is offered subject to prior sale; and

(c) This Agreement is not intended to and does not create a partnership, joint venture or any other business combination between Receiver and Offeror.

Addenda: This confidentiality Agreement is intended to expand on and Supplement the terms of a letter dated August 3, 1999 to Van Hampton Oil and Gas Company (RECEIVER) from Larry F. Snyders (OFFEROR) ATTACHED herein AS Exhibit II. This letter OUTLINES terms to provide technical ASSISTANCE to explore for and develop NATURAL GAS AND ASSOCIATED hydrocarbons in the geographical AREA OUTLINED in Exhibit #1. This AGREEMENT INCLUDES VAN HAMPTON OIL and GAS, it related companies And JOINT INTEREST ACTIVITIES IN THE AREA DEFINED IN EXHIBIT I

AGREED TO AND ACCEPTED:

By: [signature] Title: President (RECEIVER)

STAN Thompson

By: _____ Date: _____

[signature] DATE 2/29/00 (OFFEROR)

LARRY Snyders

LS 6/2/00

Page 2 of 5

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF Crawford :

On this, the 21st day of September 2001, before me a Notary Public, the undersigned officer, personally appeared S.R. Thompson - President - Devonian Resources

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notarial Seal
Cecilia R. Adams, Notary Public
City of Titusville, Crawford County
My Commission Expires May 14, 2005
Member, Pennsylvania Association of Notaries

Cecilia R. Adams
Notary Public

STATE OF Pennsylvania :

COUNTY OF Crawford :

On this, the 21st day of September 2001, before me a Notary Public, the undersigned officer, personally appeared Larry F. Smyers

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notarial Seal
Cecilia R. Adams, Notary Public
City of Titusville, Crawford County
My Commission Expires May 14, 2005
Member, Pennsylvania Association of Notaries

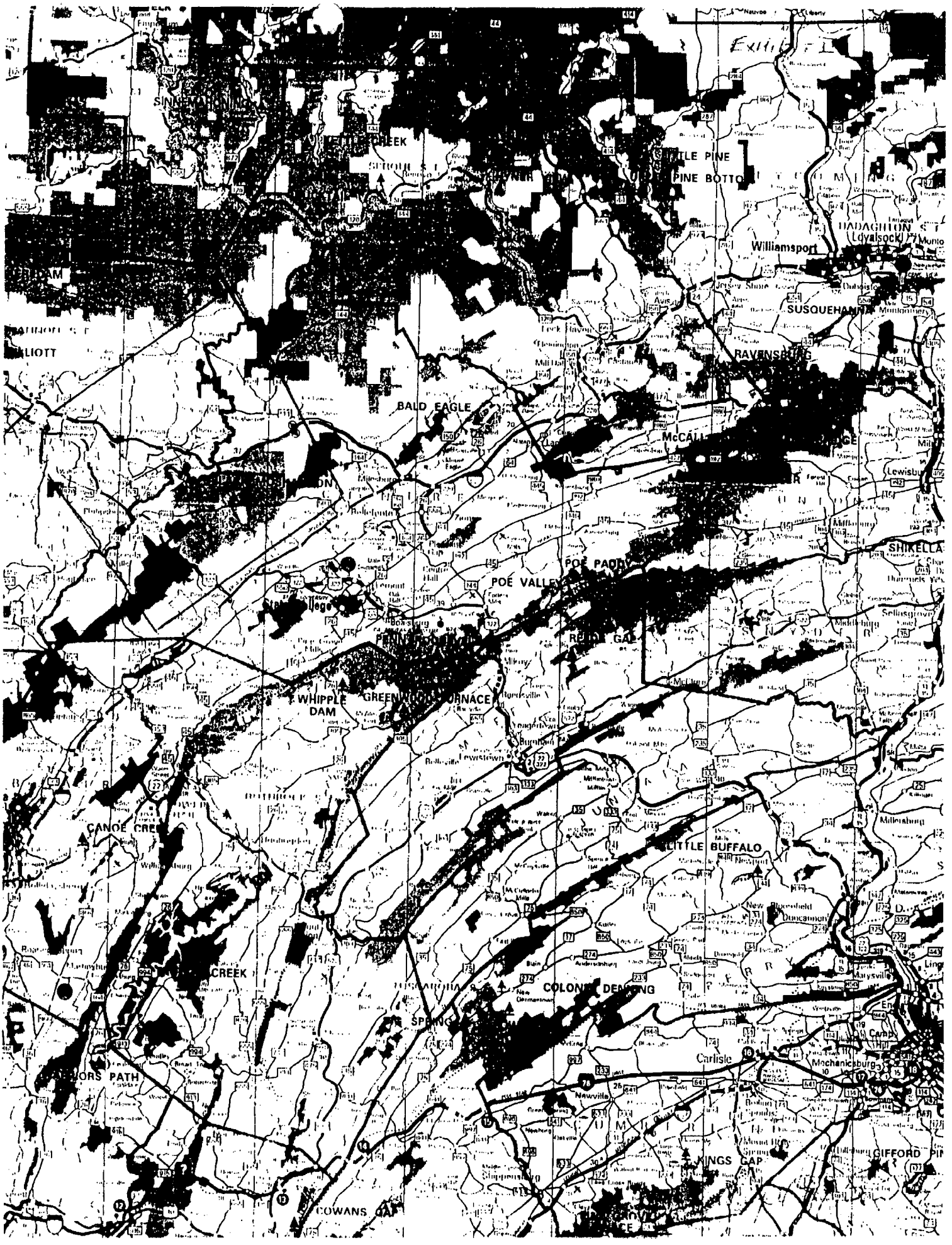
Cecilia R. Adams
Notary Public

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200115082
RECORDED ON
Sep 24, 2001
9:36:52 AM
Total Pages: 5

RECORDING FEES - RECORDER	$15.00
COUNTY IMPROVEMENT FUND	$1.00
RECORDER IMPROVEMENT FUND	$1.00
STATE WRIT TAX	$0.50
TOTAL	$17.50
CUSTOMER	
SMYERS, LARRY	

Page 3 of 5


Williamsport
SUSQUEHANNA
RAVENSBURG
BALD EAGLE
McCALL
SHIKELLA
POE VALLEY
WHIPPLE DAM
LITTLE BUFFALO
COLONEL DENNING
Carlisle
Mechanicsburg
Newville
KINGS GAP
COWANS GAP
GIFFORD

Larry F. Smyers
Petroleum Geologist/Geophysicist

AAPG Certified Petroleum Geologist # 4774
Lic. Prof. Geologist WY, # 221
Reg. Professional Geologist PA, 3203

309 E. Second Ave.
DuBois, PA 15801

Telephone/Fax
814.371.7450

August 3, 1999

Mr. Stan Thompson
Van Hampton Oil & Gas Company
Route 36
Pleasantville, PA

Dear Stan:

It was a pleasure to meet with you to discuss the potential of some areas for natural gas drilling, and my availability to aid you in developing drilling programs.

The following is a brief summary of my proposal to retain my services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development. It is my intention to keep it as simple as possible and start working towards some significant drilling projects:

1. Retainer fee of $ ~~2,500~~ 1500 LFS, from which a $ 175/ day fee will be deducted for each day worked on a project (plus necessary expenses). This retainer fee is renewable when the balance from the previous payment is depleted. Prospects and/or programs will be developed as efficiently as professional prudence and economics allow.
2. A 1/64 interest (ORRI) of the gross from the sale of natural gas, associated liquids, or crude oil from each well located in a prospect, or program, I propose.
3. Cost of maps, seismic data, or that data necessary for prospect, and program development, will be borne by Van Hampton and will remain their property. Any information used in prospect and/or program development from my personal files ~~will become the property of~~ of which copies Hampton Oil & Gas.
4. The areas of interest will adhere to the AAPG DPA/ SIPES Confidentiality Agreement attached.
5. When drilling programs develop, my professional services will be retained ongoing project technical development (i.e. site geological consulting etc.).

Details can be worked out at a later date in respect to areas of interest, data necessary for project development, fee renewal schedule, etc. as the projects develop.

I trust this proposal is sufficient to begin discussion towards a rewarding working relationship. Please call me if you have any questions.

Sincerely,

Larry Smyers

Larry Smyers

Exhibit II

Page 5 of 5

DEVONIAN RESOURCES, INC.

P.O. Box 329
Pleasantville, PA 16341
(814) 589-7061
(814) 589-7936 Fax

August 23, 2000

Exhibit "B"

Mr. Mark Thompson
Mid East Oil Company
P.O. Box 1378
Indiana, PA 15701

RE: JOINT VENTURE AGREEMENT (Pine Glen Prospect)

Dear Mark:

This Letter Agreement when accepted by you shall govern the terms and conditions of the joint venture between Devonian Resources, Inc. and Mid East Oil Company (the Parties) which shall be established to explore for and develop Devonian sandstone formations, principally in the Townships of Burnside and Snowshoe of Centre County, Pennsylvania.

1. An Area of Mutual Interest (AMI), shall be established that will include all of Devonians leasehold position in the Pine Glen and all of Mid East leasehold position in this area, in addition to any new acreage that may be acquired by the Parties which lies within the boundaries of the AMI as delineated on the attached Exhibit "A".

2. All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area, however, the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent. All current leases held by Devonian Resources and Mid East at the time of the signing of this Joint Venture Agreement, shall be cross assigned to both parties to effectuate an undivided Fifty Percent (50%) interest into each parties leasehold estate. All new leases shall be taken in the name of Mid East Oil Company. Devonian Resources, Inc. shall be assigned a 50% interest in said new leases acquired. Any leases acquired from another company shall be taken by that party as deemed appropriate. Such lease acquisitions, however, will not be made without the consent of both parties. A leasing budget may be proposed by either party and at the mutual consent of both parties, a leasing program will be undertaken and directed by Mid East. The cost of any and all lease acquisition will be borne jointly in accordance with each parties working interest. Any lease acreage proposed by either party not mutually consented to, shall not be a part of the AMI of this Joint Venture Agreement.

3. The initial acreage being contributed by each party going into the AMI will be cost balanced to effectuate a 50%/50% equal costs. Whichever party has an imbalance, the imbalance shall be corrected by a cash payment to the other party. All future costs related to the Joint Venture acreage and wells will be borne jointly in accordance with each parties working interest. Each parties working interest shall be as follows:

Mid East Oil Company - 50%
Devonian Resources, Inc. - 50%

4. Prospect evaluation and the terms and conditions that shall apply are as follows:

A. Mid East desires to use funding from outside this joint venture at no cost to Mid East or Devonian, to drill and complete if warranted, certain location that Devonian and Mid East have mutually agreed upon within the prospect area, and shall do so by drilling a minimum of 8 wells but not more than 15 wells, commencing by September 1, 2000 and having at least the minimum number of wells (8) drilled within 1 year from September 1, 2000.

B. Mid East shall be designated as operator with respect to the drilling, completion, hookup and producing for the first 15 wells. Operator for all subsequent wells drilled will be determined on a mutual basis. Operating fee for any well that can be commercially produced shall be $175.00 per month.

C. After the initial 8 well minimum lease evaluation has been completed, Devonian and Mid-East agree to drill and complete, if warranted, 8 wells per year under the terms of this Joint Venture Agreement and the Operating Agreement.

D. Should either party propose the drilling and development of additional wells above the 8 wells per year specified in subparagraph C. above, and should one of the parties elect not to participate in any or all the proposed additional wells. Then the non-participating party shall be compensated for the loss of future development location(s) in the amount of **Five Thousand Dollars ($5,000.00)** per location. The election to not participate shall only effect the parties on a location by location basis, and does not change the terms or conditions of this Joint Venture Agreement.

5. **Gas Marketing** - Mid East and Devonian will mutually agree on the gas marketing strategy and price to be received for the joint venture gas. It is anticipated that the joint venture will sell gas through a third party gas marketing company, and that the produced gas will be sales metered on the Columbia Gas Transmission System or Columbia Gas of Pennsylvania System.

6. **Field Gathering and Compression System**

A. Mid East and Devonian shall design, construct and operate the gas gathering and compression system. Since joint venture gas will be commingled with Mid East (Investor) gas, the joint venture gas will only be charged and pay its pro-rated share of the actual monthly compression cost.

B. Mid East and Devonian will agree on a gathering and compression fee which will be charged to third-party gas, including Mid East or Devonian investor gas. The gathering and compression fee shall be distributed to Mid East and Devonian in accordance with each parties ownership in the gathering and compression system.

7. For volume allocation purposes, all joint venture gas shall be measured at the receipt point meters (wellhead) and pro-rated along with non-joint venture gas meters connected to Mid East's gathering system back to sales volume. Sales volume will be that volume as measured at the delivery point master sales meter where Mid East's gathering system interconnects to Columbia Gas Transmission or Columbia Gas of Pennsylvania.

8. **Drilling and Operating** - All wells in the joint venture will be drilled and operated at cost, subject to those terms and conditions mandated in an Operating Agreement which shall be executed prior to drilling the first joint venture well. The initial term for the joint venture shall be five (5) years unless mutually extended, commencing July 1, 2000.

A. It understood and agreed that both Devonian Resources and Mid East have the right to perform certain field services in regards to the drilling, completion and operations of the joint venture wells and any wells that may be drilled on the joint venture acreage in evaluation. Specifically, Mid East shall have the right to do all service rig work, water hauling and pipeline and well head hookups.

Devonian Resources shall have the right to do all dozer work, drilling and trucking. All of the above services shall be performed at the competitive rates for the same services provided for in the area of this work.

9. Should either party decide to sell their interest in any or all wells drilled on acreage within the boundaries of the AMI, whether they were wells drilled under this joint venture or wells that were drilled to evaluate the acreage within the AMI, the non-selling party shall have the right of first refusal to purchase the interest at the bonafide offer that the selling party received. This right of first refusal shall be for a thirty (30) day period from the time non-selling party has received in writing the terms of any such bonafide offer to purchase.

However, full operating rights shall transfer and revert to the non-selling party, whether non-selling party purchases the selling parties interest or not.

10. If any terms and conditions of this letter conflict with any terms or conditions of a later Operating Agreement set forth in Paragraph 8. above, then the terms and conditions of this letter shall prevail.

11. This Agreement may not be assigned without the express written consent of the non-assigning party.

Very truly yours,
DEVONIAN RESOURCES, INC.

STANLEY R. THOMPSON
President

I, _____ on behalf of Mid East Oil Company, agree to and accept the terms and conditions as set forth in this letter on this 25th day of August 2000.

ASSIGNMENT AND BILL OF SALE

Devonian Resources, Inc., a Pennsylvania business corporation, hereinafter referred to as "Devonian", with an office address of P. O. Box 329, Pleasantville, PA 16341, for valuable consideration, and with the intent to be legally bound hereby, has assigned, transferred, sold, conveyed and set-over, and by the presents does hereby assign, transfer, sell, convey and set-over, unto Mid-East Oil Company, a Pennsylvania business corporation, hereinafter referred to as "Mid-East", with offices at 255 Airport Road, Indiana, PA 15701, all of the right, title and interest of Devonian in and to all oil and gas property of any kind or nature situate or relating to lands within the political boundaries of Burnside Township, Center County, Pennsylvania (hereinafter the "AMI"), including but not limited to all lease rights, working interests and/or fee interests, all easements and other interests in real estate held in connection with same, all oil and/or gas wells thereon together with all downhole equipment, all production equipment, machinery, fixtures, pipelines and compressors connected thereto, and all tools, maps, electronic mapping data, digital document imaging, tracings, surveys, engineering and engineering work product, seismic, geophysical, geological, geochemical and other geotechnical information and data, logs, contracts, contract rights, licenses, permits, bonds, and all records and documents relating thereto, and all claims and causes of action as relate to any of the same, and further including without limitation by way of enumeration, all of the right, title and interest of Devonian in and to (a) the oil and gas lease and leasehold known as the Commonwealth of Pennsylvania, Pennsylvania Game Commission, State Game Lands No. 100, Tract 100A-00, (b) the Confer lease and leaschold, (c) all right, title and interest of Devonian in and to the leasehold estates,

oil and gas ownership rights and rights-of-way (the "Oil & Gas Agreements") situate in Centre County, Pennsylvania, more particularly set forth and described on Exhibit A attached hereto and made a part hereof, (d) all the right, title and interest of Devonian in the AMI established to explore for and develop Devonian sandstone formations in the Townships of Burnside and Snow Shoe, Centre County, Pennsylvania, and known as the Pine Glen Prospect, the terms and conditions of the AMI being more fully set forth and described in a letter dated August 23, 2000, a copy of which is attached hereto as Exhibit B and made a part hereof, (e) all of the fractional working interests of Devonian and all of the right, title and interest of Devonian in all those certain oil and gas "Wells" situate in Burnside Township, Centre County, Pennsylvania, more particularly designated and described on Exhibit C attached hereto and made a part hereof, (f) all royalty and/or overriding royalty interests of Devonian within the AMI, (g) all right, title and interest of Devonian in and to the natural gas gathering system within the AMI, consisting of all pipelines, compressors and other machinery and equipment used in connection with the transportation of gas production from the flow lines of the wells drilled within the AMI to the transmission lines of the purchasers of gas, as now and hereafter constituted, including all additions, replacements and extensions thereof (the "Gathering System") and (h) all other assets ("Assets") of Devonian that are the subject of the Asset Purchase Agreement between Devonian and Mid-East, dated November 15, 2001, all of the foregoing hereinafter described as the "Oil & Gas Property".

Assignor hereby warrants specially that it has complete legal title to its undivided interest in the Oil & Gas Property free and clear of all liens and encumbrances.

It is further specially warranted that the said leases and agreements are in full force and effect and contain all covenants and obligations of Assignor concerning the oil and gas operations on the leased premises. Assignor disclaims all warranties concerning the quality and quantity of oil and gas that may be produced in the future from the subject oil and gas Well.

Devonian shall have the right to receive payment for all oil and gas produced and marketed from the leases described herein up to the date of the chart change on or about December 27, 2001. Devonian shall also make payment of all expenses incurred in the operation of the subject Wells including the payment of royalties through such production period. Mid-East shall receive payment of all proceeds from the sale of oil and gas form the subject Wells and shall be responsible for all expenses thereafter.

This Assignment and Bill of Sale shall be binding upon and shall enure to the benefit of the parties hereto and their successors and assigns.

TO HAVE AND TO HOLD the entire interest of Devonian and all claims of Devonian in and to the Assets and their hereditaments and the premises herein granted and mentioned, and intending so to be with the appurtenances unto Mid-East, its successors and assigns forever.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Assignment and Bill of Sale this 16th day of January 2002.

ATTEST:

Secretary

DEVONIAN RESOURCES, INC.:

By: _____
President

(CORPORATE SEAL)

ATTEST:

Secretary

MID-EAST OIL COMPANY:

By: _____
MARK A. THOMPSON - President

(CORPORATE SEAL)

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Clarion :

On this the 16th day of January, 2002, before me, the undersigned officer, personally appeared Stanley R. Thompson, who acknowledged himself to be President of DEVONIAN RESOURCES, INC., a Pennsylvania corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notarial Seal
Stefanie S. Haines, Notary Public
Clarion Boro, Clarion County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

_____(SEAL)
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Clarion :

On this the 16th day of January, 2002, before me, the undersigned officer, personally appeared MARK A. THOMPSON, who acknowledged himself to be President of MID-EAST OIL COMPANY, a Pennsylvania corporation, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Stefanie S. Haines (SEAL)
NOTARY PUBLIC

Notarial Seal
Stefanie S. Haines, Notary Public
Clarion Boro, Clarion County
My Commission Expires Oct. 16, 2003
Member, Pennsylvania Association of Notaries

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*
CONFER, WILLIAM C.					
D725	Centre	Burnside	PA	03/01/00	1144/0365
		Lessor: William C Confer and Mary E Confer			
		Lessee: Devonian Resources			
RENOE					
D721	Centre	Burnside	PA	08/01/99	1127/0025
MID2039		*Lessor:* Donna Renoe, et al			
		Lessee: Devonian Resources, Inc.			
STATE GAME LANDS NO. 100					
D727	Centre	Burnside	PA	05/25/00	1303/355
MID2049		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission			
		Lessee: Devonian Resources, Inc.			

EXHIBIT A

DEVONIAN RESOURCES, INC.

P.O. Box 329
Pleasantville, PA 16341
(814) 589-7061
(814) 589-7936 Fax

August 23, 2000

Mr. Mark Thompson
Mid East Oil Company
P.O. Box 1378
Indiana, PA 15701

RE: JOINT VENTURE AGREEMENT (Pine Glen Prospect)

Dear Mark:

This Letter Agreement when accepted by you shall govern the terms and conditions of the joint venture between Devonian Resources, Inc. and Mid East Oil Company (the Parties) which shall be established to explore for and develop Devonian sandstone formations, principally in the Townships of Burnside and Snowshoe of Centre County, Pennsylvania.

1. An Area of Mutual Interest (AMI), shall be established that will include all of Devonians leasehold position in the Pine Glen and all of Mid East leasehold position in this area, in addition to any new acreage that may be acquired by the Parties which lies within the boundaries of the AMI as delineated on the attached Exhibit "A".

2. All leases, both existing and new, shall be subject to a 1/64 ORRI as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area, however, the net revenue interest of the leaseholds effecting this joint venture shall not be less than .812500 percent. All current leases held by Devonian Resources and Mid East at the time of the signing of this Joint Venture Agreement, shall be cross assigned to both parties to effectuate an undivided Fifty Percent (50%) interest into each parties leasehold estate. All new leases shall be taken in the name of Mid East Oil Company. Devonian Resources, Inc. shall be assigned a 50% interest in said new leases acquired. Any leases acquired from another company shall be taken by that party as deemed appropriate. Such lease acquisitions, however, will not be made without the consent of both parties. A leasing budget may be proposed by either party and at the mutual consent of both parties, a leasing program will be undertaken and directed by Mid East. The cost of any and all lease acquisition will be borne jointly in accordance with each parties working interest. Any lease acreage proposed by either party not mutually consented to, shall not be a part of the AMI of this Joint Venture Agreement.

3. The initial acreage being contributed by each party going into the AMI will be cost balanced to effectuate a 50%/50% equal costs. Whichever party has an imbalance, the imbalance shall be corrected by a cash payment to the other party. All future costs related to the Joint Venture acreage and wells will be borne jointly in accordance with each parties working interest. Each parties working interest shall be as follows:

Mid East Oil Company - 50%
Devonian Resources, Inc. - 50%

4. Prospect evaluation and the terms and conditions that shall apply are as follows:

A. Mid East desires to use funding from outside this joint venture at no cost to Mid East or Devonian, to drill and complete if warranted, certain location that Devonian and Mid East have mutually agreed upon within the prospect area, and shall do so by drilling a minimum of 8 wells but not more than 15 wells, commencing by September 1, 2000 and having at least the minimum number of wells (8) drilled within 1 year from September 1, 2000.

B. Mid East shall be designated as operator with respect to the drilling, completion, hookup and producing for the first 15 wells. Operator for all subsequent wells drilled will be determined on a mutual basis. Operating fee for any well that can be commercially produced shall be $175.00 per month.

C. After the initial 8 well minimum lease evaluation has been completed, Devonian and Mid-East agree to drill and complete, if warranted, 8 wells per year under the terms of this Joint Venture Agreement and the Operating Agreement.

D. Should either party propose the drilling and development of additional wells above the 8 wells per year specified in subparagraph C. above, and should one of the parties elect not to participate in any or all the proposed additional wells. Then the non-participating party shall be compensated for the loss of future development location(s) in the amount of Five Thousand Dollars ($5,000.00) per location. The election to not participate shall only effect the parties on a location by location basis, and does not change the terms or conditions of this Joint Venture Agreement.

5. Gas Marketing - Mid East and Devonian will mutually agree on the gas marketing strategy and price to be received for the joint venture gas. It is anticipated that the joint venture will sell gas through a third party gas marketing company, and that the produced gas will be sales metered on the Columbia Gas Transmission System or Columbia Gas of Pennsylvania System.

6. **Field Gathering and Compression System**

A. Mid East and Devonian shall design, construct and operate the gas gathering and compression system. Since joint venture gas will be commingled with Mid East (Investor) gas, the joint venture gas will only be charged and pay its pro-rated share of the actual monthly compression cost.

B. Mid East and Devonian will agree on a gathering and compression fee which will be charged to third-party gas, including Mid East or Devonian investor gas. The gathering and compression fee shall be distributed to Mid East and Devonian in accordance with each parties ownership in the gathering and compression system.

7. For volume allocation purposes, all joint venture gas shall be measured at the receipt point meters (wellhead) and pro-rated along with non-joint venture gas meters connected to Mid East's gathering system back to sales volume. Sales volume will be that volume as measured at the delivery point master sales meter where Mid East's gathering system interconnects to Columbia Gas Transmission or Columbia Gas of Pennsylvania.

8. **Drilling and Operating** - All wells in the joint venture will be drilled and operated at cost, subject to those terms and conditions mandated in an Operating Agreement which shall be executed prior to drilling the first joint venture well. The initial term for the joint venture shall be five (5) years unless mutually extended, commencing July 1, 2000.

A. It understood and agreed that both Devonian Resources and Mid East have the right to perform certain field services in regards to the drilling, completion and operations of the joint venture wells and any wells that may be drilled on the joint venture acreage in evaluation. Specifically, Mid East shall have the right to do all service rig work, water hauling and pipeline and well head hookups.

Devonian Resources shall have the right to do all dozer work, drilling and trucking. All of the above services shall be performed at the competitive rates for the same services provided for in the area of this work.

9. Should either party decide to sell their interest in any or all wells drilled on acreage within the boundaries of the AMI, whether they were wells drilled under this joint venture or wells that were drilled to evaluate the acreage within the AMI, the non-selling party shall have the right of first refusal to purchase the interest at the bonafide offer that the selling party received. This right of first refusal shall be for a thirty (30) day period from the time non-selling party has received in writing the terms of any such bonafide offer to purchase.

However, full operating rights shall transfer and revert to the non-selling party, whether non-selling party purchases the selling parties interest or not.

10. If any terms and conditions of this letter conflict with any terms or conditions of a later Operating Agreement set forth in Paragraph 8. above, then the terms and conditions of this letter shall prevail.

11. This Agreement may not be assigned without the express written consent of the non-assigning party.

Very truly yours,
DEVONIAN RESOURCES, INC.

STANLEY R. THOMPSON
President

I, _____, on behalf of Mid East Oil Company, agree to and accept the terms and conditions as set forth in this letter on this 25th day of August 2000.

EXHIBIT C

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
BARNYAK, LOUIS E. #1							
CR-28	Centre	Burnside	PA	10/29/00	1195/1022	37-027-20701	69
MID2020		*Lessor:* Louis E Barnyak					
		Lessee: Mid-East Oil Company					
BARNYAK, LOUIS E. #2							
CR-28	Centre	Burnside	PA	10/29/00	1195/1022	37-027-20702	69
MID2021		*Lessor:* Louis E Barnyak					
		Lessee: Mid-East Oil Company					
BARNYAK, SHANE #1							
CR-27	Centre	Burnside	PA	10/29/00	1195/1026	37-027-20735	28.6
MID2033		*Lessor:* Shane L Barnyak and Michelle L Barnyak					
		Lessee: Mid-East Oil Company					
CONFER, WILLAIM C. #1							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20684	700
MID2011		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
CONFER, WILLIAM C. #10							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20704	700
MID2062		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #11							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20705	700
MID2067		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #18							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20747	700
MID2042		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #19							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20748	700
MID2040		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #2							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20691	700
MID2012		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
CONFER, WILLIAM C. #20							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20749	700
MID2041		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #3							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20695	700
MID2013		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #4							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20696	700
MID2014		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #5							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20697	700
MID2015		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #6							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20698	700
MID2016		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
CONFER, WILLIAM C. #7							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20699	700
MID2017		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #8							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20700	700
MID2018		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CONFER, WILLIAM C. #9							
D725	Centre	Burnside	PA	03/01/00	1144/0365	37-027-20703	700
MID2019		*Lessor:* William C Confer and Mary E Confer					
		Lessee: Devonian Resources, Inc.					
CRAWFORD #1							
CR-16	Centre	Burnside	PA	03/21/00	1152/0037	37-027-20777	61.03
MID2057		*Lessor:* Robert D Crawford					
		Lessee: Mid-East Oil Company					
ETTERS #1							
CR-12	Centre	Burnside	PA	03/20/00	1152/0022	37-027-20690	54.10
MID2022		*Lessor:* Grant D Etters					
		Lessee: Mid-East Oil Company					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

FORESMAN #1

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20755	441

MID2046

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #2

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20754	441

MID2044

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #4

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20757	441

MID2051

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #5

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20758	441

MID2047

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

FORESMAN #6

PP	Centre	Burnside	PA	08/14/97	949/438	37-027-20759	441

MID2048

Lessor: Loran D Foresman and Jon E Foresman

Lessee: Phillips Production Company

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*
MID-EAST OIL COMPANY						(W998B)	
FYE #1							
CR-9	Centre	Burnside	PA	02/16/00	1152/0013	37-027-20689	105.88
MID2007		*Lessor:* Gilbert L Fye and Gloria J Fye					
		Lessee: Mid-East Oil Company					
HAWLEY/FORESMAN #2							
PP	Centre	Burnside	PA	09/05/95	836/305	37-027-20745	660
MID2037		*Lessor:* David W Foresman, Cynthia A Hawley, Norman L Hawley					
		Lessee: Phillips Production Company					
HOOVER, MELVIN E. #1							
CR-2	Centre	Burnside	PA	01/31/00	1152/0004	37-027-20712	103.42
MID2008		*Lessor:* Melvin E Hoover and R Lucille Hoover					
		Lessee: Mid-East Oil Company					
LIVERGOOD #1							
CR-30	Centre	Burnside	PA	01/30/01	1210/0983	37-027-20736	385.82
MID2035		*Lessor:* Robert L Livergood and Margaret J Livergood					
		Lessee: Mid-East Oil Company					
MCCULLOUGH #1							
CR-21	Centre	Burnside	PA	08/02/00	1175/0920	37-027-20685	94.0
MID2006		*Lessor:* Robert Goldwin McCullough, Travis R McCullough and Matthew R McCullough as tennants in com					
		Lessee: Mid-East Oil Company					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*
MID-EAST OIL COMPANY						(W998B)	
MULL #1							
CR-6	Centre	Burnside	PA	02/11/00	1152/53	37-027-20686	66.04
MID2005		***Lessor:*** County National Bank, Trustee under agreement for Anthony P Mull					
		Lessee: Mid-East Oil Company					
RENOE #1							
D721	Centre	Burnside	PA	08/01/99	1127/0025	37-027-20688	626.5
MID2039		***Lessor:*** Donna Renoe, et al					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #19							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20751	3787.6
MID2052		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #20							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20750	3787.6
MID2050		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #21							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20753	3787.6
MID2049		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY (W998B)

STATE GAME LANDS NO. 100 #22

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20752	3787.6

MID2053 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #23

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20763	3787.6

MID2061 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #24

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20762	3787.6

MID2064 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #25

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20761	3787.6

MID2065 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #26

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20760	3787.6

MID2055 *Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission
Lessee: Devonian Resources, Inc.

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY

(W998B)

STATE GAME LANDS NO. 100 #27

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20764	3787.6

MID2063

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #28

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20766	3787.6

MID2060

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #29

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20765	3787.6

MID2066

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #32

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20771	3787.6

MID2058

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO. 100 #33

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20772	3787.6

MID2056

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY					(W998B)		
STATE GAME LANDS NO. 100 #36							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20774	3787.6
MID2068		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO. 100 #5							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20710	3787.6
MID2054		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO.100 #1							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20692	3787.6
MID2045		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO.100 #10							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20720	3787.6
MID2024		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					
STATE GAME LANDS NO.100 #11							
D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20721	3787.6
MID2028		***Lessor:*** Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage

MID-EAST OIL COMPANY

(W998B)

STATE GAME LANDS NO.100 #12

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20722	3787.6

MID2030

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #13

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20723	3787.6

MID2029

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #17

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20740	3787.6

MID2036

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #2

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20693	3787.6

MID2027

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

STATE GAME LANDS NO.100 #3

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20694	3787.6

MID2026

Lessor: Commonwealth of Pennsylvania, Pennsylvania Game Commission

Lessee: Devonian Resources, Inc.

Well Name	*County*	*Township*	*State*	*Lease Date*	*Recording Information*	*Permit Number*	*Acreage*

MID-EAST OIL COMPANY

(W998B)

STATE GAME LANDS NO.100 #6

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20711	3787.6
MID2023		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

STATE GAME LANDS NO.100 #8

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20718	3787.6
MID2043		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

STATE GAME LANDS NO.100 #9

D727	Centre	Burnside	PA	05/25/00	1303/955	37-027-20719	3787.6
MID2025		*Lessor:* Commonwealth of Pennsylvania, Pennsylvania Game Commission					
		Lessee: Devonian Resources, Inc.					

WARNER/FORESMAN #1

PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20726	1425
MID2034		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					

WARNER/FORESMAN #2

PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20727	1425
MID2032		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					

Well Name	County	Township	State	Lease Date	Recording Information	Permit Number	Acreage
MID-EAST OIL COMPANY						(W998B)	
WARNER/FORESMAN #5							
PP	Centre	Burnside	PA	08/17/97	949/446	37-027-20730	1425
MID2038		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					
WARNER/FORESMAN #7							
PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20732	1425
MID2031		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					
WARNER/FORESMAN #9							
PP	Centre	Burnside	PA	08/14/97	949/446	37-027-20734	1425
MID2059		*Lessor:* Loran D Foresman, et ux / Robert A Warner et ux					
		Lessee: Phillips Production Company					

	Wells drilled by	MID EAST	L F SMYERS		AMI		
API #	WELL NAME	COUNTY As of	STATUS March	TIL 7th, 2003	PAYMENT	SPUD	COMPLETION
20923	Carlin 1	Centre	?			3/5/2002	yes
20921	Carlin 3	Centre	?			3/6/2002	yes
20684	CONFER 1	Centre	Producing		x	8/23/2000	
20691	CONFER 2	Centre	Producing		x	12/19/2002	
20695	CONFER 3	Centre	Producing		x	1/2/2002	
20696	CONFER 4	Centre	Producing		x	1/2/2002	
20697	CONFER 5	Centre	Producing		x	1/10/2001	
20698	CONFER 6	Centre	Producing		x	1/6/2001	
20699	CONFER 7	Centre	Producing		x	1/12/2001	
20700	CONFER 8	Centre	Producing		x	1/12/2001	
20703	CONFER 9	Centre	Producing		x	9/28/2001	
20704	CONFER 10	Centre	Producing		x	2/16/2001	
20705	CONFER 11	Centre	Producing		x	10/11/2001	
	CONFER 18	Centre	Producing		x	10/11/2001	
20748	CONFER 19	Centre	Producing		x	6/19/2001	
	CONFER 20	Centre	Producing		x	6/27/2001	
20792	CONFER 21	Centre	?			10/31/2001	yes
20791	CONFER 22	Centre	?			10/24/2001	yes
20690	ETTERS 1	Centre	Producing		x	1/7/2001	
20701	Barnyak, L 1	Centre	Producing		x	2/1/2001	
20702	Barnyak L 2	Centre	Producing		x	2/23/2001	
20735	Barnyak S 1	Centre	Producing		x	4/17/2001	
20777	Crawford 1	Centre	Producing		x	9/18/2001	
20755	Foresman 1	Centre	Producing		x	7/25/2001	
20754	Foresman 2	Centre	Producing		x	7/18/2001	
20756	Foresman 3	Centre	Producing		x	9/26/2001	5/29/2002
20757	Foresman 4	Centre	?			9/6/2001	
20758	Foresman 5	Centre	Producing		x	7/29/2001	
20759	Foresman 6	Centre	Producing		x	8/8/2001	
20986	Foresman 7	Centre	?			8/10/2002	
20985	Foresman 8	Centre	?			8/6/2002	
20991	Foresman 9	Centre	?			8/11/2002	
21030	Foresman 11	Centre	?			11/24/2002	
21028	Foresman 12	Centre	?			12/10/2002	
21029	Foresman 13	Centre	?			12/5/2002	
20632	Gulf USA 2	Centre	?	drilled earlier by Eastern States taken over by Mid			
20362	Gulf USA 3	Centre	?	""			
20954	Gulf USA 5	Centre	?			2/19/2002	
21042	Gulf USA 19	Centre	?			12/31/2002	

20929	Litke 1	Centre	?		1/24/2002	
20928	Litke 2	Centre	?		2/11/2002	
20199	Litke 23	Centre	?	drilled earlier by Eastern States taken over by Mid		
20976	Litke 25	Centre	?		7/19/2002	
20977	Litke 26	Centre	?		8/28/2002	
20978	Litke 28	Centre	?		7/25/2002	
20979	Litke 29	Centre	?		8/5/2002	
20992	Litke 35	Centre	?		8/24/2002	
20996	Litke 36	Centre	?		8/24/2002	
20995	Litke 37	Centre	?		7/29/2002	
20994	Litke 38	Centre	?		12/21/2002	
20993	Litke 39	Centre	?		9/8/2002	
20997	Litke 40	Centre	?		9/12/2002-	1/7/2003
20998	Litke 41	Centre	?		9/4/2002	
21033	Litke 43	Centre	?		12/11/2002	
21034	Litke 44	Centre	?		12/17/2002	
21081	Litke 45	Centre	?		2/5/2003	
21063	Litke 46	Centre	?		12/28/2002	
21064	Litke 47	Centre	?		1/13/2003	
21065	Litke 48	Centre	?		1/3/2003	
21092	Litke 52	Centre	?		3/5/2003	
21083	Litke 53	Centre	?		2/12/2003	
21085	Litke 57	Centre	?		2/26/2003	
21088	Litke 61	Centre	?		2/24/2003	
21089	Litke 62	Centre	?		1/31/2003	
21090	Litke 63	Centre	?		2/4/2003	
20644	Litke W.W. D 1	Centre	?	drilled earlier by Eastern States taken over by Mid		
20689	Fye 1	Centre	?		1/17/2001	
20894	Fye 2	Centre	?		6/3/2002	
20745	Hawley/Foresman 2	Centre	?		5/16/2001	
20712	Hoover 1	Centre	? P&A		2/23/2001	
20736	Livergood 1	Centre	? P&A		5/2/2001	
20685	McCullough 1	Centre	?		9/7/2000	
20686	Mull 1	Centre	?		9/1/2000	
24836	Neidrick 1	Centre	? prob. PtA		8/1/2001	
21062	Pine Glen FD 1	Centre	?		1/10/2003	
20688	Renoe 2	Centre	?		5/26/2001	
20726	Warner/Foresman 1	Centre	Producing	x	4/24/2001	
20727	Warner/Foresman 2	Centre	Producing	x	4/11/2001	
20730	Warner/Foresman 5	Centre	?		5/20/2001	
20732	Warner/Foresman 7	Centre	Producing	x	4/4/2001	
20734	Warner/Foresman 9	Centre	Producing	x	9/23/2001	

24819	Brown 1	Clearfield	P&A ?		07-04-01	
24891	Brown 6	Clearfield	P&A ?		8/1/2001	
20692	SGL 100-1	Centre	Producing	x	1/19/2001	
20693	SGL 100-2	Centre	Producing	x	1/25/2001	
20694	SGL 100-3	Centre	Producing	x		
20710	SGL 100-5	Centre	Producing	x	9/11/2001	
20711	SGL 100-6	Centre	Producing	x	2/16/2001	
20718	SGL 100-8	Centre	Producing	x	7/6/2001	
20719	SGL 100-9	Centre	Producing	x	3/4/2001	
20720	SGL 100-10	Centre	Producing	x	3/14/2001	
20721	SGL 100-11	Centre	Producing	x	3/17/2001	
20722	SGL 100-12	Centre	Producing	x	3/28/2001	
20723	SGL 100-13	Centre	Producing	x	3/23/2001	
	SGL 100-17	Centre	Producing	x	5/8/2001	
20751	SGL 100-19	Centre	Producing	x	9/7/2001	
20750	SGL 100-20	Centre	Producing	x	9/4/2001	
20753	SGL 100-21	Centre	Producing	x	8/27/2001	
20752	SGL 100-22	Centre	Producing	x	9/10/2001	
20763	SGL 100-23	Centre	Producing	x	9/27/2001	
20762	SGL 100-24	Centre	Producing	x	10/3/2001	
20761	SGL 100-25	Centre	Producing	x	10/7/2001	
20760	SGL 100-26	Centre	Producing	x		
20764	SGL 100-27	Centre	Producing	x	9/27/2001	
20766	SGL 100-28	Centre	Producing	x	9/24/2001	
20765	SGL 100-29	Centre	Producing	x	10/10/2001	
20769	SGL 100-30	Centre	Producing	x	1/5/2002	
20770	SGL 100-31	Centre	Producing	x	1/2/2002	
20771	SGL 100-32	Centre	Producing	x	9/22/2001	
20772	SGL 100-33	Centre	Producing	x	9/19/2001	
20776	SGL 100-34	Centre	Producing	x	1/14/2002	
20775	SGL 100-35	Centre	Producing	x	1/19/2002	
20774	SGL 100-36	Centre	Producing	x	10/17/2001	
20773	SGL 100-37	Centre	?		6/17/2002	
21046	SGL 100-38	Centre	?		12/31/2002	
20779	SGL 100-40	Centre	?		6/25/2002	
20778	SGL 100-41	Centre	?		6/21/2002	
20789	SGL 100-42	Centre	?		8/15/2002	
20788	SGL 100-43	Centre	?		6/19/2002	
20790	SGL 100-44	Centre	Producing	x	1/21/2002	
20785	SGL 100-50	Centre	?		6/21/2002	7/9/2002
20899	SGL 100-51	Centre	?		5/13/2002	
20898	SGL 100-52	Centre	?		6/10/2002	
20897	SGL 100-53	Centre	?		5/17/2002	
20896	SGL 100-54	Centre	?		6/14/2002	
20895	SGL 100-55	Centre	?		5/21/2002	
20909	SGL 100-56	Centre	Producing	x	1/5/2002	
20912	SGL 100-57	Centre	Producing	x	1/9/2002	
20911	SGL 100-58	Centre	?		5/13/2002	
20910	SGL 100-59	Centre	Producing	x	12/30/2001	

20917	SGL 100-60	Centre	Producing		x	1/15/2002	
20940	SGL 100-62	Centre	Producing		x	1/18/2002	
20960	SGL 100-70	Centre	?			5/30/2002	
20959	SGL 100-71	Centre	?			5/23/2002	
20957	SGL 100-72	Centre	?			6/30/2002	7/10/2002
20966	SGL 100-73	Centre	?			5/7/2002	
20965	SGL 100-74	Centre	?			6/7/2002	
20970	SGL 100-75	Centre	?			6/11/2002	
20969	SGL 100-76	Centre	?				
21052	SGL 100-96	Centre	?			12/28/2002	
21051	SGL 100-97	Centre	?			1/4/2003	
20789	SGL 100-100	Centre	?			6/24/2002	
21055	SGL 100-101	Centre	?			12/17/2002	
21054	SGL 100-102	Centre	?			12/22/2002	
21073	SGL 100-104	Centre	?			1/16/2003	
21074	SGL 100-105	Centre	?			1/16/2003	
21095	SGL 100-106	Centre	?				
20958	SGL 100 B01- 64	Centre	?			2/1/2003	
20962	SGL 100 B01-66	Centre	?			9/16/2002	
20400	COP 706-1	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20401	COP 706-2	Centre	Proucing	Drilled by	Eastern Sta es purchasec by Mid East		
20466	COP 706-3	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20467	COP 706-4	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20468	COP 706-5	Centre	Producing	Drilled by	Eastern Sta es purchasec by Mid East		
20448	COP 706-7	Centre	?				
20901	COP 706-8	Centre	?			6/30/2002	
20905	COP 706-9	Centre	?			8/24/2002	
20900	COP 706-10	Centre	?			6/25/2002	
20968	COP 706-19	Centre	?			12/3/2002	
21019	COP 706-22	Centre	?			1/13/2003	

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff vs. MID-EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	No. 03-1598-CD Type of Pleading: ANSWER TO COMPLAINT TO JOIN ADDITIONAL DEFENDANTS AND NEW MATTER Filed on Behalf of: ADDITIONAL DEFENDANTS Counsel of Record for This Party: Robert W. McFate Supreme Court No. 18528 3178-B State Rte. 257 P. O. Box 407 Seneca, PA 16346 (814-676-3933

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

ANSWER TO COMPLAINT AGAINST ADDITIONAL DEFENDANTS

NOW COME Additional Defendants, Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. by and through their attorney, Robert W. McFate and files the following response to the Complaint Against Additional Defendants and says:

1. Admitted.

2. a. Admitted.

   b. Admitted.

   c. i. Admitted except that they have some directors in common.

   ii. Admitted except that they have some officers in common.

   iii. Admitted.

iv. Admitted.

v. Admitted.

d. Admitted. By way of further answer, Devonian and Van Hampton concentrate their activities and resources in natural gas drilling and development operations and activities in Pennsylvania.

3. Denied to the extent that the averments set forth in Paragraph 3 of the Third Party Complaint paraphrase the content of a letter dated August 3, 1999, from the Plaintiff to Van Hampton attached to the Plaintiff's Complaint as Page 5 of Exhibit 1.

4. a. Admitted.

b. Admitted.

c. Admitted.

d. Admitted.

e. Admitted.

f. Admitted.

5. a. Admitted.

b. Admitted.

c. Admitted.

d. Admitted.

e. Admitted.

6. a. Admitted.

b. Admitted.

c. Admitted.

d. Admitted.

e. Admitted.

f. Admitted.

g. Admitted.

h. Admitted.

7. Admitted.

8. a. Denied. It is denied that Paragraph 2 of the joint venture agreement does not provide for the assumption of any liability or obligation by Defendant Mid-East, or any joint venture, of any obligation to Plaintiff Larry Smyers.

i. to the extent that all then current leases held by Devonian and Mid-East at the time of the signing of the joint venture agreement were to be cross assigned as between the parties; and

ii. all leases, both existing and new, were under the joint venture agreement subject to a 1/64th overriding royalty interest.

It is averred on the contrary that while the Plaintiff is not specifically identified in said joint venture agreement, said Agreement at Paragraph 2 provides that all leases, both existing and new shall be subject to a 1/64th overriding royalty interest as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area.... It is further averred that the third party referred to is the Plaintiff.

b. Admitted.

c. Admitted.

d. i. Admitted.

ii. Admitted.

9. a. Admitted.

b. Admitted.

c. Admitted.

d. Admitted.

e. Admitted.

f. Admitted.

10. a. Admitted.

b. Denied. Denied that the joint venture agreement does not identify the alleged "prior agreement" that the Plaintiff alleges "mandated" such payments. It is averred on the contrary that said joint venture agreement identifies said agreement by reference, albeit without specificity.

c. Denied. It is denied that the joint venture agreement does not identify Plaintiff Smyers as such party then providing such services. It is averred on the contrary that said agreement identifies Smyers by reference, albeit without specificity.

11. Denied. It is denied that Mid-East did not succeed to and/or receive an assignment of all rights of Devonian. It is averred on the contrary that although a formal assignment of said rights did not occur, a defacto assignment occurred as evidenced by the course of dealing between Defendant and Additional Defendant Devonian in the performance of said joint venture agreement. It is admitted that Devonian continued in existence doing business after Devonian entered into the August 23, 2000 joint venture agreement with Mid-East and the January 16, 2002 Assignment and Bill of Sale with Mid-East.

12. Admitted.

13. Denied. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 13.

14. Denied. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 14.

15. Denied. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 15.

16. Admitted in part and denied in part. It is admitted that the letter from Larry S. Smyers to Van Hampton Oil & Gas Company dated August 3, 1999, provided that Smyers would provide services to develop drilling prospects and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development. It is admitted that the confidentiality agreement between Smyers and Devonian makes reference to said letter of August 3, 1999, with specific reference to Smyers' technical assistance to explore and develop natural gas and associated hydrocarbons. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth

of the averments in Paragraph 16 of the Third Party Complaint as they may relate to any other agreements between Smyers and Devonian and therefore such allegations are denied.

17. Admitted in part and denied in part. It is admitted that the letter from Smyers to Devonian dated August 3, 1999, which letter is referred to in the confidentiality agreement between Smyers and Devonian provided for compensation for services to be provided by Smyers. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 17 as said averments may relate to any other agreement between Smyers and Devonian and said allegations are therefore denied.

18. Admitted in part and denied in part. To the extent that the averments in Paragraph 18 refer to the August 3, 1999 letter from Smyers to Van Hampton and the confidentiality agreement between Smyers and Devonian, the averments in Paragraph 18 are admitted. To the extent that the averments refer to any other agreement between Smyers and Devonian and/or Van Hampton, after reasonable investigation Devonian is without knowledge or information sufficient to form a belief as to the truth of said averments and the same are therefore denied.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Denied. It is denied that the letter from Smyers to Van Hampton dated August 3, 1999, and the confidentiality agreement between Smyers and Devonian specifically provided that Smyers would provide advice and step by step assistance in drilling and fracturing wells. It is further averred that said documents are attached to the pleadings as exhibits, that the language in said documents speaks for itself and is subject to interpretation.

24. Admitted.

25. Denied. It is denied that Smyers never released Devonian or Van Hampton from the obligation to make payments to Smyers. It is averred on the contrary that while Smyers did not verbally or by writing specifically release Devonian and/or Van Hampton from the obligation to make payments, the joint venture agreement between Mid-East and Devonian dated August 23, 2000, of which Smyers had knowledge, specifically provided in Paragraph 2 that all leases, both

existing and new, were subject to a 1/64th overriding royalty interest as mandated by a prior agreement between Devonian Resources and a third party providing geologic services which prior agreement referred to the agreement between Smyers and Van Hampton and/or Devonian as set forth in the letter of August 3, 1999, and the confidentiality agreement acknowledged September 21, 2001.

26. Denied that the property within said AMI had been leased, was drilled and was producing gas prior to any involvement between Smyers and Devonian. It is averred on the contrary that Devonian first leased any of said property beginning in or about March, 2000 and that no wells were drilling on said property until several months thereafter.

27. Admitted.

28. Admitted.

29. Denied. It is denied that Smyers was hired because of his past experience in the geographic area. It is averred on the contrary that he was hired because of his expertise as a petroleum geologist and geophysicist.

30. Denied. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 30.

31. Denied. After reasonable investigation Devonian is without knowledge or information to form a belief as to the truth of the averments set forth in Paragraph 31 of the Third Party Complaint.

32. a. Admitted.

b. i. Admitted.

ii. Admitted.

c. Admitted.

d. Admitted.

33. a. Denied. It is denied that the confidentiality agreement provided that Plaintiff Smyers would provide technical assistance to Devonian to develop natural gas wells. It is averred on the contrary that said confidentiality agreement merely committed the parties to confidentiality with respect to the matters set forth therein.

b. Admitted. By way of further answer it is averred that said confidentiality agreement did not provide for the provision of

technical assistance by or to any party or parties.

c. Admitted.

d. Admitted.

34. Admitted.

35. a. Admitted. By way of further answer, it is averred that said joint venture agreement provided that "all leases, both existing and new shall be subject to a 1/64th overriding royalty interest as mandated by a prior agreement between Devonian Resources and a third party providing geological services..."

b. Admitted. By way of further answer, it is averred that although Mid-East was not a party or signatory to the prior agreement, Mid-East entered into said joint venture agreement with full knowledge of the existence of such prior agreement as well as full knowledge that the "third party" referred to in Paragraph 2 of said joint venture agreement referred to the Plaintiff.

c. Admitted.

d. Denied. It is denied that said joint venture agreement contains no provision by which Mid-East assumed any obligations to satisfy Devonian's obligations to third parties. It is averred on the contrary that at the time it entered into said joint venture agreement, Mid-East had actual knowledge of the existence of the agreement between Devonian and/or Van Hampton and Plaintiff Smyers. It is further averred that by entering into said agreement, Mid-East assumed and agreed to pay said obligations and further that Mid-East did in fact pay said obligations in the form of a 1/64th overriding royalty interest to Plaintiff Smyers.

e. Admitted. By way of further answer, it is averred that the Plaintiff Smyers, although not a party to or signatory to said joint venture agreement was a third party beneficiary.

f. Admitted.

g. Admitted.

36. Admitted. By way of further answer it is averred that Devonian conveyed its interest to Mid-East free and clear of liens or encumbrances of any other person. By way of further answer it is averred that Devonian conveyed its entire interest in and to said oil and gas property, said interest being a factional interest.

37. Denied. It is denied as averred that Devonian assigned its

rights in Mid-East's AMI to Mid-East. It is averred on the contrary that by said assignment dated January 6, 2003, Devonian assigned its right, title and interest in and to all oil and gas property of any kind or nature situate or related to lands within the political boundaries of Burnside Township, Centre County, Pennsylvania, (therein referred to as the "AMI"), which included interests acquired by Devonian as the result of a cross assignment of interest with Mid-East.

38. a. Admitted to the extent that reference to "Mid-East's AMI" the Defendant is referring to the AMI.

b. Denied. It is denied that Devonian warranted that it had complete title to such interests free and clear of all liens and encumbrances. It is averred on the contrary as specifically stated in said assignment that Devonian warranted that it had complete legal title to its undivided interests free and clear of all liens and encumbrances. It is further averred that the undivided interest of Devonian was a fractional interest, there being an outstanding overriding royalty interest in the Plaintiff.

c. Admitted.

d. Admitted in part and denied in part. It is admitted that said documents identified in Paragraph 38 d of the Third Party Complaint made no reference to Larry Smyers. It is further admitted that said documents do not provide for payment of any kind to Smyers. It is denied that said documents did not refer to the outstanding overriding royalty interest in Smyers. It is averred on the contrary that said documents expressly conveyed only the undivided interest of Devonian which was subject to an outstanding overriding royalty interest. It is further averred that the August 23, 2000, joint venture agreement between Devonian and Mid-East specifically referred to and was made subject to a 1/64th overriding royalty interest and that Mid-East had actual notice of the existence of said interest and that the Plaintiff Larry Smyers was the owner of said interest. It is further averred that Mid-East had actual knowledge that royalty payments representing said 1/64th overriding royalty interest were paid to Smyers by Devonian prior to the assignment of Devonian's interest to Mid-East. It is further averred that after the assignment of Devonian's interest to Mid-East said royalty payments were made directly by Mid-East to Larry Smyers.

e. Admitted.

f. Admitted.

g. Admitted.

h. Denied. It is denied that said assignment provides what is set forth in Paragraph 38 h of the Defendant's Third Party Complaint. It is averred on the contrary that Devonian shall also make payment of all expenses incurred in the operation of the subject wells including the payment of royalties through such production period, which period ended December 27, 2001.

i. Denied. The terms and conditions of said assignment are set forth within the four corners of the document and said terms and conditions speak for themselves. Everything else is not stated in the document.

j. Denied. The terms and conditions of said assignment are set forth withing the four corners of the document and said terms and conditions speak for themselves. Everything else is not stated in the document.

k. Admitted.

39. No responsive pleading is required to the averments in Paragraph 39 of the Complaint for the reason that said averments are not averments of fact but rather ultimate conclusions of law.

40. After reasonable investigation, Devonian is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 40 of the Third Party Complaint, and said averments are therefor denied.

41. a. Denied that Devonian breached its warranty that the interests conveyed were free and clear of all liens and encumbrances. It is averred on the contrary that Devonian conveyed only such interest as it had, which was a factional interest, there being an outstanding overriding royalty interest in the Plaintiff. It is further averred that said overriding royalty interest is a separate estate and not a lien or encumbrance in the interest assigned by Devonian to Mid-East. It is further averred that Mid-East had actual notice of said overriding royalty interest prior to receiving the assignment of Devonian's interest and knowingly accepted and took said interest subject to said overriding royalty interest.

b. Denied that Devonian breached any warranty that the leases and agreements conveyed contained all covenants and obligations of Devonian concerning the oil and gas operation on the lease premises. It is averred on the contrary that Devonian conveyed and Mid-East took and assumed said leases and agreements with actual knowledge that they were subject to an overriding royalty interest in the Plaintiff, said interest being a separate estate. It is further averred that upon assuming and taking said interest from Devonian that Mid-East knowingly, intentionally and willingly continued to make

payments of said overriding royalty interest to the Plaintiff.

c. No responsive pleading is required to the averment in Paragraph 41 c of the Third Party Complaint as said averments are not averments of fact but rather ultimate conclusions of law.

42. It is admitted that Plaintiff Smyers amended Complaint alleges what it alleges. Any averments in Paragraph 42 of the Third Party Complaint which purport to allege what Plaintiff Smyers amended complaint does not allege are specifically denied.

43. No responsive pleading is required to the averments in Paragraph 43 of the Third Party Complaint.

Wherefore, Additional Defendants Devonian and Van Hampton pray your Honorable Court for judgment in favor of said Additional Defendants and against Defendant Mid-East on Count 1 of the Third Party Complaint and for a finding by your Honorable Court of no liability to either Plaintiff or Mid-East, that Count 1 of the Complaint be dismissed and costs be awarded in favor of Devonian and Van Hampton and against Mid-East.

44. No responsive pleading is required to the averments in Paragraph 44 of the Third Party Complaint.

Wherefore, Additional Defendants Devonian and Van Hampton pray your Honorable Court for judgment in favor of said Additional Defendants and against Mid-East on Count 2 of the Third Party Complaint and for a finding that there is no liability over to Defendant Mid-East, that Count 2 be dismissed and that costs be awarded against the Defendant Mid-East and in favor of Additional Defendants Devonian and Van Hampton.

45. No responsive pleading is required to the averments in Paragraph 45 of the Third Party Complaint.

Wherefore, Additional Defendants Devonian and Van Hampton pray your Honorable Court for a judgment in favor of said Additional Defendants and against Defendant Mid-East on Count 3 of the Third Party Complaint and a finding that there is no joint or several liability to the Defendant Mid-East, that Count 3 of the Complaint be dismissed against Additional Defendants and that costs be awarded against Defendant Mid-East and in favor of Additional Defendants Devonian and Van Hampton.

46. No responsive pleading is required to the averments in Paragraph 46 of the Third Party Complaint.

47. a. Denied that Devonian breached the November 15, 2001

agreement by reason of its covenant that it had good, marketable and indefeasible title to the assets free and clear of all liens and encumbrances. It is averred on the contrary that Devonian conveyed good, marketable and indefeasible title to the assets which were the subject of said agreement free and clear of all liens and encumbrances, said title being a fractional interest. It is further averred that at the time of said conveyance there was an outstanding overriding royalty interest in the Plaintiff which was a separate estate in land apart from the interest of Devonian which was conveyed pursuant to said agreement. It is further averred that Mid-East had knowledge of said outstanding overriding royalty interest in the Plaintiff and accepted and assumed title from Devonian with full knowledge of and consent to said outstanding interest.

b. Denied that Devonian breached the November 15, 2001 agreement in that it covenanted that it would deliver all records and documents relating to the assets. It is averred on the contrary that Devonian performed said covenant in that it delivered all records and documents relating to the assets. It is further averred to the extent that any of said records or documents remain undelivered, that Devonian is ready, willing and able to deliver the same.

48. Denied that Mid-East has been damaged by any action or failure to act on the part of Additional Defendants Devonian and Van Hampton. It is averred on the contrary that Devonian and Van Hampton at all times heretofore have performed all of the terms and covenants of their agreements with all parties to this action fully and in good faith.

Wherefore, Additional Defendants Devonian and Van Hampton pray for judgment in favor of said Additional Defendants and against Defendant Mid-East on Count 4 of the Third Party Complaint, and that your Honorable Court enter an Order denying the relief requested therein and that costs be awarded against Defendant Mid-East and in favor of said Additional Defendants.

49. No responsive pleading is required to the averments in Paragraph 49 of the Third Party Complaint.

50. a. Denied that Devonian breached any warranties to Mid-East under the January 16, 2002 agreement , that Devonian had complete legal title to its undivided interest free and clear of all liens and encumbrances. It is averred on the contrary that Devonian at all times upheld said warranty as to the interest it conveyed, which interest was a fractional interest. It is further averred that when Devonian conveyed and assigned its interest to Mid-East, Mid-East had actual knowledge of an outstanding overriding royalty interest in the Plaintiff and that it accepted and assumed title to the interest conveyed by Devonian subject to said outstanding overriding royalty.

It is further averred that said overriding royalty interest was not a lien or encumbrance but a separate estate in realty which constitutes part of the fee simple estate.

b. It is denied that Devonian breached any warranties that the leases and agreements contained all covenants and obligations of Devonian. It is averred on the contrary that Devonian fully performed all covenants and obligations required of it under said agreements.

51. Denied that Additional Defendants Devonian and Van Hampton breached any warranty to Mid-East or otherwise, or that Mid-East has been damaged by any act or failure to act by said Additional Defendants.

WHEREFORE, Additional Defendants Devonian and Van Hampton pray your Honorable Court for judgment in favor of said Additional Defendants and against Defendant Mid-East, denying the relief requested in Count 5 of the Third Party Complaint and ordering the costs be awarded against Defendant Mid-East and in favor of said Additional Defendants.

Respectfully submitted,

Robert W. McFate
Attorney for Additional Defendants
Pa. I.D. 18528
3178 State Route 257
P. O. Box 407
Seneca, PA 16346
(814) 676-3933

NOTICE TO PLEAD

TO: Mid-East Oil Company, Defendant

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Robert W. McFate
Attorney for Additional Defendants

NEW MATTER

NOW, comes Additional Defendants Devonian Resources, Inc. and Van Hampton Gas and Oil Co., Inc. by and through their attorney, Robert W. McFate, and file the following New Matter in response to the Complaint to Join Additional Defendants in the above matter and aver and say:

52. All the averments set forth in Paragraphs 1-51 above are incorporated herein by reference and made a part hereof as though fully set forth herein.

53. From and after August 23, 2000, the date of the joint venture agreement (Pine Glen Prospect), Mid-East agreed to and assumed the designation of operator of wells drilled on said prospect.

54. From and after the date of said joint venture agreement with Devonian, Mid-East was, as a matter of fact, the exclusive operator of all wells drilled on the prospect.

55. At the time Mid-East entered into said joint venture agreement, Mid-East knew of the 1/64th overriding royalty interest to the Plaintiff Larry Smyers under a prior agreement between Smyers and Devonian and knew that said interest was held by Smyers.

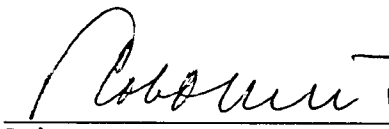
56. From and after entering into said joint venture agreement and as operator of the leases in the prospect, Mid-East actually paid a 1/64th overriding royalty interest to the Plaintiff Larry Smyers on the production from said leases.

57. Although not a party or signatory to said joint venture agreement, the Plaintiff Larry Smyers was a third party beneficiary of said joint venture agreement.

58. At the time Mid-East entered into said joint venture agreement with Devonian, Mid-East knew that Devonian's interest in the leases covered by said agreement was a fractional interest subject to an outstanding overriding royalty interest or interests, including the overriding royalty interest held by Plaintiff Larry Smyers.

WHEREFORE, Additional Defendants Devonian and Van Hampton Gas & Oil Co., Inc. pray for judgment in favor of said Additional Defendants and against Defendant Mid-East on all counts of the Third Party Complaint and that your Honorable Court enter an Order denying the relief requested therein and that all costs be awarded against Defendant Mid-East and in favor of said Additional Defendants.

Respectfully submitted,



Robert W. McFate
Attorney for Additional Defendants
Pa. I.D. 18528
3178 State Route 257
P. O. Box 407
Seneca, PA 16346
(814) 676-3933

IN THE COURT OF COMMON PLEAS
OF CLEARIFELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID-EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC. Additional Defendants	:	

VERIFICATION

I, the undersigned, Stanley R. Thompson, am the President of Devonian Resources, Inc. and as such am authorized to execute this Verification on behalf thereof. I hereby verify that I have read the foregoing pleadings consisting of an Answer and New Matter, together attached thereto, and that the averments contained in said pleadings are true and correct to the best of my knowledge, information and belief.

This Verification is given subject to the provisions of 18 P.A.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 10-25-04

Stanley R. Thompson

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LARRY F. SMYERS,
Plaintiff

vs.

MID-EAST OIL COMPANY,
Defendant

vs.

DEVONIAN RESOURCES, INC.,
and VAN HAMPTON GAS & OIL
CO., INC.,
Additional Defendants

FILED

OCT 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO COMPLAINT TO JOIN
ADDITIONAL DEFENDANTS AND
NEW MATTER

LAW OFFICES OF
McFATE, McFATE & McFATE
P. O. BOX 407
3178 STATE ROUTE 257, SUITE B
SENECA, PENNSYLVANIA 16346

IN THE COURT OF COMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

NO CC
10:41 BK
OCT 20 2004

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "**Notice of Intent to File Praecipe to Enter Judgment By Default**", was sent by U. S. mail, postage prepaid, on OCTOBER 18, 2004, to other counsel of record, as required by Rule 237.1(a)(2)(ii), addressed as follows:

Robert W. McFate, Esq.
McFate Law Offices
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, Pennsylvania 15801

GRECO & LANDER, P.C.

By: _____(SEAL)
NATHANIEL C. PARKER, ESQ.

#646

IN THE COURT OF COMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	**JURY TRIAL DEMANDED**
	:	
vs.	:	Type of Case
	:	Civil Action – Law
Mid-East Oil Company,	:	
	:	
Defendant	:	Type of Pleading:
	:	***Notice of Intent to File***
vs.	:	***Praecipe to Enter Judgment***
	:	***By Default***
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
Additional Defendants	:	Supreme Court Id. No. 16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853

NO CC
OCT 20 2004 m/10:41 BA

#1640

IN THE COURT OF COMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

NOTICE OF INTENT TO FILE PRAECIPE TO ENTER JUDGMENT BY DEFAULT

TO: Robert W. McFate, Esq.
McFate Law Offices
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Date of Notice: OCTOBER 18, 2004

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER INTO A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE

ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Laurel Legal Services
211 ½ E. Locust Street
Clearfield, PA 16830
(814) 765-2836



(SEAL)

DOM W. GRECO, ESQ.
NATHANIEL C. PARKER, ESQ.
Attorneys for Plaintiff
Law Offices of Greco & Lander, P.C.
P.O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

09:11 AM 1cc atty Shaw
2cc atty McKee
2cc atty Haladay

OCT 18 2004

LARRY F. SMYERS -vs- MID-EAST OIL COMPANY -vs- DEVONIAN RESOURCE, INC. and VAN HAMPTON GAS & OIL CO.	No. 03-1598-CD

O R D E R

NOW, this 13th day of October, 2004, following combined oral argument on Larry F. Smyers' (Plaintiff) Preliminary Objections to Mid-East Oil Company's (Defendant) Answer, New Matter and Counterclaim and Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaim, the Court FINDS as follows:

1. That Plaintiff's Preliminary Objections are hereby denied;

2. Pursuant to the Court's ruling in paragraph 1 above, Defendant's Preliminary Objections are dismissed as the Court finds them to be moot.

BY THE COURT,

Judge J. Cummings

President Judge

#63

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
vs.	:	Civil Action – Law
	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant Mid-East's Response***
Defendant	:	***to Plaintiff Smyers' Motion***
	:	***to Compel Discovery***
vs.	:	
	:	
	:	
Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.,	:	Counsel of Record for This Party:
	:	
Additional defendants	:	Dom W. Greco, Esq. Supreme Court Id. No. 16829
	:	
	:	Nathaniel C. Parker, Esq. Supreme Court Id. No. 90993
	:	
	:	Greco & Lander, P.C. P.O. Box 667 Clarion, PA 16214 (814) 226-6843 Fax: (240) 465-7135
	:	
	:	
	:	

EGK
2cc Atty Parker
01 9:39 BA
OCT 13 2004

#60

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

DEFENDANT MID-EAST'S RESPONSE TO PLAINTIFF SMYERS' MOTION TO COMPEL DISCOVERY

AND NOW, comes Defendant Mid-East Oil Company ("Mid-East"), by its attorney, Greco & Lander P.C., and hereby asserts the following response to Plaintiff Smyers' Motion to Compel Discovery:

1. Plaintiff Larry F. Smyers ("Smyers") is a licensed professional geologist by the Commonwealth of Pennsylvania.
2. Smyers submitted a Request for Production of Documents ("Request") to Mid-East.
3. Smyers' Request seeks to have Mid-East disclose geologic information that is valuable, confidential, proprietary, and an integral part of Mid-East's business.

4. The Pennsylvania legislature has recognized and acknowledged the sensitive nature of the information sought by Mr. Smyers, by providing in 58 P.S. §601.212 that "***[t]he department[1] shall keep all ...[production] reports confidential for five years***". All of the production information sought by Mr. Smyers' Request is for production from within the last five years.

5. Mid-East and Smyers have been working towards drafting an appropriate Confidentiality Agreement that would enable Mid-East to comply with Smyers' Request without jeopardizing the confidentiality of Mid-East's valuable, proprietary, confidential, geologic information.

6. The only issue of substance[2] in dispute between the parties is the following:

> **Is it reasonable for Mid-East to limit its pretrial disclosure of its valuable, confidential, proprietary, geologic information to only Smyers' legal counsel ("Attorney's eyes only"), and to prohibit the disclosure of such information to Smyers who is a practicing geologist, where Smyers' sworn deposition testimony discloses that Smyers has previously diverted and misused Mid-East's confidential proprietary geologic information for Smyers' own personal financial benefit and the benefit of others?**

7. Smyers made statements during his deposition that show that Smyers has previously diverted and misused Mid-East's confidential proprietary geologic information, which gives rise to a reasonable concern on Mid-East's behalf that Smyer's will misuse the information sought by the Smyers' Request to the grave detriment of Mid-East.

---

[1] The Department of Environmental Resources of the Commonwealth.

[2] Mid-East disagrees with Smyers' account of the correspondences between the parties, but in an effort move the parties toward resolution, Mid-East focuses its response to Smyers' motion on the core matter in dispute.

8. Smyers' deposition transcript[3] reveals that in Smyers' sworn deposition he admits that (I, II, and III below are cross references to the supporting deposition abstracts contained below):

I	*II*	*III*
14 Q. Did you feel that you had [Devonian & **Mid-East's**] authority to do 15 things for Mr. Sbarra even if it would be harmful to their 16 interest? 17 A. No.	13 Q. Did you encourage [Sbarra] to invest with somebody else? 14 Did you say, hey, don't invest with these people. Invest 15 over here with this other deal? 16 A. No. No.	1 Q. But later you're giving [Sbarra] information about 2 drilling elsewhere? 3 A. Yes, there were added things. It was starting to 4 crunch in with my time that I had to devote with Devonian.

I. Smyers has duties to Mid-East.
II. Smyers initially denied diverting opportunities from Mid-East.
IIII. Then Smyers admitted he diverted business opportunities from Mid-East without consent.

I. Smyers duties as a licensed professional geologists

A. Smyers is a licensed professional geologist

*LARRYS~1.ASC: Page 7 Line 9 to Page 7 Line 12
9 Q. Are you licensed as a professional geologist?
10 A. Yes, I am.
11 Q. By which jurisdiction?
12 A. Pennsylvania and the State of Wyoming.

B. Smyers had duties

*LARRYS~1.ASC: Page 163 Line 14 to Page 163 Line 17
14 Q. Did you feel that you had [Devonian & **Mid-East's**] authority to do
15 things for Mr. Sbarra even if it would be harmful to their
16 interest?
17 A. No.

*LARRYS~1.ASC: Page 163 Line 23 to Page 164 Line 5
23 Q. So what I'm trying to understand is whether I get
24 to a yes or no at the end of the question. So yes or no, did
25 you feel that you could help Mr. Sbarra even it would harm
00164

[3] Mid-East deposed Smyers on January 19, 2004. Smyers' deposition transcript is 242 pages in length. Mid-East will file a copy of the entire transcript with the Court upon request of the Court.

1 **Mid-East** and Devonian?
2 A. No.
3 Q. So you had that limit? You couldn't help Sbarra to
4 hurt them?
5 A. That's right.

*LARRYS~1.ASC: Page 164 Line 20 to Page 164 Line 24
20 Q. To encourage [Sbarra] not to invest with **Mid-East** and
21 Devonian, and encouraging Sbarra to invest somewhere else,
22 that would be harmful to **Mid-East** and Devonian, wouldn't it?
23 A. If I would have brought it up, it would have been,
24 yes.

II. Smyers initially denied diverting business opportunities.

A. Smyers denied diverting employer's opportunity

*LARRYS~1.ASC: Page 155 Line 13 to Page 155 Line 16
13 Q. Did you encourage [Sbarra] to invest with somebody else?
14 Did you say, hey, don't invest with these people. Invest
15 over here with this other deal?
16 A. No. No.

B. Smyers denied encouraging Sbarra to go into business separate and apart from Mid-East.

*LARRYS~1.ASC: Page 156 Line 3 to Page 156 Line 12
3 MR. GRECO: I asked him if he felt that if it was
4 within the permissible scope of the consent that he had from
5 Mid-East and from Devonian, that he could encourage
6 Mr. Sbarra to go into business with him. I didn't ask if he
7 did, I asked if it was in the scope of what he could have
8 done.
9
10 A. Well, it didn't occur to me to encourage [Sbarra] to
11 split off and go in that area and do things on his own. No.
12 No. He never made any mention of that.

C. Smyers denied encouraging Sbarra to go into business with Smyers.

*LARRYS~1.ASC: Page 156 Line 24 to Page 157 Line 2
24 Q. But let me ask so I can get a yes or no answer.
25 Did you ever suggest to [Sbarra] that he could go into business
00157
1 with you and --
2 A. I never suggested to him, no.

III. Smyers' admitted he misused confidential geologic information.

A. Smyers used geologic information belonging to his employer for his own personal benefit

*LARRYS~1.ASC: Page 214 Line 2 to Line 19

Q. So at that point Devonian was out, and Mid-East was in as the successor to Devonian?
A. Yes.
Q. So did you send copies of this to Mid-East?
A. No.
Q. So Mid-East stood in the shoes of Devonian as the successor. So you were an employee of Devonian, you had an agreement that was then held by **Mid-East**, but you didn't give any of this information to either Devonian or **Mid-East**?
A. No. This information -- these logs would have come from Mid-East's office.
Q. They would have come from **Mid-East**. You added value to them by doing an analysis of them?
A. Yes.
Q. And you didn't share that added value with them?
A. This was added value for Don Sbarra.
Q. But not for them?
A. That's right.

B. Smyers performed services contrary to Mid-East's best interest .

*LARRYS~1.ASC: Page 167 Line 21 to Page 168 Line 9

Q. Did your relationship with the scope of your services change over time because in the beginning I thought you said that you were hired to help him and assist him in evaluating his investments?
A. Right. Right.

00168

Q. But later you're giving [Sbarra] information about drilling elsewhere?
A. Yes, there were added things. It was starting to crunch in with my time that I had to devote with Devonian.
Q. He wanted to expand the scope of your services to include things other than Pine Glenn?
A. Yes. Yes.
Q. You did that to some degree before you quit?
A. Yes, I did. I said, I cannot do anymore of this.

*LARRYS~1.ASC: Page 168 Line 21 to Page 168 Line 25

Q. You didn't go back before you kind of escalated the scope of your services, which occurred before you stopped? Before you escalated the scope of your services, you didn't go back to **Mid-East** and Devonian and ask them for consent?
A. No.

*LARRYS~1.ASC: Page 237 Line 21 to Page 238 Line 9

Q. Now, did you discuss with Mr. Sbarra I'll get a thirty second, and I'll bring these prospects to you and I won't charge you, I won't send you an invoice for this, but

24 I'll get an override?
25 A. Well, yeah. We could have worked out something
00238
1 like that, yes.
2 Q. You could have worked it out. Did you suggest it?
3 A. I mentioned it; that I do work -- you know, on a
4 contingency basis like this, yes.

9. Pennsylvania law provides that:

It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer, professional land surveyor or professional geologist:

(1) To act for his client or employer in professional matters otherwise than as a faithful agent or trustee, or to accept any remuneration other than his stated recompense for services rendered. 63 P.S. §151.

10. Mid-East is agreeable to providing its valuable proprietary confidential geologic information to Smyers' legal counsel as part of pretrial discovery.

11. Mid-East is agreeable to allowing Smyers' counsel to retain a consultant (other than Smyers or someone directly or indirectly related to or affiliated with Smyers) to assist Smyers' attorney in interpreting and reviewing the proprietary geologic information disclosed, subject to such consultant executing a reasonable confidentiality agreement.

12. Mid-East requests that it be permitted to respond to the Request by Mid-East producing such information to Smyers' attorney, ***not*** to Smyers himself.

13. It would be unreasonable for the Court to require Mid-East to disclose its valuable confidential proprietary geologic information to Smyers, a professional geologist, who has already admitted under oath that he has previously diverted and misused Mid-East's confidential geologic information for Smyers' own personal financial gain.

Wherefore, defendant Mid-East respectfully requests that Mid-East be permitted to disclose its valuable, confidential, proprietary, geologic information to Smyers' attorney for "Attorney's eyes only", under the condition that such information not be disclosed to Smyers, since Smyers is a practicing geologist, and he has admitted in sworn deposition testimony that he previously misused Mid-East's confidential geologic information for his own personal financial gain.

If the Court is inclined to issue and Order requiring Mid-East to disclose the information requested by Smyers pursuant to the Request, without limiting such disclosure to Plaintiff's attorneys' eyes only, then Mid-East requests that an evidentiary hearing first be held to establish a record of Smyers' prior actions which Mid-East contends will provide a record for the Court to determine whether or not to limit the requested disclosure to Plaintiff's attorneys' eyes only.

Respectfully Submitted:

Dated: October 13, 2004

By _____

DOM W. GRECO, ESQ.
NATHANIEL C. PARKER, ESQ.
Attorneys for Plaintiff
Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "***Defendant Mid-East's Response to Plaintiff Smyers' Motion to Compel Discovery***" was delivered on October 13, 2004, to other counsel of record addressed as follows:

Via hand delivery:
Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Via First Class Mail:
Robert W. McFate, Esq.
McFate, McFate, & McFate
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Dated: October 13, 2004

_____(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: CERTIFICATE OF SERVICE Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED
E6K
SEP 29 2004
10:30 lc
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 28th day of September, 2004, a true and correct copy of Order of Court dated September 22, 2004 was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: MOTION TO COMPEL DISCOVERY Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED
SEP 17 2004
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

MOTION TO COMPEL DISCOVERY

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby brings the within Motion to Compel Discovery:

1. On February 17, 2004, Plaintiff submitted to Defendant a Request for Production of Documents which is attached hereto as Exhibit "A".

2. A Notice of Service evidencing service on Defendant by first class mail was filed with the Office of Prothonotary. A copy is attached as Exhibit "B".

3. By letter dated March 8, 2004, counsel for Defendants proposed responding to the Request for Production of Documents by making the requested documents available for

inspection at the offices of Mid-East. Thereafter, counsel for Plaintiff make repeated attempts to schedule document inspection at the offices of Mid-East. A copy of the above referenced correspondence is attached as Exhibit "C".

4. Following numerous telephone calls, tentative arrangements were made to inspect documents at the offices of Mid-East on May 28, 2004. However, by correspondence dated May 17, 2004 counsel for Defendant advised that the office would be closed on that date. It was suggested that inspection take place the week of June 7 - 11. A copy of that correspondence is attached as Exhibit "D". By same correspondence, counsel forwarded Defendant Mid-East requested Plaintiff to enter into a Confidentiality Agreement prior to inspecting any documents.

5. By correspondence dated May 18, 2004 counsel for Defendant forwarded a lengthy and extremely restrictive Confidentiality Agreement for review by Plaintiff. A copy of this correspondence is attached hereto as Exhibit "E" and Defendant's proposed Confidentiality Agreement is attached as Exhibit "F".

6. By letter of May 28, 2004 counsel for Plaintiff requested inspection of documents in the office of Mid-East on June 18, 2004 beginning at 10:00 a.m. Counsel for Defendant was further advised that the Plaintiff's proposed Confidentiality Agreement was overly cumbersome and restrictive, and advised that Plaintiff would draft a proposed Confidentiality Agreement for review by the Defendants. A copy of this correspondence is attached as Exhibit "G".

7. By letter dated June 2, 2004 counsel for Defendant Mid-East suggested that a condition of providing the requested discovery would be to bar the Plaintiff for all time from engaging in his profession in the counties of Centre or Clearfield. A copy of this correspondence is attached as Exhibit "H".

8. Plaintiff submitted a follow-up letter to Defendant dated June 8, 2004 seeking to resolve the Defendant's confidentiality concerns without the necessity for Court intervention. This correspondence is attached as Exhibit "I".

9. By correspondence dated June 16, 2004 the Plaintiff submitted to attorney for Defendant Mid-East a proposed Agreement and Stipulation for review. A copy of the transmittal correspondence is attached as Exhibit "J".

10. By correspondence dated June 17, 2004 counsel for Mid-East advised counsel for Plaintiff that the requested documents would not be made available for inspection on June 18, 2004. This correspondence made further suggestions for modification of the proposed Confidentiality Agreement. A copy of this correspondence is attached as Exhibit "K".

11. By correspondence of July 6, 2004, attached as Exhibit "L", counsel for Plaintiff forwarded a modified Stipulation and Consent Order for review by counsel for Mid-East.

12. On July 9, 2004 co-counsel for Defendant Mid-East requested that a copy of the proposed Stipulation and Consent Order be forwarded to counsel for Additional Defendant, Devonian/Van

Hampton Gas and Oil. An Additional Defendant Complaint was not filed against this Defendant until July 26, 2004. A copy of the July 9, 2004 correspondence is attached as Exhibit "M".

13. By correspondence dated July 13, 2004, a copy of the proposed Confidentiality Agreement and Stipulation was forwarded to Robert W. McFate, Attorney for Additional Defendant. A copy of that correspondence is attached as Exhibit "N".

14. Your undersigned counsel for Plaintiff has had several telephone conversations with counsel for Defendant regarding the Plaintiff's proposed Stipulation and Consent Order. In addition, a lengthy discussion regarding this discovery issue between your undersigned counsel and Attorney Nathaniel Parker occurred following the agreement regarding outstanding Preliminary Objections which occurred on September 1, 2004. As a result of these discussions, your undersigned counsel for Plaintiff believes and therefore avers that Defendant will not provide responses to Plaintiff's outstanding Request for Production of Documents and will not agree to the terms of the Stipulation and Consent Order proposed by Plaintiff. A draft of the proposed Stipulation and Consent Order is attached as Exhibit "O".

15. Your undersigned counsel for Plaintiff has also spoken with Attorney Robert McFate on September 10, 2004 regarding the proposed Stipulation and Consent Order. It is the impression of your undersigned counsel for Plaintiff that Defendant

Devonian/Van Hampton has adopted the position of Defendant Mid-East with regard to this discovery issue.

16. The requested documents are solely within the custody and control of the Defendants and are necessary to allow Plaintiff to develop and evaluate his claims regarding both liability and damages.

17. The terms of the proposed Confidentiality Agreement and Consent Order are reasonable and adequately protect the Defendants' interest in allegedly confidential information.

WHEREFORE, it is respectfully requested that the Court issue an Order compelling Defendant Mid-East to fully comply with Plaintiff's pending Request for Production of Documents under penalty of sanctions.

WHEREFORE, it is respectfully requested that the within Motion to Compel Discovery be granted.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: REQUEST FOR PRODUCTION OF DOCUMENTS Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby requested, pursuant to Rule 4009 of the Pennsylvania Rules of Civil Procedure to produce and make available to: Matthew B. Taladay, Esquire, Attorney for the Defendant, thirty days from the date of this document, at his office at 498 Jeffers Street, DuBois, Pennsylvania 15801, for the purpose of inspecting, reproducing, and photocopying the following described and identified documents, papers and writings.

This Request for Production of Documents may in the alternative be complied with by photocopying or reproducing the hereinafter mentioned documents, records, writings, photographs, films and video tapes and making such reproductions or photocopies available to Matthew B. Taladay, Esq., 498 Jeffers Street, DuBois, Pennsylvania 15801.

Definitions

"Document" or *"Documents"* means the originals, or any copies when originals are not available, unless otherwise stated, and any non-identical copies, whether different from originals because of notes made on such copies or otherwise, and writings of every kind and

description, whether inscribed by hand or by mechanical, electronic, photographic, or other means, as well as phonic, such as tape recordings, or visual representations or oral statements, conversations or events and including, but not limited to, correspondence, letters, agreements, reports, records, price lists, quotations, memoranda, financial statements, telephone call slips, information stored in computers, teletype messages, internal memoranda, notes, reports, contracts, records of meetings, conferences or telephone or other conversations or communications, photographs, computer printouts, computer stored data, plans, maps, drawings, diaries, calendars, books, minutes of meetings, known to you or any of your employees, agents, consultants, contractors, or any person acting or purporting to act on its behalf.

"Area of Mutual Interest" (AMI) means the geographic area including certain areas located in Burnside Township, Centre County, Snow Shoe Township, Centre County, Cooper Township, Clearfield County, Boggs Township, Clearfield County, and West Decatur, Clearfield County, including, but not limited to, areas outlined in Exhibit 1 as attached to Confidentiality Agreement between Larry F. Smyers and Devonian Resources, Inc. dated February 29, 2000, and further including, but not limited to, all geographical areas described in paragraph 1 of Joint Venture Agreement between Mid-East Oil Company and Devonian Resources, Inc. dated August 23, 2000.

TO: MID EAST OIL COMPANY
c/o Dom Greco, Esq.

1. All production records for wells located within the AMI in which Defendant has or had an interest from January 1, 2000 to present.

2. Copies of all correspondence, including facsimile transmittals, cover sheets, electronic mail, memoranda of telephone conversations and any and all other documents memorializing communication with the Plaintiff from January 1, 2000 to present.

3. Copies of all agreements, correspondence, documents, oil and gas production records, memoranda, facsimile transmissions, and any and all other documents between Defendant and Van Hampton Oil and Gas Company and/or Devonian Resources, Inc. in any way pertaining to the AMI from January 1, 2000 to present.

4. Copies of all correspondence, memoranda of communications, documents, maps, drawings, production data, charts and all other documentation between Defendant and Donald Sbarra from January 1, 200 to present.

5. Copies of all accounting sheets, memoranda of calculations, checks, correspondence and any other documentation pertaining to overriding royalty payments or all other payments made to Plaintiff by Defendant for wells located within the AMI from January 1, 2000 to present.

6. All documents supporting calculations used to prepare 2003 IRS 1099-Misc. statement issued to Plaintiff.

7. Photocopies of all exhibits to Joint Venture Agreement dated August 23, 2000 between Devonian Resources, Inc. and Mid-East Oil Company, Inc.

Respectfully submitted,

HANAK, GUIDO and TALADAY

Dated: February 17, 2004

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff	:	CIVIL ACTION - AT LAW
	:	No. 03-1598-CD
vs.	:	Type of Pleading:
MID EAST OIL COMPANY, Defendant	:	NOTICE OF SERVICE
	:	Filed on Behalf of:
	:	PLAINTIFF
	:	Counsel of Record for This Party:
	:	Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801
	:	814-371-7768
	:	JURY TRIAL DEMANDED

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being counsel of record for Defendant, do hereby certify that I propounded on Defendant, via United States mail, first class, postage pre-paid, this 17th day of February, 2004, Plaintiff's REQUEST FOR PRODUCTION OF DOCUMENTS to the below indicated person, at said address, being counsel of record for the Defendant:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
1390 East Main Street, Suite 2
Clarion, Pennsylvania 16214-0667

DOM W. GRECO
AL LANDER

Telephone ..... (814) 226-6853
FAX ..... (814) 226-4951
e-mail .....nparker@usachoice.net

SENT BY FACSIMILE TRANSMISSION

March 8, 2004

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

Re: **Smyers v. Mid-East Oil Company: Mid-East Response to Smyers February 17, 2004 Request For Production of Documents**

Dear Attorney Taladay:

We have received your February 17, 2004 "Request For Production Of Documents" in connection with Smyers versus Mid-East. We have forwarded a copy of your request to Mid-East for their review and response. Mid-East has informed me that they would prefer to have you meet with Mid-East at their offices where Mid-East can show you the documents that they believe would be responsive to your request, so that you can then select those documents that you would like to have photocopied.

Please let me know if this procedure would be agreeable to you.

Sincerely,

Nathaniel C. Parker, Esq.

NCP:tsr

EXHIBIT "C"

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
1390 East Main Street, Suite 2
Clarion, Pennsylvania 16214-0667

DOM W. GRECO
AL LANDER

Telephone ..... (814) 226-6853
FAX ..... (814) 226-4951
e-mail ..... nparker@usachoice.net

05-19-04

SENT BY FACSIMILE TRANSMISSION AND FIRST CLASS MAIL

May 17, 2004

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, Pennsylvania 15801

Re: **Document Production at Mid-East Offices**

Dear Attorney Taladay:

We received your request to conduct document inspection at the Mid-East office on May 28. Unfortunately, the Mid-East office is closed on that date for the Memorial Day weekend.

As an alternative inspection date, Mid-East proposes that you select a day convenient for you during the week of June 7 through 11 and Mid-East will be available on the date that you select.

However, please get back to me as soon as possible with your date selection, since any delay in your making a selection and notifying me about your selection may result in Mid-East having scheduled other obligations for one or more of the above referenced days in the meantime.

Mid-East will require you and Mr. Smyers to execute a reasonable confidentiality agreement prior to the commencement of your inspection. I shall send you a proposed draft of such confidentiality for your review.

If you plan to have anyone attend the document inspection other than you or Mr. Smyers, please let me know as soon as possible so that we can determine if the attendance of anyone else at the inspection may create problems or be objectionable for some reason.

Sincerely,

Nathaniel C. Parker, Esq.

NCP:ktc
cc: Mr. Mark A. Thompson
Robert W. McFate, Esq.

EXHIBIT "D"

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
1390 East Main Street, Suite 2
Clarion, Pennsylvania 16214-0667

DOM W. GRECO
AL LANDER

Telephone ..... (814) 226-6853
FAX ..... (814) 226-4951
e-mail ..... nparker@usachoice.net

SENT VIA FACSIMILE TRANSMISSION

May 18, 2004

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Robert W. McFate, Esq.
McFate Law Offices
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Re: **Smyers v. Mid-East, Devonian, and Van Hampton**; Proposed Confidentiality Agreement

Dear Messrs. Taladay and McFate:

Enclosed please find the confidentiality agreement that Mid-East requests that all parties execute in connection with the above captioned case. If the agreement is acceptable to you, please execute the confidentiality agreement and return it to me at your earliest convenience.

Conversely, if you desire to have changes made to the confidentiality agreement, please contact myself, as well as other counsel of record, as soon as possible of your desired changes so that all parties can work towards signing the same confidentiality agreement as expeditiously as possible.

Currently, the parties are attempting to schedule Smyers' request for production of documents at the Mid-East offices during the week of June 6, 2004. This discovery requests cannot take place unless and until a suitable confidentiality agreement is entered into by all parties. For this reason, I would appreciate it if both of you would respond to me as soon as possible. Thank you for your consideration.

Sincerely,

Nathaniel C. Parker, Esq.

NCP:ktc
Enclosure

EXHIBIT "E"

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Stipulation and Protective Order***
Defendant	:	
	:	
vs.	:	
	:	Counsel of Record for This Party:
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Dom W. Greco, Esq.
	:	Pa. Id. #16829
	:	Fax: (240) 465-7135
Additional defendants	:	
	:	Nathaniel C. Parker, Esq.
	:	Pa. Id. #90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853
	:	
	:	
	:	
	:	

EXHIBIT "F"

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
Plaintiff	:	
vs.	:	No. 03-1598-CD
Mid-East Oil Company,	:	
Defendant	:	
vs.	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
Additional defendants	:	

STIPULATION AND PROTECTIVE ORDER

This Stipulation is entered into by and between the parties to the within action, Larry F. Smyers ("Smyers") , Mid-East Oil Company ("Mid-East"), Devonian Resources, Inc. ("Devonian"), and Van Hampton Gas & Oil Co., Inc. ("Van Hampton") by their respective attorneys, for the purpose of facilitating mutual discovery, and it is without prejudice to or waiver of any rights any party may have to obtain information, in addition to that information to be supplied pursuant hereto, with respect to documentary material or any other right of any party.

WHEREAS, the parties have served, or intend to serve, interrogatories, requests for production of certain documents and tangible things, and notices of depositions, the responses to which the respective attorneys reasonably contend will include the disclosure of trade secrets, proprietary data and/or confidential business information; and

WHEREAS, the parties, by and through their respective counsel, have agreed to produce such information for inspection, copying and use in the present action, subject to the terms and provisions of this Stipulation and Protective Order:

NOW, THEREFORE, IT IS HEREBY STIPULATED, AND THE COURT MAY SO ORDER THAT:

1. The parties involved in this litigation may designate as "CONFIDENTIAL" any document, testimony, information, or material disclosed through formal or informal discovery or otherwise in the course of this litigation in the manner hereinafter set forth in paragraphs 2, 3 and 4 which a party in good faith believes contains or refers to trade secrets or confidential business or financial information or other confidential or proprietary information concerning or relating to one or both of the parties. Such designation shall subject the information produced or provided under said designation to the provisions of this Stipulation and Protective Order.

2. Any writing produced by any party or person in this litigation may be designated as "CONFIDENTIAL" by any party stamping or writing the word "CONFIDENTIAL" on the face of the writing.

3. Certain CONFIDENTIAL information may be further designated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY". Confidential information designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall be treated like "CONFIDENTIAL" information except that it shall not be given, shown, made available or communicated in any way to parties or officers or employees of parties unless such person is employed by the party who produced the "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information.

4. Any party may designate deposition testimony or any portion of deposition testimony as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" by

advising the reporter and counsel of such designation during the course of the deposition or within fifteen (15) days after receipt of the transcript of the deposition. Portions of any deposition designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" that are to be filed of record are to be filed with the Prothonotary under seal, bearing substantially the following designation:

> "This envelope contains documents which are filed in this case by [name of party] and, by Order of this Court, shall not be opened nor the contents hereof be displayed or revealed except by further order of the Court."

Whenever any writing designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" is identified as an exhibit in connection with testimony given in this litigation, it shall be so marked and separately filed under seal with the Prothonotary as provided above.

5. Any party may designate as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" specific responses to interrogatories or to any specific request for admissions by labeling the specific response "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY".

6. Whenever any writing, testimony, information or material designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" is used or submitted to the Court in conjunction with any filing or proceeding in this litigation, it shall be so marked and shall be filed separately under seal with the Prothonotary as described in Paragraph 4 above. The party asserting "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" treatment of any writing, testimony, information or material can waive the requirements of this Stipulation and Protective Order with respect to such writing, testimony, information or material. The party seeking to file such writing, testimony, information, or materials but avoid the requirements of filing under seal may seek a waiver of the filing under seal requirement. The

party asserting "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" treatment shall have the right to enforce the filing under seal requirement, but may also waive the filing under seal requirement with respect to any specific writing, testimony, information or material and any waiver will not be deemed a general waiver of the requirements of this Stipulation and Protective Order.

7. (a) Except upon prior written consent of the party asserting "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" treatment or upon further order of this Court, documents, testimony, information or material designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall be held in strict confidence and shall be used solely for the purposes of prosecution or defense of this litigation. Access to "CONFIDENTIAL" documents, testimony, information or material shall be limited to:

(i) Counsel for the respective parties (including in-house counsel, co-counsel, and such other attorneys who may be consulted in connection with this action) and employees of said counsel who are assisting in the prosecution or defense of this litigation;

(ii) Experts and consultants (including independent experts and consultants, and employees or clerical assistants of said experts) who are employed, retained or otherwise consulted by counsel or a party for the purpose of analyzing data, conducting studies or providing opinions to assist in such litigation;

(iii) Parties or officers or employees of the respective parties; and/or

(iv) Witnesses and consultants to the extent deemed necessary by counsel for the prosecution, defense or settlement of this litigation.

(b) Each person (other than Court personnel and counsel of record and employees of counsel of record), given access, pursuant to the terms hereof of "CONFIDENTIAL" or

"CONFIDENTIAL - ATTORNEYS' EYES ONLY" or information derived therefrom, shall be advised that said "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information is being disclosed pursuant to and subject to this Stipulation and Order and may not be disclosed other than pursuant to the terms herein. In addition, persons identified in subparagraphs 7(a)(ii), 7(a)(iii) and 7(a)(iv) shall, prior to such access, execute a "Consent Agreement" in the form annexed hereto as Exhibit A. This limitation does not apply if the access person is the author of or recipient of the document in question. Counsel will keep such executed Consent Agreements and make them available to the other party upon a showing of good cause.

8. No party shall, for itself or for any person acting or persons acting on its behalf, make more copies of any "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information or material than are reasonably necessary to conduct this litigation.

9. Except as otherwise provided for in this Stipulation and Protective Order, all "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information and material shall remain in the possession of counsel for the respective parties, and be stored in a secure place.

10. "CONFIDENTIAL" documents, testimony, information or material shall not be disclosed to any expert or consultant (as provided in Paragraph 7(a)(ii) or witness or other person as provided in Paragraph 7(a)(iv)) unless and until such person has signed and returned to all counsel a written agreement in the form of the Acknowledgment attached hereto that he/she agrees to be bound by the terms of this Stipulation and Protective Order.

11. If any party objects to the designation of any document, testimony, information or material as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY", it may,

by noticed motion, apply to the Court for a ruling that the document, testimony, information or material shall not be so treated. Unless and until the Court enters an order to the contrary, the documents, testimony, information or material shall be given the "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" treatment initially assigned to it and provided for in this Stipulation and Protective Order. The party opposing the designation of documents, testimony, information or material as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall have the burden of persuasion before the Court in attempting to have a document not designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY".

12. Upon final termination of this action, Smyers, Mid-East, Devonian, and Van Hampton, and other persons subject to the terms hereby shall be under an obligation to assemble and return to the originating source all materials and documents marked "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" and all copies, summaries and abstracts thereof to the extent they disclose such confidential information, and to return or destroy all other material, memoranda or documents embodying such confidential information; providing, however, counsel of record for Smyers, Mid-East, Devonian, and Van Hampton may retain one copy of each such document or other such material solely for reference in the event of, and only in the event of, a dispute over the use or dissemination of information subject to the terms hereof.

13. The restrictions set forth in any of the preceding paragraphs shall not apply to information which (a) was, is or becomes public knowledge not in violation of this Stipulation and Protective Order; or (b) is acquired from a third party lawfully in possession of such information and/or having no obligation to the designating party; or (c) was known by the party receiving such information prior to disclosure by the designating party.

14. In any separate action based upon a claimed improper use of "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information, any party claiming possession of such information prior to disclosure thereof shall have the burden of establishing such prior possession as an affirmative defense in such action.

15. Nothing in this Stipulation and Protective Order shall be deemed to be a waiver of either party's right to oppose production of any information or documents for lack of timeliness or relevance or materiality, or as a privileged communication, or as work product of counsel, or as not calculated to lead to the discovery of admissible evidence.

16. It is contemplated by this Stipulation and Protective Order that the materials covered by this Order shall remain confidential and shall be treated as confidential even after the termination of this action. It is further contemplated by the parties that this Stipulation and Protective Order will not be modified or amended after the termination of this action.

17. Should any party hereto seek to utilize any "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" document, testimony, information or material at trial, it shall meet with counsel for the other parties hereto in an effort to agree upon a procedure to insure the confidentiality of such document, testimony, information or material. In the event counsel are unable to reach agreement, the matter will be submitted to the Court.

18. For purposes of this Stipulation and Protective Order, "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" documents, testimony, information or materials shall also mean and include all copies, extracts and summaries thereof.

19. This Stipulation and Protective Order may be modified and amended by agreement of the parties or by further Order of the Court for good cause shown.

Respectfully submitted,

HANAK, GUIDO & TALADAY

By:_____
Matthew B. Taladay
Pa. Id. No. 49663

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Attorneys for
Larry F. Smyers

LAW OFFICES OF
GRECO & LANDER, P.C.

By:_____
Dom W. Greco
Pa Id. No. 16829

PO Box 667
1390 East Main Street, Suite 2
Clarion, PA 16214

Attorneys for
Mid-East Oil Company

MCFATE LAW OFFICES

By:_____
Robert W. McFate
Pa. Id. No. _____

P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Attorneys for:
Devonian Resources, Inc.
Van Hampton Gas & Oil Co., Inc.

Dated: _____, 2004

APPROVED AND SO ORDERED this _____ day of _____, 2004.

BY THE COURT:

_____

EXHIBIT A

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
Plaintiff	:	
vs.	:	No. 03-1598-CD
Mid-East Oil Company,	:	
Defendant	:	
vs.	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
Additional defendants	:	

CONSENT AGREEMENT

The person whose name and signature appear below acknowledges that he or she is being provided materials designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" pursuant to the Stipulation and Order Regarding Confidentiality of Disclosure Made During Discovery in the above-captioned matter, that he or she has read the Stipulation and Order, that he or she and his or her Company or Firm agrees to use such materials in accordance with this Stipulation and Order, and that he or she has the necessary and appropriate authority to enter into this agreement on behalf of his or her Company or Firm.

Name: _____
Company or Firm: _____
Signature: _____
Date: _____

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Nicole Hanak Bankovich
S. Casey Bowers

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

May 28, 2004

Nathaniel C. Parker, Esq.
Greco & Lander
P.O. Box 667
Clarion, PA 16214-0667

Re: Smyers vs. Mid-East Oil Company

Dear Attorney Parker:

The purpose of this letter is to respond to several separate correspondences sent by your office relative to the above referenced matter. I will attempt to segregate these topics by reference to the appropriate correspondence date.

Correspondence of May 17, 2004: You advised that the proposed document inspection at the Mid-East Offices on May 28, 2004 could not occur. In the alternative you proposed the selection of a day during the week of June 7 through 11. We have no dates available that week. We would propose that the inspection occur on June 18 beginning at 10:00 a.m. in the offices of Mid-East. This inspection, of course, is contingent on reaching an agreement regarding the boundaries of discovery as discussed below.

Correspondence of May 18, 2004: By this correspondence you forwarded a proposed Confidentiality Agreement. I wholeheartedly agree with the proposition that the information exchanged in discovery in this matter should be strictly limited to use in the present litigation. However, the document that you proposed is, I believe, overly cumbersome and burdensome.

The information that we are seeking is primarily limited to development of, production from, and royalty payments for gas wells within the area of the Pine Glen AMI. I cannot enter into an agreement that allows your client to unilaterally designate documents "for attorney's eyes only" when I feel that it would be absolutely necessary to have my client review these records in order to determine the appropriate measure of damages.

EXHIBIT "G"

I believe that a simple agreement of confidentiality whereby all parties agree to hold discovery information confidential and for use at trial only would suffice. I am in favor of simplification rather than complication of the discovery process. Therefore, I will draft and forward a proposed agreement within the next several days.

Correspondence of May 19, 2004: I have reviewed the proposed Plaintiff's Answer to Mid-East's Request for Production of Documents - January, 2004. Based on a cursory review, it appears that the bates stamped numbers and descriptions accurately set forth the number and general description of documents produced.

Unfortunately, I cannot currently insure the accuracy of this tabulation since I have custody of neither the original documents provided nor the bates stamped duplicates. I fully trust that your office has thoroughly and accurately recorded these documents.

I would suggest that you make the original documents and bates stamped duplicates available for inspection at your office at a mutually convenient time. I would intend to review the bates stamped duplicates and to retrieve the originals for return to my client. At that time, I would intend to sign the Answer for Request for Production and obtain my client's verification. Please advise if this is acceptable.

Correspondence of May 20, 2004: With regard to the Preliminary Objections to the Answer and New Matter, I regret that I do not have the time or stamina to respond in full to your inquiry referenced above. I believe the basis for objections are set forth in the pleading itself: Simply stated, a reply to a complaint which includes New Matter containing 157 paragraphs and subparagraphs does not, I believe, meet any definition of the word "concise". I believe that the material factual allegations necessary to fairly state your client's defenses and counterclaim could be accomplished with a greater modicum of brevity and precision.

While I am loath to file any type of objection, I feel that I must protect my client from "litigation by suffocation" tactics. Therefore, I feel I have no choice but to refer this matter to Judge

Ammerman to disposition. I would gladly withdraw this objection if you would pare down the response to the factual allegations and statements of law which concisely set forth your client's position.

I would be happy to discuss this matter further with you at your convenience.

Sincerely,

Matthew B. Taladay

MBT:kam

cc: Larry Smyers

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
1390 East Main Street, Suite 2
Clarion, Pennsylvania 16214-0667

DOM W. GRECO
AL LANDER

Telephone ..... (814) 226-6853
FAX ..... (814) 226-4951
e-mail ..... nparker@usachoice.net

Received
06-04-04

June 2, 2004

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Re: Smyers v. Mid-East: Confidentiality Agreement

Dear Attorney Taladay:

Thank you for your correspondence dated May 28, 2004. In your letter you state that you are in favor of "*a simple agreement of confidentiality whereby all parties agree to hold discovery information confidential and for use at trial only*".

Based on your assertion, if Mid-East agrees to make available to Mr. Smyers all of the requested documents, will Mr. Smyers in turn agree to, and agree to the issuance of a court order prohibiting him from, not now or at any time hereafter directly or indirectly in any capacity participating in, or assisting or encouraging anyone else from participating in, the drilling, development, and/or transportation of natural gas or oil, in Centre or Clearfield Counties in any way, whether individually, or through or with or for or on behalf of any other person or entity, so that in the event that Mr. Smyers would breach any of the above covenants he would then:

- be liable to Mid-East for contract damages, and
- be in violation of a Court order, and in contempt of Court?

Please provide me with your answer so that my client and I may consider your proposal.

Sincerely,

Nathaniel C. Parker, Esq.

NCP:ktc

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Nicole Hanak Bankovich
S. Casey Bowers

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

June 8, 2004

Nathaniel C. Parker, Esq.
Greco & Lander
P.O. Box 667
Clarion, PA 16214-0667

Re: Smyers vs. Mid-East Oil Company

Dear Attorney Parker:

I am in receipt of your letter dated June 2, 2004. As stated previously, the agreement of Mr. Smyers pertaining to any information revealed during discovery would limit the use of this information for purposes of ascertaining liability and damages for the claims asserted.

My client cannot agree to the interpretation of this proposal as set forth in your letter. Certainly a proposal that Mr. Smyers be forever precluded from providing geological services in Clearfield and Centre Counties is not within our contemplation. However, any violation of this confidentiality provision would be subject to a civil sanction for contempt of court.

Quite frankly, I do not see how an accounting of gas well development and provision of revenue figures from these wells stands to jeopardize any proprietary information or trade secret of your client, except as to the amount of revenue for which Mr. Smyers believes he is entitled to overriding royalty interests.

Please advise if your client will provide the requested discovery under these terms. I am hopeful that we can resolve this issue without input from the Judge.

Sincerely,

Matthew B. Taladay

MBT:kam

cc: Larry Smyers

EXHIBIT "I"

HANAK, GUIDO and TALADAY

Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

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Telephone: (814) 371-7768
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498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

June 16, 2004

FAX Transmission:
(240) 465-7135

Via FAX and Regular Mail

Pages:
5

Dom W. Greco, Esq.
Greco & Lander, P.C.
P.O. Box 667
Clarion, PA 16214

Re: Smyers vs. Mid-East Oil Company

Dear Mr. Greco:

We had previously reserved Friday, June 18, as the date for review and inspection of records at the offices of Mid-East Oil Company. Submitted herewith is a proposed Agreement and Stipulation regarding the ground rules for this discovery. I believe that this Agreement adequately addressed the confidentiality concerns of Mid-East Oil Company without imposing overly cumbersome impediments to the discovery process. Please review this and get back to me at your soonest opportunity with your comments.

Sincerely,

Matthew B Taladay K

Matthew B. Taladay

MBT:kam

Enc.

EXHIBIT "J"

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
1390 East Main Street, Suite 2
Clarion, Pennsylvania 16214-0667

DOM W. GRECO
AL LANDER

Telephone ..... (814) 226-6853
FAX ..... (814) 226-4951
e-mail ..... nparker@usachoice.net

VIA FACSIMILE TRANSMISSION AND REGULAR MAIL

June 17, 2004

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Re: Smyers v. Mid-East: Confidentiality Agreement

Dear Attorney Taladay:

I have received your letter dated June 16, 2004 along with the accompanying draft "*Stipulation and Confidentiality Agreement*". In your letter you make reference to having previously "*reserved*" a specific date and time for the document inspection at Mid-East's offices. The correspondences I have on file make no reference to such "*reservation*". In your letter of May 28, 2004 you did "*propose that the inspection occur on June 18*", however, this "*proposed*" inspection date was expressly *"contingent on [the parties] reaching and agreement regarding the [Confidentiality Agreement]"*.

Mid-East is more than willing to produce the requested documents, however, because no Confidentiality Agreement has been entered into, Mid-East has not made plans to have the document inspection tomorrow, June 18, 2004. Also, I have been advised that Robert McFate, attorney for the additional defendants, is out of town until June 22, 2004. Therefore, even if your client and Mid-East were to come to an agreement today, there would be no way for Devonian and Van Hampton to approve and sign the confidentiality agreement before tomorrow's proposed inspection.

In reviewing the confidentiality agreement you drafted, I have the following comments and questions that I would kindly ask you to address so that the parties can work toward an agreement and discovery can proceed.

- Mid-East envisioned a universal Confidentiality Agreement that would apply to all discovery from all parties henceforth, not merely a stipulation and agreement applicable only to the document inspection presently contemplated at Mid-East's offices.

EXHIBIT "K"

- In setting forth the "*Geographical Limitation*" I am confused by your language where you start by stating that Mid-East must "*comply in all respects...with Plaintiff's Request for Production of Documents*" (requiring records be produced pertaining to two entire counties), then you state that the documents may be "*limited to oil and gas exploration, development, production and related activities*" in certain townships within the two counties, then you state "*but shall further include all areas set forth directly or by reference in [Exhibit 3 to the Amended Complaint]*". Will you please clearly and concisely state the documents you are requesting and the respective geographic area (i.e. - a list of specific townships)?

- In proposing the above limitation, is Mr. Smyers in effect amending his Amended Complaint and his claim to payment from Mid-East, to only wells worked on within such geographic limitation?

- Is Plaintiff Smyers agreeable to being precluded from issuing geologic opinions, etc. as previously set forth, in such geographic limitation from the time of the inspection forward?

If you would please provide me with some clarification and you and your client's feedback regarding the above points of concern, I may then discuss the matter with my client and we can then work toward reaching an agreement so discovery may proceed. Thank you for your consideration

Sincerely yours,

Nathaniel C. Parker, Esq.

NCP:ktc
cc: Robert W. McFate

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

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498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

July 6, 2004

Nathaniel C. Parker, Esq.
Greco & Lander
P.O. Box 667
Clarion, PA 16214-0667

Re: Smyers vs. Mid-East Oil Company

Dear Attorney Parker:

I have modified the Stipulation and Consent Order regarding discovery so as to include all parties and all discovery procedures. Please review these general terms with your client and get back to me.

I will be contacting you with a specific list of information. Generally, Mr. Smyers will be seeking production and royalty data on specified leaseholds in Clearfield and Centre Counties. I expect to be able to provide you with a comprehensive list of the leases in question in the near future. We will also be seeking to review any assignments, joint venture agreements, conveyances, or other transactional documents which would affect your client's interest in the subject leaseholds.

Sincerely,

Matthew B. Taladay

MBT:kam

Enc.

cc: Larry Smyers

EXHIBIT "L"

LAW OFFICES
OF
GRECO & LANDER, P.C.
Attorneys At Law
P. O. Box 667
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DOM W. GRECO
AL LANDER

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e-mail ..... nparker@usachoice.net

VIA FACSIMILE AND FIRST CLASS MAIL

July 9, 2004

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Re: Smyers v. Mid-East

Dear Attorney Taladay:

I am in receipt this morning of your letter dated July 6, 2004. I note initially, that it appears that a copy of this correspondence and the therein enclosed revised Confidentiality Agreement you drafted was not sent to Attorney McFate. Neither myself, nor co-counsel Dom Greco, have received feedback from Attorney McFate regarding either the initial Confidentiality Agreement proposed by Mid-East, or the previous draft you prepared. Since Attorney McFate's clients will need to join in the agreement, it would seem most prudent to include him in the preliminary correspondences, to expedite the overall process.

Prior to responding to your revised draft Confidentiality Agreement, I will need to provide my co-counsel with the opportunity to review the revised document. Attorney Greco is out of town on vacation until July 19, 2004. Therefore, I will not be able to submit my response to your revised docment until sometime thereafter. I apologize for any inconvenience this may cause you.

Sincerely yours,

Nathaniel C. Parker, Esq.

NCP:ktc
Cc: Robert W. McFate, Esq.
Cc: Mark Thompson (via email)

EXHIBIT "M"

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Nicole Hanak Bankovich
S. Casey Bowers

Telephone: (814) 371-7768
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498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

July 13, 2004

Robert W. McFate, Esq.
P.O. Box 407
Seneca, PA 16346

Re: Smyers vs. Mid-East Oil Company

Dear Mr. McFate:

As you may know, discovery in this matter is already underway. There have been some concerns expressed regarding dissemination of information produced through discovery. Accordingly, I have prepared the within Consent Agreement and Order which is proposed to govern the terms of discovery in this matter. Please review this and get back to me with your comments. I look forward to hearing from you.

Sincerely,

Matthew B. Taladay

MBT:kam

Enc.

EXHIBIT "N"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: Stipulation and Consent Order Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

EXHIBIT "O"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	:	

STIPULATION
AND CONSENT ORDER

THIS Stipulation and Agreement made this _____ day of July, 2004 by and between LARRY F. SMYERS, Plaintiff, MID-EST OIL COMPANY, Defendant, and DEVONIAN RESOURCES, INC., and VAN HAMPTON GAS & OIL CO., INC., as Additional Defendants, provides as follows:

Plaintiff, Defendant and Additional Defendant are parties to a lawsuit involving rights to certain oil and gas interests located in Centre and Clearfield Counties, Pennsylvania. The parties are engaging in discovery which involves exchange of information and documentation, some of which may be confidential. The parties desire this agreement whereby reasonable perameters for inspection and production of documents are established.

Now, therefore, in consideration of the mutual promises set forth herein, the parties stipulate and agree as follows:

1. Confidentiality: All documentation and information provided by any party in this matter shall be considered confidential and shall be used solely for the purposes of prosecution or defense of this litigation. Access to this information shall be limited to:

(a) The parties to this litigation;

(b) Counsel for the respective parties (including co-counsel) and employees of said counsel who are assisting with the prosecution or defense of this litigation;

(c) Experts, witnesses and consultants (including independent experts and consultant, and employees or clerical assistants of said expert) who are employed, retained or otherwise consulted by counsel for the prosecution, defense or settlement of this litigation. Provided, however, that prior to inspection of any materials by an expert, consultant or witness each such expert, witness, advisor or witness first acknowledge in writing that he/she has read and is fully familiar with and agrees to comply with the terms of this Stipulation and Order.

2. Procedure: In all other respects not inconsistent with this Agreement Pennsylvania Rules of Civil Procedure shall govern all discovery matters in this case.

3. Filing or Publication: The parties shall not, without consent of Defendant's counsel or leave of Court, in any way file of record or publish any of the documents or information provided in response to Plaintiff's discovery request.

4. Return of Materials: Upon termination of this action, Plaintiff and Additional Defendant shall return to Defendant all documents provided by Defendant in response to discovery requests,

except those which become a matter of record. Notwithstanding, however, counsel shall be entitled to retain one copy of all documents in closed files for purposes of record keeping only and subject to the confidentiality provisions set forth herein.

5. The restrictions set forth in any of the preceding paragraphs shall not apply to information which (a) was, is or becomes public knowledge not in violation of this Stipulation and Protective Order; or (b) is acquired from a third party lawfully in possession of such information and/or having no obligation to the designating party; or (c) was known by the party receiving such information prior to disclosure by the designating party.

6. Modification: This Agreement and Stipulation may be modified and amended by agreement of the parties or by further Order of Court.

7. Violation: A violation of this Agreement by any party shall be considered contempt of Court and shall subject the violator to such sanctions as the Court may impose. Notwithstanding

the parties retain any civil remedies for breach of contract or other available causes which may arise from violation of this Agreement.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

LAW OFFICES OF GRECO & LANDER, P.C.

By _____
Dom W. Greco
Attorney for Defendant

McFATE LAW OFFICES

By _____
Robert W. McFate
Attorney for Additional Defendants

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	:	

ORDER

Approved and so ordered this _____ day of

_____, 2004.

BY THE COURT,

_____

J.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

ORDER OF COURT

AND NOW, this 22 day of September, 2004, Rule is hereby issued upon Defendant to show cause, if any, why the Plaintiff's Motion to Compel Discovery should not be granted. Rule Returnable on the 13 day of October, 2004 at 10:00 A M. in Courtroom No. 1 of the Clearfield County Courthouse, 230 E. Market Street, Clearfield, Pennsylvania.

BY THE COURT,

J.

FILED 1cc Atty Taladay
01:42 BT
SEP 22 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 16th day of September, 2004, a true and correct copy of Plaintiff's Motion to Compel Discovery was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

CERTIFICATE OF SERVICE

I, Dom W. Greco, Esq., hereby certify that a true and correct copy of the foregoing **"Complaint Against Additional Defendants"** was sent by U.S. mail, postage prepaid, on July 26, 2004, to other counsel of record addressed as follows:

On Behalf Of Larry F. Smyers

Matthew B. Taladay, Esq.
Hanak, Guido & Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

On Behalf Of Devonian & Van Hampton

Robert W. McFate, Esq.
McFate Law Offices
P. O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

GRECO & LANDER, P.C.:

By_____
Dom W. Greco

FILED NO CC
m/10:35 BY
JUL 28 2004
E/S
Prothonotary

{GL032281.1}: ncp

#59

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	**JURY TRIAL DEMANDED**
	:	
vs.	:	Type of Case
	:	Civil Action – Law
Mid-East Oil Company,	:	
	:	
Defendant	:	Type of Pleading:
	:	***Complaint Against Additional***
vs.	:	***Defendants***
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
Additional Defendants	:	Supreme Court Id. No. 16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853
	:	

FILED No cc
m/10:35 BY
JUL 28 2004
William A. Shaw
Prothonotary/Clerk of Courts

#58

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

COMPLAINT AGAINST ADDITIONAL DEFENDANTS

AND NOW comes the Defendant, Mid-East Oil Company ("Mid-East"), who by and through their undersigned counsel, the Law Offices of Greco & Lander, P.C., files this Complaint against Additional Defendants and states as follows:

1. Third-party plaintiff Mid-East is the original defendant in this action.

2. Additional Defendants:

   a. Additional defendant Devonian Resources Inc. ("Devonian") is a Pennsylvania business Corporation with its registered office at State Route 36, Pleasantville, Pennsylvania 16341.

   b. Additional defendant Van Hampton Gas & Oil Company, Inc. ("Van Hampton") is a Pennsylvania business Corporation with its registered office at R.D. No. 1, Drawer A, Pleasantville, Pennsylvania 16341.

   c. Devonian and Van Hampton are separate and distinct legal entities, with their own separate:

      i. directors;

ii. officers;

iii. corporate records;

iv. assets; and

v. liabilities and obligations.

d. Devonian and Van Hampton were each managed from January 1, 1999 to present by managers knowledgeable and experienced in natural gas drilling and development operations and activities.

3. On or about August 3, 1999 plaintiff Smyers submitted a brief summary of a proposal for him to render services to Van Hampton with details to be worked out at a later date for the purpose of beginning discussions toward establishing a relationship, as such matters are set forth on page five of five of Exhibit 1 of plaintiff Smyers' amended complaint.

4. If Smyers committed any time, effort, expertise and/or knowledge as a professional geologists to develop a drilling prospect in the Pine Glen Prospect: (Any reference herein to the 'Pine Glen Prospect' and/or 'AMI' is intended to reflect those terms as they are defined in Smyers amended complaint. They specifically do ***not*** refer to any AMI that Mid-East or Devonian may have, which is specifically designated 'Mid-East's AMI'.)

a. he did not commit any such time, effort, expertise and/or knowledge as an investment;

b. he did so as services rendered by an employee to an employer;

c. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

d. he made such efforts and rendered such services as a licensed professional geologist;

e. while he was licensed by the Commonwealth of Pennsylvania; and

f. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

5. The February 29, 2000 confidentiality agreement between Smyers and Devonian by its express terms was only intended "to expand on and supplemented the terms of a letter dated August 3, 1999 to Van Hampton", which August 3, 1999 letter (page five of Exhibit 1 of the amended complaint) itself was in accordance with its express terms:

a. "a brief summary"

b. of a "proposal" (not an agreement)

c. "to begin discussion",

d. so that "details to be worked out at a later date", and

e. not intended to confirm or supplement any prior agreement between plaintiff Smyers and Van Hampton, since the August 3, 1999 letter was not an agreement.

6. The addenda section of Exhibit 1 of the amended complaint:

a. The addenda by its express terms provides that the confidentiality agreement between plaintiff Smyers and Devonian "is intended to expand on and supplemented" the August 3, 1999 letter between plaintiff Smyers and Van Hampton.

b. Van Hampton was not a party to the confidentiality agreement containing the addenda in amended complaint Exhibit 1.

c. The confidentiality agreement between plaintiff Smyers and Devonian containing that addenda did not by its terms incorporate the August 3, 1999 letter between Smyers and Van Hampton into the confidentiality agreement.

d. The confidentiality agreement is dated February 29, 2000.

e. The confidentiality agreement had a term.

f. The term of the confidentiality agreement was one year.

g. The confidentiality agreement ¶ 5 provided that it "shall be binding on receiver and receiver's officers, directors, employees, agents, attorneys, accounts and representatives".

h. The confidentiality agreement did not provide that it would be binding upon the successors or assigns of parties plaintiff Smyers or additional defendant Devonian.

7. The joint venture agreement (Exhibit 2 of the amended complaint) does not name or identify plaintiff Larry Smyers as an individual to whom any payments are to be made.

8. Paragraph 2 of the joint venture agreement (Exhibit 2 of the amended complaint):

a. does not provide for the assumption of any liability or obligation by defendant Mid-East, or any joint venture, of any obligation to plaintiff Larry Smyers;

b. merely provides that certain leases "shall be subject to" what the joint venture agreement describes as "a 1/64 ORRI";

c. describes such 1/64 ORRI "as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area";

d. without the amended complaint:

i. attaching, identifying, or describing such alleged "prior agreement" that Smyers alleges "mandated" the payments Smyers is claiming in his amended complaint; or

ii. alleging that Smyers was at the time of such August 23, 2000 joint venture agreement then "providing geologic services for this prospective area".

9. If plaintiff Smyers did render any services with respect to the premises covered by the joint venture agreement:

a. he did not commit any such time, effort, expertise and/or knowledge as an investment;

b. he did so as services rendered by an employee to an employer;

c. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

d. he made such efforts and rendered such services as a licensed professional geologist;

e. while he was licensed by the Commonwealth of Pennsylvania; and

f. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

10. The joint venture agreement does ***not*** subject all leases in Mid-East's AMI to any payment payable by Mid-East to plaintiff. The joint venture agreement ORRI provision:

a. is limited in its application only "as mandated by a prior agreement between Devonian Resources Inc. and a third party providing geologic services for this prospective area";

b. does not identify the alleged "prior agreement" that the plaintiff alleges "mandated" such payments; and

c. does not identify plaintiff Smyers as such party then providing such services.

11. Mid-East did not succeed to and/or receive an assignment of all the rights of Devonian. Mid-East believes, and therefore avers, that Devonian did not assign or convey all of its rights to Mid-East, but that Devonian continued in existence doing business after Devonian entered into both:

a. its August 23, 2000 Joint Venture Agreement with Mid-East, and

b. its January 16, 2002 Assignment and Bill of Sale with Mid-East.

12. The January 16, 2002 Assignment and Bill of Sale between Devonian and Mid-East, specifically provides that, "It is further specially warranted [by Devonian] that the said leases and agreements... contain all covenants and obligations of [Devonian] concerning the oil and gas operations on the leased premises".

13. Smyers never entered into a contract with Mid-East to render services to Mid-East.

14. Smyers never rendered any services to Mid-East.

15. Smyers refused to render any services to Mid-East.

16. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI provided that Smyers would help operate, expand and develop his alleged AMI.

17. Any agreement Smyers' may have had with Devonian and/or Van Hampton regarding his alleged AMI required that Smyers was to provide a package of future services for a package of compensation for those services.

18. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI provided that Smyers was to provide technical assistance for the development of his alleged AMI.

19. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI, could not have been unilaterally changed or amended by Smyers.

20. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI was never changed or amended.

21. Smyers owed Devonian a duty as a faithful agent or trustee because he was employed as a licensed professional geologist during the time period of January 2000 through December 2003.

22. Smyers quit working for Devonian in December 2003, when other opportunities became available for him.

23. Any agreement that Smyers had regarding Smyers' alleged AMI provided that Smyers would provide advice and step-by-step assistance for drilling and fracturing wells.

24. Smyers has no written agreements with Van Hampton and/or Devonian except for the reference in the August 3, 1999 letter, and the February 29, 2000, confidentiality agreement.

25. Smyers never released Devonian or Van Hampton from the obligation to make payments to Smyers.

26. The property encompassed in Smyers' alleged AMI had been leased, was drilled, and was producing gas prior to any involvement between Smyers and Devonian.

27. Devonian was acquiring leases, and pursuing prospects located in Smyers' alleged AMI, prior to any contact or proposal of a prospect from Smyers.

28. Smyers did not propose or sell any maps or geologic prospect area information to Van Hampton or Devonian.

29. Smyers was hired by Van Hampton and/or Devonian to perform professional services to develop certain prospects, because of his past experience in the geographic area.

30. Mid-East was acquiring leases, and pursuing prospects located in Smyers' alleged AMI, prior to the joint venture agreement, or any other contact by Mid-East with Devonian regarding Smyers alleged AMI.

31. Devonian and Mid-East entered into their Joint Venture Agreement without Smyers knowledge or participation.

32. The August 3, 1999 letter from plaintiff Smyers to Van Hampton attached to the amended complaint as exhibit 1, page five:

a. proposed that plaintiff Smyers would provide services on an ongoing basis to develop natural gas wells to Van Hampton.

b. did ***not*** provide that plaintiff Smyers would provide geologic services to ***either***:

i. defendant Mid-East, ***or***

ii. Devonian.

c. Defendant Mid-East was not the addressee, author, or a party.

d. Devonian was not the addressee, author, or a party.

33. The February 29, 2000 confidentiality agreement between plaintiff and Devonian (attached as exhibit 1 to plaintiff's amended complaint):

a. Provided that plaintiff Smyers would provide technical assistance to Devonian to develop natural gas wells.

b. Did not provide that Smyers would provide technical assistance to develop natural gas wells to either:

i. defendant Mid-East; or

ii. Van Hampton.

c. Defendant Mid-East was not a party to or a signatory.

d. Van Hampton was not a party to or a signatory.

34. On August 23, 2000 Mid-East entered into a joint venture agreement ("joint venture agreement") with Devonian, a copy of which is attached as exhibit 2 to plaintiff's amended complaint.

35. The August 23, 2000 Joint Venture Agreement entered into between Mid-East and Devonian:

a. Provided that leases within a specified area shall be "subject to" Devonian's obligations under a "prior agreement between Devonian Resources and a third-party providing geologic services".

b. Mid-East was not a party to or signatory to the "prior agreement" between Devonian and such third-party who was allegedly providing geologic services to Devonian.

c. Van Hampton was not a party to or signatory to the "prior agreement" between Devonian and such third-party who was allegedly providing geologic services to Devonian.

d. Contains no provision by which Mid-East assumed any obligations to satisfy any of:

i. Devonian's obligations to third parties, or

ii. Van Hampton's obligations to third parties.

e. Plaintiff Smyers was not a party to or a signatory.

f. Van Hampton was not a party to or signatory.

g. The parties to the agreement were represented by legal counsel when they entered into the joint venture agreement.

36. On November 15, 2001 Devonian entered into an asset purchase agreement with Mid-East whereby Devonian agreed to convey "*all its interest in and to all oil and gas property of any kind or nature which is situate or relates to lands within [Mid-East's AMI]*", "*free and clear of the liens or encumbrances of any other person*". A copy of this November 15, 2001 asset purchase agreement is attached hereto as Exhibit 1, and is expressly made a part hereof as though set forth in its entirety.

37. On January 16, 2002 Devonian entered into an assignment agreement whereby Devonian assigned its rights in Mid-East's AMI to Mid-East, a copy which assignment is attached as exhibit 3 to the amended complaint.

38. The January 16, 2002 Assignment From Devonian To Mid-East:

a. Assigned Devonian's rights in Mid-East's AMI to Mid-East.

b. Warranted specially that at such time of the conveyance from Devonian to Mid-East that Devonian had complete title to such interests "*free and clear of all liens and encumbrances*".

c. Page 3, specifically provided that "*it is further specially warranted that the said leases and agreements are in full force and effect and contain all covenants and obligations of [Devonian] concerning the oil and gas operation on the lease premises*".

d. And the leases that were assigned pursuant to this agreement and bill of sale made no reference of Larry Smyers, nor did they provide for any payment of any kind to Smyers.

e. Plaintiff Smyers was ***not*** a party to or a signatory.

f. Van Hampton was ***not*** a party to or a signatory.

g. Made reference to responsibility for the payment of "*expenses*" and "*royalties*".

h. Provides that Devonian, ***not*** defendant Mid-East or anyone else, shall have the responsibility of paying for both all *expenses* ***and*** *royalties* for oil and gas production from the area of mutual interest that was produced up until on or about December 27, 2001.

i. Did ***not state*** that there would be any *royalties* payable by defendant Mid-East, or anyone else, *after* on or about December 27, 2001.

j. Contains ***no*** provisions by which Mid-East assumed any obligation to satisfy any of the obligations of either Devonian or Van Hampton under either the August 3, 1999 letter or the February 29, 2000 confidentiality agreement to make any payments to plaintiff Smyers, both of which documents are attached as exhibit 1 to the amended complaint.

k. The parties to the January 16, 2002 assignment were represented by legal counsel when they entered into the assignment.

39. If plaintiff Smyers is entitled to the payments he claims in his amended complaint against defendant Mid-East, then plaintiff Smyers would be entitled to such payments *only* for natural gas production:

a. During the period of time when plaintiff Smyers was rendering all of the geological services to Devonian and/or Van Hampton described in both:

i. The August 3, 199 letter; and

ii. The February 29, 2000 confidentiality agreement.

b. Produced only from natural gas wells located within the geographic area covered by the January 16, 2002 assignment.

40. Plaintiff Smyers did not after on or about December 27, 2001 up until the date on which plaintiff Smyers filed his amended complaint in this action render all of the services of the type described in amended complaint exhibit 1 (August 3, 1999 letter and February 29, 2000 confidentiality agreement) with respect to the proper and full development of natural gas within the geographic areas described in either the:

a. Geographic Area Associated With Devonian & Van Hampton. Amended complaint exhibit #1 (August 3, 1999 letter and February 29, 2000 confidentiality agreement); or

b. Geographic Area Associated With Mid-East (January 16, 2002 assignment, amended complaint exhibit 3).

41. If defendant Mid-East is liable to plaintiff Smyers for any royalties, payments, or other amounts that plaintiff Smyers claims against defendant Mid-East in the amended complaint, then:

a. Devonian breached its special warranty to defendant Mid-East that the interests that Devonian conveyed to Mid-East pursuant to the January 16, 2002 assignment were "free and clear of all liens and encumbrances"; and

b. Devonian breached its special warranty to defendant Mid-East that the leases and agreements conveyed to Mid-East pursuant to the January 16, 2002 assignment contained all covenants and obligations of Devonian concerning the oil and gas operation on the lease premises; and

c. Devonian is therefore liable to Mid-East for the resultant damages caused, and to be caused, Mid-East by Devonian's breach of its warranties, including the damages suffered, and to be suffered, by Mid-East as a result of plaintiff Smyers' amended complaint claims against Mid-East.

42. Plaintiff Smyers' amended complaint alleges that defendant Mid-East is liable to plaintiff Smyers for royalty payments computed based upon a share of production from natural gas wells in accordance with:

a. the August 3, 1999 letter between plaintiff Smyers and Van Hampton (amended complaint exhibit 1); and

b. the February 29, 2000 confidentiality agreement between plaintiff Smyers and Devonian (amended complaint exhibit 1).

COUNT #1: ADDITIONAL DEFENDANTS SOLELY LIABLE ON PLAINTIFF'S CAUSE OF ACTION AGAINST DEFENDANT MID-EAST: RULE 2252(A)(1):

43. **Incorporation By Reference**. Incorporated herein by this reference thereto are paragraphs 1 through 42.

Prayer for relief as to Count #1

Wherefore, defendant Mid-East respectfully requests that this Honorable Court order that additional defendants Devonian and Van Hampton are libel solely on the plaintiff's cause of action that plaintiff has asserted against defendant Mid-East in plaintiff's amended complaint.

COUNT #2: ADDITIONAL DEFENDANTS LIABLE OVER TO DEFENDANT MID-EAST ON PLAINTIFF'S CAUSE OF ACTION: RULE 2252(A)(2):

44. **Incorporation By Reference**. Incorporated herein by this reference thereto are paragraphs 1 through 42.

Prayer for relief as to Count #2

Wherefore, defendant Mid-East respectfully requests that this Honorable Court order that additional defendants Devonian and Van Hampton are liable over to defendant Mid-East on plaintiff Smyers' cause of action that plaintiff Smyers has asserted against defendant Mid-East in plaintiff Smyers' amended complaint.

COUNT #3: ADDITIONAL DEFENDANTS LIABLE JOINTLY AND SEVERALLY WITH DEFENDANT MID-EAST ON PLAINTIFF SMYERS' CAUSES OF ACTION AGAINST DEFENDANT MID-EAST: RULE 2252(A)(3):

45. **Incorporation By Reference**. Incorporated herein by this reference thereto are paragraphs 1 through 42.

Prayer for relief as to Count #3

Wherefore, defendant Mid-East respectfully requests that this Honorable Court order that additional defendants Devonian and Van Hampton are jointly or severally liable to defendant Mid-East on plaintiff Smyers' causes of action against defendant Mid-East.

ADDITIONAL DEFENDANTS LIABLE TO DEFENDANT MID-EAST ON CAUSES OF ACTION ARISING OUT OF THE TRANSACTION OR OCCURRENCE OR SERIES OF TRANSACTIONS OR OCCURRENCES UPON WHICH THE PLAINTIFF'S CAUSE OF ACTION IS BASED: RULE 2252(A)(4):

COUNT #4 – BREACH OF CONTRACT

46. **Incorporation By Reference**. Incorporated herein by this reference thereto are paragraphs 1 through 42.

47. **Devonian's Breach Of Contract.** Devonian breached the November 15, 2001 agreement in that:

a. Devonian covenanted that it had " *good, marketable and indefeasible title to all of the Assets ... free and clear of all liens and encumbrances*".

b. Devonian covenanted that it would "*deliver to [Mid-East] at Closing all records and documents of [Devonian] relating to the Assets*".

48. **Damages.** Mid-East has been damaged by this breach of contract in having to defend against Smyers' claims in the present action, as well as having to pay any judgment the Court might enter against Mid-East in favor of Smyers, both in excess of $25,000.

WHEREFORE, Defendant Mid-East respectfully requests that this Court entered judgment against Devonian in an amount in excess of $25,000.

COUNT #5 – BREACH OF WARRANTY

49. **Incorporation By Reference**. Incorporated herein by this reference thereto are paragraphs 1 through 42.

50. **Devonian's Breach Of Warranty.** Devonian breached the special warranties that it gave defendant Mid-East in the January 16, 2002 assignment that:

a. Devonian had complete legal title to its undivided interest in the Oil and Gas Property **free and clear of all liens and encumbrances**; and that

b. **the leases and agreements** conveyed by the January 16, 2002 assignment and bill of sale **contained all covenants and obligations of Devonian** concerning the oil and gas operations on the lease premises.

51. **Damages.** Mid-East has been damaged by these breaches of warranty in having to defend against Smyers' claims in the present action, as well as having to pay any judgment the Court might enter against Mid-East in favor of Smyers, both in excess of $25,000.

WHEREFORE, Defendant Mid-East respectfully requests that this Court entered an order directing Devonian to defendant Mid-East against Smyers' claims, and directing Devonian to indemnify Mid-East for any judgment that may be entered in this action against Mid-East.

Respectfully submitted:

Dom W. Greco, Esq.

Nathaniel C. Parker, Esq.

ASSET PURCHASE AGREEMENT

This Agreement made and entered into this 15th day of November, 2001 by and between **DEVONIAN RESOURCES, INC.**, a Pennsylvania business corporation (hereinafter the "Seller"),

and

MID-EAST OIL COMPANY, a Pennsylvania business corporation (hereinafter "Buyer"),

WITNESSETH THAT:

WHEREAS, Buyer and Seller presently share an area of mutual interest in that geographical area comprised within the political boundaries of Burnside and Snowshoe Townships, Centre County, Pennsylvania (hereinafter the "AMI");

WHEREAS, the shared mutual interest arises out of the ownership by the parties of complementary undivided interests in certain oil and gas assets, hereinafter more particularly defined and situate entirely within the AMI;

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer certain of Seller's interest in those oil and gas assets;

WHEREAS, this Agreement ("Agreement") sets forth the terms and conditions of the sale and purchase between the parties,

NOW THEREFORE, the parties hereto each of whom intending to be legally bound hereby agree as follows:

1. Sale and Purchase of Assets.

(a) Subject to the terms, conditions and exclusions hereinafter set forth, Seller will sell, transfer, assign and deliver to Buyer at Closing (as hereinbelow defined) all of the Seller's right title and interest in and to all oil and gas property of any kind or nature which is situate or relates to lands within the AMI, including but not limited to all lease rights, working interests and/or fee interests, all easements and other interests in real estate held in connection with same, all oil and/or gas wells thereon together with all downhole equipment, all production equipment, machinery, fixtures, and all tools, maps, tracings, surveys, engineering and engineering work product, logs, contracts, contract rights, licenses, permits, bonds, claims and causes of action as relate to any of the same (collectively hereinafter referred to as the "Assets").

Notwithstanding the foregoing, Seller excepts and reserves, and there is excluded from the Assets an undivided 50% interest in and to the natural gas gathering system consisting of all

EXHIBIT 1

pipelines, compressors and other machinery and equipment used in connection with the transport of gas production from the flow lines of the wells drilled within the AMI to the transmission lines of the purchasers of gas, as now and hereafter constituted, including all additions, replacements and extensions thereof (the "Gathering System").

(b) The Assets will be transferred and conveyed at closing by proper instrument of assignment executed and acknowledged by the President of Seller.

(c) The application of any law to the contrary notwithstanding, any and all state, federal or local permits shall as between the parties hereto constitute property of and part of the Assets of the Seller to be transferred to the Buyer hereunder, and Seller shall at all times following Closing, upon the request of Buyer, do all things necessary to assure and evidence the transfer of the same to Buyer, including but not limited to the prompt execution, acknowledgment and delivery to Buyer and/or appropriate governmental authorities of such assignments, consents, certifications and other documents or instruments reasonably required by Buyer or such authorities, to effectuate the transfer of same. Buyer however shall bear all costs in connection with the transfer of permits.

2. Purchase Price

The purchase price of the Assets shall be Two Million Two Hundred ($2,200,000.00) U.S. Dollars (the "Purchase Price") payable as follows:

(a) the sum of One Hundred Ten Thousand ($110,000.00) Dollars by way of Bank Cashier's check or wired funds, upon the execution hereof, receipt whereof is hereby acknowledged by Seller, which sum shall be non-refundable; and,

(b) the balance of Two Million Ninety Thousand ($2,090,000.00) U.S. Dollars at Closing, as hereinafter defined.

3. Effective Time and Closing Date.

(a) Provided this transaction shall timely close on the date set forth at subparagraph (b) hereunder, ownership of the Assets shall be deemed to have been transferred from Seller to Buyer immediately upon the change of the production meter charts in the ordinary course of business marking the end of the December 2001 production period and the commencement of the January 2002 production period (the "Effective Time"). All gas metered prior to the Effective Time shall be credited to Seller and Buyer in accordance with their respective interest existing prior to the sale contemplated hereby, and all gas metered thereafter shall be credited to the account of Buyer.

(b) Closing of the sale and purchase of the Assets (the "Closing") will take place at Buyer's offices, Indiana, Pennsylvania at 10:00 o'clock A.M. local time on January 3, 2002 (the "Closing Date").

4. Covenants Concerning the Gathering System

(a) Following closing, the parties will operate the Gathering System as joint venturers, each owning an undivided 50% interest thereof, and not as partners.

(b) Seller's 50% ownership interests in the Gathering System shall extend to all additions, replacements and extensions thereof at any time hereafter made.

(c) Seller shall have no obligation to contribute any capital for any addition, expansion or extension of the Gathering System, nor shall any such cost be assessed against Seller in computing its entitlement to 50% of the net revenues.

(d) Unless otherwise agreed in writing by the parties, all gas transported by the Gathering System(s) shall be subject to a charge of 10% of the purchase price, paid by the Buyer of such gas; at the Delivery Point(s) on the transmission line(s) where the Gathering System(s) may be connected.

(e) Net income from the operation of the Gathering System shall be distributed to the parties monthly.

(f) Buyer covenants and agrees that it will not construct, not will it permit any well at any time drilled within the AMI to use, any system for the collection and transport of gas which is not an addition to or extension of the Gathering System in which Seller has herein retained an interest.

5. Miscellaneous Provisions

(a) Commissions. Seller and Buyer mutually warrant and acknowledge that neither has contracted with nor used a broker or other person who may be entitled to a commission in connection with the transactions contemplated hereby, and that no commission, finder's fee or other compensation is payable to any such person in connection herewith.

(b) Hold Harmless. Buyer shall indemnify, defend and hold harmless the Seller, its employees, agents, officers, directors, successors and assigns from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, including reasonable attorney and expert fees, at any time claimed or asserted following Closing which arise out of or in any way related to the ownership, possession, maintenance, use, operation or disposition of any of the Assets, including but not limited to any and all liabilities claimed by reason of any alleged (i) personal injury to or death of any person, (ii) any alleged breach of any contract obligation or (iii) any violation of any environmental law or regulation.

(c) Further Assurances. Subject to the terms and conditions of this Agreement, each of the parties hereto will use its best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement.

(d) Amendment and Modification. This Agreement may be amended, modified or supplemented at any time prior to the Closing Date but only by the written agreement of the parties hereto.

(e) Binding Effect / Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, heirs, successors and assigns, but shall not be assignable by any party hereto without the prior written consent of the other party.

(f) Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

(g) Counterparts. This Agreement may be executed in one or more counterpart, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(h) Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties in respect of the transactions contemplated by this Agreement. This Agreement supersedes all prior agreements and understandings between the parties with respect to the transactions contemplated hereby.

(i) Product of Negotiation. This Agreement is the product of extensive negotiation among the parties and no construction, interpretation, enforcement, inference or presumption, in favor of or against any party, shall be made as a consequence of the identity of the draftsman of this final statement of the product of such negotiation in the form of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SELLER

DEVONIAN RESOURCES, INC.

by _____
Stanley R. Thompson, President

BUYER

MID-EAST OIL COMPANY

by _____
Mark A. Thompson, President

ADDENDUM TO

ASSET PURCHASE AGREEMENT

This Addendum to the annexed Asset Purchase Agreement between Devonian Resources, Inc. and Mid-East Oil Company is incorporated into the Asset Purchase Agreement with the intent to be made a part thereof as if the same were set forth at length therein:

(1) Sale and Purchase of Assets

(d) The Seller has good, marketable and indefeasible title to all of the Assets (other than that owned by Buyer), free and clear of the liens or encumbrances of any other person.

(e) The Seller will transfer, assign and deliver to Buyer at Closing all records and documents of Seller relating to the Assets.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to the Asset Purchase Agreement this 15th day of November 2001.

SELLER

DEVONIAN RESOURCES, INC.

by _____
Stanley R. Thompson, President

BUYER

MID-EAST OIL COMPANY

by _____
Mark A. Thompson, President

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

VERIFICATION

I, Mark Thompson, verify that the statements made herein are true and correct to the best of my knowledge, information, and belief and are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 6/9/04, 2004

Mark Thompson

{GL032281.1}: ncp

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
MID-EAST OIL COMPANY	:	

ORDER

AND NOW, this 27 day of July, 2004, it is the ORDER of the Court that argument on Defendant's Preliminary Objections to Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaims in the above matter has been scheduled for **Wednesday, September 1, 2004 at 9:00 A.M**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUL 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

#51

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
MID-EAST OIL COMPANY	:	

ORDER

AND NOW, this 26th day of July, 2004, it is the ORDER of the Court that argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaim to Plaintiff's Amended Complaint in the above matter has been rescheduled from August 23, 2004 to **Wednesday, September 1, 2004 at 9:00 A.M**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Judge J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUL 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

#56

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
vs.	:	Civil Action – Law
	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant Mid-East's Preliminary***
Defendant	:	***Objections to Plaintiff Smyers'***
	:	***Preliminary Objections to***
vs.	:	***Mid-East's Answer, New Matter,***
	:	***and Counterclaims***
	:	
Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.,	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
Additional defendants	:	Supreme Court Id. No. 16829
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6843
	:	Fax: (240) 465-7135

FILED 1CC
m/10:54BM Atty Parker
JUL 26 2004
William A. Shaw
Prothonotary Clerk of Courts

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

MID-EAST'S PRELIMINARY OBJECTIONS TO MR. SMYERS' PRELIMINARY OBJECTIONS TO MID-EAST'S ANSWER, NEW MATTER, AND COUNTERCLAIMS

Preliminary objection #1: Rule 1028(a)(3) lack of specificity:

1. Mr. Smyers' Preliminary Objections do not allege in any way what specific facts or set of facts were not pled by Mid-East in its Answer, New Matter, & Counterclaims in violation of Pa.R.C.P. 1019(a), as Mr. Smyers alleges in paragraphs 2,3, & 9 of his Preliminary Objections.
2. Mr. Smyers' Preliminary Objections do not allege in any way what specific pleading or pleadings were not concisely pled by Mid-East in its Answer, New Matter, & Counterclaims, as Mr. Smyers alleges in paragraphs 2 & 9 of his Preliminary Objections.

3. Mr. Smyers' Preliminary Objections do not allege in any way what specific scandalous or impertinent matter[1] was included by Mid-East in its Answer, New Matter, & Counterclaims, as Mr. Smyers alleges in paragraph 1 of his Preliminary Objections.
4. Mr. Smyers' Preliminary Objections do not allege in any way how Mid-East violated Pa.R.C.P. 1030 in its Answer, New Matter, & Counterclaims, as Mr. Smyers alleges in paragraph 3 & 9 of his Preliminary Objections.
5. Despite Mid-East's informal request, **Mr. Smyers' Counsel** indicated by letter dated May 28, 2004 that he "***[does] not have the time or stamina to respond***" and provide Mid-East with clarification as to which allegations he feels are improper.
6. As a result, **Mid-East is unable to** either **revise its pleading, or provide the Court with argument** and supporting case law bolstering the fact that its allegations are in fact proper, because of Mr. Smyers' failure and refusal to specify his objections.

Prayer for relief Preliminary Objection #1:

Wherefore, defendant Mid-East respectfully requests that Mr. Smyers' Preliminary Objections be stricken for their lack of Rule 1028(a)(3) required specificity.

Preliminary objection #2 Rule 1028(a)(2) Failure to plead in conformity with law: Mr. Smyers did not plead material facts in violation of 1019(a):

[1] "*If the allegation is wholly irrelevant to the action and is* ***without any influence in leading to the results of the judicial inquiry****, said allegation will be deemed impertinent.*" Jefferies v. Hoffman, 417 Pa. 1, 207 A.2d 774 (1965).

7. **Pa.R.C.P.1019(a) requires** a pleader to set forth as **a minimum**, "***material facts***" in its allegations that will afford the opposing party the opportunity to understand the nature of the claims presented against it, and the ability to prepare a defense.

8. Paragraphs 1-5 & 7-10 of Mr. Smyers' Preliminary Objections are conclusions of law with no rule required supporting material facts or other explanation that would allow Mid-East to revise the pleading or dispute his claims. By way of further allegation, Mid-East incorporates by reference paragraphs 1-6 herein above as though set forth in their entirety.

Prayer for relief Preliminary Objection #2:

Wherefore, defendant Mid-East respectfully requests that Mr. Smyers' Preliminary Objections be stricken for their failure to plead material facts as required by Rule 1019(a).

Preliminary objection #3 Rule 1028(a)(2) Failure to plead in conformity with law: Violation of Mid-East's right to Due Process of Law:

9. The **relief requested** in Mr. Smyers' Preliminary Objections is **not contemplated by Pa.R.C.P. 1019(a) or 1030**, and would **violate Mid-East's right to due process of law** by not affording it the opportunity to be heard regarding all the facts, circumstances, and claims Mid-East alleges to have

resulting from the same nucleus of operative facts that surround the claims alleged by Mr. Smyers in his Amended Complaint.[2]

10. **Mid-East is permitted** to make such allegations **under** well established principles of **Due Process,** in accord with the public policy of **conserving judicial resources,** and **specifically by rule of court under Pa.R.C.P. 1030(a).**[3]

11. **Pa.R.C.P. 1019(a)** has **not** been interpreted as **a limit** on the total amount of what can or cannot be pled. In fact, pleadings of greater length and complexity than Mid-East's Answer, New Matter, and Counterclaims have been upheld as not inconsistent with this rule.[4]

12. The present litigation is complex involving a complex area of law, multiple corporate entities, and multiple documents generated by the various corporate entities.

13. **Mr. Smyers' Preliminary Objections mislead the Court** by his allegations in paragraph 6. Mr. Smyers alleges that certain paragraphs of Mid-East's Answer, New Matter, and Counterclaims are "redundant" and "repeats the same allegations". **This is inaccurate. The paragraphs** alleged to be the

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[2] "***The practicing bar should now be sufficiently alerted to recognize that*** *our recent civil procedural* ***rules provide for broad 'new matter' pleading in order to permit a defendant to compel a plaintiff to answer during the pleading stage of the action, the defendant's assertions of affirmative defenses which might be conclusive of the action and avoid an unnecessary trial.***" Ruhe v. Kroger Co., 425 Pa. 213, 216, 228 A.2d 750, 751 (Pa. 1967).

[3] "***A party may set forth*** *as new matter* ***any other material facts*** *which are not merely denials of the averments of the preceding pleading.*" Pa.R.C.P. 1030(a). See also the Note above.

[4] The following case involved objections to a "*...**278-page, 1,957 paragraph** complaint.... Specifically, **Raintree claims** that the complaint is **too verbose and redundant**; thus, the complaint should be stricken or amended. **The purpose of the pleadings is to place a defendant on notice** of the claims that he will have to defend.... [T]he **preliminary objections filed by Raintree Defendants are overruled.***" Com. v. Percudani, 844 A.2d 35, 48 49 (Pa.Cmwlth. 2004).

same by Mr. Smyers, **are in fact different** in that they involve different corporate entities. Such pleading is required based on the nature of Mr. Smyers' claims as found in his Amended Complaint.

14. Therefore, Mr. Smyers' Preliminary Objections do not conform to the law and applicable rules and precedent, and fail to state a basis for which the requested relief can properly be granted.

Prayer for relief Preliminary Objection #3:

Wherefore, defendant Mid-East respectfully requests that Mr. Smyers' Preliminary Objections be stricken for their failure to request relief that is consistent with Mid-East's right to Due Process of Law.

Respectfully Submitted:

Dated: July 22, 2004

By _____

DOM W. GRECO, ESQ.
NATHANIEL C. PARKER, ESQ.
Attorneys for Plaintiff
Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "***Defendant Mid-East's Preliminary Objections to Plaintiff Smyers' Preliminary Objections to Mid-East's Answer, New Matter, and Counterclaims***" was sent by U. S. mail, postage prepaid, on July 22, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Robert W. McFate, Esq.
McFate, McFate, & McFate
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Dated: July 22, 2004

_____(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
MID-EAST OIL COMPANY	:	

ORDER

NOW, this 12 day of July, 2004, it is the ORDER of the Court that argument on Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint has been rescheduled from July 23, 2004 to **Monday, August 23, 2004 at 9:30 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED

JUL 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

#54

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: CERTIFICATE OF SERVICE Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED
JUL 09 2004
11:10 am
William A. Shaw
Prothonotary/Clerk of Courts
cc C/C

#53

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 8th day of July, 2004, a Court certified copy of Order of Court dated June 28, 2004 was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
MID-EAST OIL COMPANY	:	

ORDER

NOW, this 28th day of June, 2004, upon consideration of Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint, a Rule is hereby issued upon the Defendant to Appear and Show Cause why the Objections should not be granted. Argument is scheduled the 23 day of July, 2004, at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUN 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

#52

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: Response to Defendant's Rule for 4014(b) Judicial Admissions and Plaintiff's Petition for Enlargement of Time to Respond to Request for Admission Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED

JUN 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

#51

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendant	:	

PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE FOR A 4014(b) JUDICIAL ADMISSIONS AND PLAINTIFF'S PETITION FOR ENLARGEMENT OF TIME TO RESPOND TO REQUEST FOR ADMISSIONS

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Defendant's Rule 4014(b) Request for Judicial Admissions and further submits the within Petition for Enlargement of Time to Respond to Request for Admissions, as follows:

Response to Mid-East's 4014(b) Motion

1. Admitted.

2. Admitted in part and denied in part. Mid-East's Requests for Admission were mailed to Plaintiff on or about May 5, 2004, but were not received by Plaintiff's counsel until May 10, 2004.

Plaintiff's counsel forwarded these to Plaintiff by correspondence of same date.

3. Admitted. By way of further answer, however, Plaintiff requests the Court to consider the following:

(a) Plaintiff is employed by Fortuna and works Monday through Friday in south-central New York;

(b) Plaintiff's separation and distance from counsel and long work hours make communication difficult;

(c) Plaintiff has prepared responses to request for admissions which have been served on all parties by first class mail on June 21, 2004.

4. Admitted, however, the Court may in it's discretion permit the filing of an answer that would otherwise be untimely (See *Flohr vs. Pennsylvania Power and Light Company, 821 F.Supp. 301(E.D. Pa. 1993).*

Plaintiff's Petition for Enlargement of Time

5. Plaintiff incorporates paragraphs 1 through 4 herein as if set forth in full.

6. Plaintiff hereby petitions the Honorable Court to accept the Plaintiff's Response to Request for Admissions submitted the 21st day of June, 2004 as if timely filed.

7. Defendant will suffer no prejudice as a result of Plaintiff's minimal delay in filing these responses.

WHEREFORE, it is respectfully requested that Defendant, Mid-East's, Rule 4014(b) Motion be denied and that Plaintiff's Petition

for Enlargement of Time to File Response to Request for Admissions be granted.

Respectfully submitted,

HANAK, GUIDO and TALADAY

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2004, a true and correct copy of foregoing Plaintiff's Response to Defendant's Rule 4014(b) Judicial Admissions and Plaintiff's Petition for Enlargement of Time to Respond to Request for Admission was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
Greco & Lander
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
McFate, McFate & McFate
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant vs. DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: RESPONSE TO MAY 2004 REQUEST FOR ADMISSIONS Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED

JUN 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

(#50)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	
MID EAST OIL COMPANY, Defendant	:	No. 03-1598-CD
vs.	:	
DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC., Additional Defendants	:	

RESPONSE TO DEFENDANT MID-EAST'S
MAY 2004 REQUEST FOR ADMISSIONS

AND NOW, comes the Plaintiff, Larry F. Smyers, and hereby responds to Defendant's Request for Admissions as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied. Smyers continued to receive overriding royalty interest from Eastern States and it's successors because of an employee investment program on a well within the AMI.

5. Denied as stated. It is debatable whether the geological prospects or information disclosed by Smyers to Devonian/Van Hampton constitutes a "sale". However Smyers does contend that he provided geological prospect information to these companies for the consideration of the claimed overriding royalty interests.

6. Denied. However, the documents attached to the Complaint are the only written contracts with either Devonian or Van Hampton concerning the subject matter of the Complaint.

7. Admitted in part. In addition, certain terms of the Agreement were established by mutual assent or conduct of the parties.

8. Denied as stated. The Agreement provides in part that Smyers will provide technical assistance to explore and develop natural gas and associated hydra-carbons in the area in question. The Agreement further provides in part that Smyers would provide services to develop drilling prospects and provide technical assistance in the preparation of drilling program prosptecuses at various stages of project development. The full scope of Smyers' obligations under the Agreement must be determined by reference to the entire Agreement.

9. Denied as stated. The Agreement with Van Hampton and/or Devonian required, in the event that these companies chose to develop the proposed AMI to pay Smyers a 1/64th overriding royalty interest in all wells developed within this area. Devonian subsequently hired Smyers to provide additional services for payment of additional compensation.

10. Denied as stated. Smyers did receive a defacto assignment of overriding royalty interests in the AMI from Devonian and the promise to provide written assignment agreements. However, Devonian transferred its interests to Mid-East before written assignments were provided. Smyers has repeatedly requested the

written assignment or assignments from Mid-East, which requests were denied or ignored.

11. Denied as stated. Smyers terminated his employment with Devonian in December, 2003. However, Smyers' services under the terms of the AMI Agreement were completed long before December, 2003.

12. Denied as stated. Plaintiff incorporates his response to Request for Admission No. 6.

13. Admitted.

14. Denied. Smyers has had repeated communications with Mid-East regarding the AMI, including but not limited to discussions regarding royalties and gas production, and including Smyers' request for written assignment of royalties.

15. Denied as stated. However, Smyers' services for Donald Sbarro included analyzing data regarding the advisability of participating in various natural resources investments, including those located within Mid-East's AMI.

16. Denied as stated. However, Smyers did provide services for Sbarro not directly related to the AMI.

17. Denied as stated. However, Donald Sbarro did approach Larry Smyers with a proposal regarding a drilling program outside of the AMI. Smyers and Sbarro entered no agreement regarding this proposal.

18. Denied as stated. Smyers entered into a verbal agreement with Rick Hollencamp to explore the possibilities of

developing drilling prospect areas in north central Pennsylvania, outside of the AMI. Smyers did communicate these potential prospects to Donald Sbarro, but nothing ever came of the discussions, nor did Smyers and Hollencamp proceed with the development of any potential drilling prospects.

19. Denied. Plaintiff believed that Sbarro was free to invest his resources in whatever investments he deemed to be appropriate and further that the investment in prospects other than those promoted by Mid-East or Devonian by Sbarro is not necessarily harmful to Mid-East or Devonian and further that these companies are fully able to contact and develop investors other than Donald Sbarro.

20. Admitted.

21. Denied as stated. However, Smyers did give Sbarro cost data and/or reserve information outside of the AMI where Smyers had received for proposal for potential development arrangements.

22. Admitted.

23. Denied. Mid-East as successor to Devonian and Van Hampton assumed the contractual obligations to Smyers concerning the AMI.

24. Denied. Smyers had various discussions with representatives of Mid-East concerning royalty payments and contemporaneous therewith Mid-East submitted, at least in part, royalty payments due and owing under the AMI Agreement.

25. Denied. Smyers has performed various services for Mid-East.

26. Denied as stated. However, Smyers did not deny that any professional geologist that would have been employed by Mid-East could have potentially recommended procedures or processes that would possibly improve production.

27. Denied. In addition to the documents attached to the Complaint, there are various documents which help evidence or prove Smyers' overriding royalty interests, including but not limited to the agreements between Devonian/VanHampton and Mid-East, the royalty payment checks and documentation evidencing royalty payments made to Plaintiff, and other documents which may further support the course of conduct regarding payments to Smyers for production within the AMI.

28. Denied as stated. Smyers has not received a written assignment of overriding royalty interests in the AMI from Mid-East. However, Mid-East has made some royalty payments in accordance with it's obligation of assignment of oil and gas interest to Smyers. Plaintiff further incorporates his response to Request for Admission No. 10.

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

VERIFICATION

I, LARRY SMYERS, do hereby verify that I have read the foregoing RESPONSE TO REQUEST FOR ADMISSIONS. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 6-18-04

Larry Smyers

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2004, a true and correct copy of Plaintiff's Response to Request for Admissions was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
Greco & Lander
P.O. Box 667
Clarion, PA 16214

Robert W. McFate, Esq.
Attorney for Additional Defendant
McFate, McFate & McFate
P.O. Box 407
Seneca, PA 16346

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
Plaintiff	:	
vs.	:	No. 03-1598-CD
Mid-East Oil Company,	:	
Defendant	:	
vs.	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
Additional defendants	:	

FILED

JUN 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing **"Defendant Mid-East's May 2004 Request for Admissions Served Upon Plaintiff Smyers"** was sent by U. S. mail, postage prepaid, on May 5, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Robert W. McFate, Esq.
McFate, McFate, & McFate
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Dated: May 5, 2004

(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

#149

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant Mid-East's May 2004***
Defendant	:	***Request for Admissions Served on***
	:	***Plaintiff Smyers***
vs.	:	
	:	Counsel of Record for This Party:
	:	
Devonian Resources, Inc., and Van	:	Dom W. Greco, Esq.
Hampton Gas & Oil Co., Inc.,	:	Pa. Id. #16829
	:	Fax: (240) 465-7135
Additional defendants	:	
	:	Nathaniel C. Parker, Esq.
	:	Pa. Id. #90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853

FILED

JUN 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

{GL031042.1}ncp

#4

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

DEFENDANT MID-EAST'S MAY 2004, REQUEST FOR ADMISSIONS SERVED UPON PLAINTIFF SMYERS

The Defendant, pursuant to Rules 4005 and 4014 of the Pennsylvania Rules of Civil Procedure, hereby requests that Plaintiff answer or respond to, in writing and under oath, by an officer or agent, within thirty (30) days after service hereof, the following requests for admissions within thirty (30) days after service hereof to the office of the Defendant's counsel at 1390 East Main Street, Suite 2, Clarion, Pennsylvania.

GENERAL DEFINITIONS

1. ***"Smyers"*** refers to the Plaintiff in the above captioned action, Larry F. Smyers.

2. ***"AMI"*** and ***"Area of Mutual Interest"*** mean the Area of Mutual Interest as defined in paragraphs 4 and 5 of the complaint.

3. ***"Devonian"*** and ***"Devonian Resources"*** refers to the business entity known and referred to in the complaint as Devonian Resources, Inc.

4. ***"Van Hampton"*** refers to the business entity known and referred to in the complaint as Van Hampton Oil and Gas Company, also known as Van Hampton Gas & Oil Co., Inc.

5. ***"Mid-East"*** refers to the Defendant, Mid-East Oil Company.

REQUEST FOR ADMISSIONS

1. Prior to working for Van Hampton and Devonian, Smyers worked as a geologist for Eastern States.

2. Eastern Sates drilled wells within the Area of Mutual Interest when Smyers was employed as a geologist for Eastern States.

3. During his employment by Eastern States, Smyers had personal access to Eastern States exploration, development, and production information from the Area of Mutual Interest.

4. After Smyers worked as an employee of Eastern States, Smyers never disclosed to Eastern States or any of its successors that he was getting or claiming an interest in production from the Area of Mutual Interest.

5. Smyers did not sell any geologic prospect areas or information to Van Hampton or Devonian.

6. The documents attached to the Complaint are the only contracts or agreements Smyers entered into between Smyers and either Devonian and/or Van Hampton.

7. The agreement that Smyers had with Devonian and/or Van Hampton was partially written and partially oral.

8. The agreement that Smyers had with Devonian and/or Van Hampton regarding the AMI provided that Smyers would help operate, expand, and develop the AMI.

9. Smyers' agreement with Devonian and/or Van Hampton regarding the AMI required Smyers to provide a package of future services for a package of compensation for those services.

10. Smyers never received an assignment of any overriding royalty interest in any oil and/or gas rights in the AMI from either Van Hampton or Devonian.

11. Smyers stopped providing services to Devonian in December 2003.

12. Smyers has no written agreements with Van Hampton and/or Devonian except for the August 3, 1999 letter and the February 29, 2000, confidentiality agreement.

13. Devonian Resources and Mid-East entered into their joint venture agreement without Smyers' prior knowledge or participation.

14. Smyers had no communications or dealings with Mid-East prior to or after Devonian and Mid-East entering into the August 23, 2000 joint venture agreement until the filing of Smyers' Complaint against Mid-East.

15. The purpose of Smyers working for Donald Sbarra was for Smyers to give advice or an opinion to Donald Sbarra as to whether Donald Sbarra should or should not participate in investments with Mid-East or in Mid-East's AMI.

16. Donald Sbarra used Smyers for a purpose other than in connection with the AMI.

17. Smyers and Donald Sbarra discussed doing drilling programs together, separate from Mid-East and the AMI.

18. Smyers entered into an agreement with Rick Hollencamp to further Smyers' plan to entice or encourage Donald Sbarra to invest in drilling prospects outside the AMI.

19. Smyers was aware that his enticing or encouraging Donald Sbarra to invest with someone other than Mid-East or Devonian would be harmful to Mid-East and Devonian.

20. Smyers gave Donald Sbarra cost data and/or reserve information about drilling prospects in a prospect area other than the Area of Mutual Interest.

21. Smyers gave Donald Sbarra costs data and/or reserved information about drilling prospects in an area where Smyers personally had prospects.

22. Smyers met with John McNally on behalf of Donald Sbarra to evaluate drilling prospects that McNally had for drilling outside the Area of Mutual Interest.

23. No contracts or agreements were entered into between Smyers and Mid-East.

24. Smyers never had a direct contract with Mid-East in which Mid-East assumed any obligation to make any payments to Smyers.

25. Smyers never performed any services for Mid-East.

26. Smyers could have provided services to Mid-East that would have improved production from wells drilled in the Area of Mutual Interest.

27. There are no documents evidencing Smyers' claimed overriding royalty interest in any part of the AMI, other than those documents attached to his Complaint as exhibits.

28. Smyers never received a present assignment of any overriding royalty interest in any oil and/or gas rights in the AMI from Mid-East.

FOR DEFENDANT MID-EAST OIL COMPANY:

DOM W. GRECO, ESQ.
Pa. Id.# 16829

NATHANIEL C. PARKER, ESQ.
Pa. Id.# 90993

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

FILED

JUN 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "*Defendant Mid-East's Rule 4014(b) Judicial Admissions For Failure To Timely Answer Or Object*" was sent by U. S. mail, postage prepaid, on June 15, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Robert W. McFate, Esq.
McFate, McFate, & McFate
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Dated: June 15, 2004

_____(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

#47

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant Mid-East's Rule 4014(b)***
Defendant	:	***Judicial Admissions for Failure to***
	:	***Timely Answer or Object***
vs.	:	
	:	Counsel of Record for This Party:
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Dom W. Greco, Esq.
	:	Pa. Id. #16829
	:	Fax: (240) 465-7135
Additional defendants	:	
	:	Nathaniel C. Parker, Esq.
	:	Pa. Id. #90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853

FILED

JUN 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

#10

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional defendants	:	

DEFENDANT MID-EAST'S RULE 4014(b) JUDICIAL ADMISSIONS FOR FAILURE TO TIMELY ANSWER OR OBJECT

1. Defendant Mid-East Oil Company ("Mid-East") served Plaintiff Larry Smyers ("Smyers") with "*Defendant Mid-East's May 2004, Request for Admissions Served on Plaintiff Smyers*" ("Request for Admissions").

2. Mid-East served its Request for Admissions on Smyers on May 5, 2004.

3. By June 14, 2004, Smyers had not served any answers or objections on Mid-East in response to the Request for Admissions.

4. Since more than thirty (30) days have expired (expired June 5, 2004) since service of the Request for Admissions without Smyers serving Mideast with any answers or objections to the requested admissions, the requested admissions contained in the Request for Admissions are deemed admitted by Smyers under Rule 4014(b).

5. The following are the resultant judicial admissions by Plaintiff Smyers, with the identification numbers and defined terms that correspond to the original Request for Admission:

1. Prior to working for Van Hampton and Devonian, Smyers worked as a geologist for Eastern States.

2. Eastern Sates drilled wells within the Area of Mutual Interest when Smyers was employed as a geologist for Eastern States.

3. During his employment by Eastern States, Smyers had personal access to Eastern States exploration, development, and production information from the Area of Mutual Interest.

4. After Smyers worked as an employee of Eastern States, Smyers never disclosed to Eastern States or any of its successors that he was getting or claiming an interest in production from the Area of Mutual Interest.

5. Smyers did not sell any geologic prospect areas or information to Van Hampton or Devonian.

6. The documents attached to the Complaint are the only contracts or agreements Smyers entered into between Smyers and either Devonian and/or Van Hampton.

7. The agreement that Smyers had with Devonian and/or Van Hampton was partially written and partially oral.

8. The agreement that Smyers had with Devonian and/or Van Hampton regarding the AMI provided that Smyers would help operate, expand, and develop the AMI.

9. Smyers' agreement with Devonian and/or Van Hampton regarding the AMI required Smyers to provide a package of future services for a package of compensation for those services.

10. Smyers never received an assignment of any overriding royalty interest in any oil and/or gas rights in the AMI from either Van Hampton or Devonian.

11. Smyers stopped providing services to Devonian in December 2003.

12. Smyers has no written agreements with Van Hampton and/or Devonian except for the August 3, 1999 letter and the February 29, 2000, confidentiality agreement.

13. Devonian Resources and Mid-East entered into their joint venture agreement without Smyers' prior knowledge or participation.

14. Smyers had no communications or dealings with Mid-East prior to or after Devonian and Mid-East entering into the August 23, 2000 joint venture agreement until the filing of Smyers' Complaint against Mid-East.

15. The purpose of Smyers working for Donald Sbarra was for Smyers to give advice or an opinion to Donald Sbarra as to whether Donald Sbarra should or should not participate in investments with Mid-East or in Mid-East's AMI.

16. Donald Sbarra used Smyers for a purpose other than in connection with the AMI.

17. Smyers and Donald Sbarra discussed doing drilling programs together, separate from Mid-East and the AMI.

18. Smyers entered into an agreement with Rick Hollencamp to further Smyers' plan to entice or encourage Donald Sbarra to invest in drilling prospects outside the AMI.

19. Smyers was aware that his enticing or encouraging Donald Sbarra to invest with someone other than Mid-East or Devonian would be harmful to Mid-East and Devonian.

20. Smyers gave Donald Sbarra cost data and/or reserve information about drilling prospects in a prospect area other than the Area of Mutual Interest.

21. Smyers gave Donald Sbarra costs data and/or reserved information about drilling prospects in an area where Smyers personally had prospects.

22. Smyers met with John McNally on behalf of Donald Sbarra to evaluate drilling prospects that McNally had for drilling outside the Area of Mutual Interest.

23. No contracts or agreements were entered into between Smyers and Mid-East.

24. Smyers never had a direct contract with Mid-East in which Mid-East assumed any obligation to make any payments to Smyers.

25. Smyers never performed any services for Mid-East.

26. Smyers could have provided services to Mid-East that would have improved production from wells drilled in the Area of Mutual Interest.

27. There are no documents evidencing Smyers' claimed overriding royalty interest in any part of the AMI, other than those documents attached to his Complaint as exhibits.

28. Smyers never received a present assignment of any overriding royalty interest in any oil and/or gas rights in the AMI from Mid-East.

FOR DEFENDANT MID-EAST OIL COMPANY

DOM W. GRECO, ESQ.
Pa. Id.# 16829

NATHANIEL C. PARKER, ESQ.
Pa. Id.# 90993

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

PRELIMINARY OBJECTIONS TO DEFENDANT'S NEW MATTER AND COUNTERCLAIMS TO PLAINTIFF'S AMENDED COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED
MAY 17 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

PRELIMINARY OBJECTIONS TO DEFENDANT'S NEW MATTER AND COUNTERCLAIMS TO PLAINTIFF'S AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby files Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint, averring as follows:

1. Plaintiff files these Preliminary Objections under Pennsylvania Rule of Civil Procedure 1028(a)(2) for inclusion of a scandalous or impertinent matter and/or failure of the pleading to conform to law or rule of court.

2. Specifically, Defendant's New Matter and Counterclaim fail to concisely plead material facts as required by Pennsylvania Rule of Civil Procedure 1019(a). In addition, Pennsylvania Rule of Civil Procedure 1030 permits a party to set forth as a new matter additional material facts which are not merely denials of the averments of the preceding pleading.

3. Defendant's New Matter and Counterclaim fails to conform to law or rules of Court 1019 and 1030.

4. The Defendant's New Matter and Counterclaim is not concise in that it repeats and extends without cause or reason the material facts which were pled in the Complaint and the denials pled in Defendant's Answer.

5. Defendant's New Matter and Counterclaim includes 102 paragraphs (paragraphs 32 - 134), along with numerous subparagraphs, before stating the affirmative defenses (at paragraphs 135 - 143) and counterclaims (at paragraphs 144 - 151). These preceding 102 paragraphs should be stricken as improper and unnecessary.

6. Defendant's New Matter and Counterclaim contains multiple allegations that are redundant. For example, Defendant makes the exact same allegations in the Answer at paragraphs 6, 10, 13 and 25. Defendant thereafter repeats these same allegations in the New Matter at paragraphs 33, 40 and 48.

7. Defendant's New Matter and Counterclaim contains multiple allegations that are irrelevant to the affirmative defenses and counterclaims.

8. Defendant's New Matter and Counterclaim is permeated with conclusions of law.

9. Defendant's pleading is not stated in a concise and summary form, and includes allegations which are not material to the

affirmative defenses and counterclaims in violation of Pennsylvania Rules of Civil Procedure 1019 and 1030.

10. Defendant's pleading is permeated with surplusate and impertinent matters, redundant allegations, and conclusions of law which must be separated from matters which are pertinent and relevant.

WHEREFORE, Plaintiff respectfully requests that this Court grant the Preliminary Objections and strike paragraphs 32 through 134 of Defendant's New Matter and Counterclaim.

A JURY TRIAL DEMANDED.

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 14th day of May, 2004, a true and correct copy of Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaim to Plaintiff's Amended Complaint was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

ATL's Copy

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS, Plaintiff vs. MID EAST OIL COMPANY, Defendant	CIVIL ACTION - AT LAW No. 03-1598-CD Type of Pleading: PRELIMINARY OBJECTIONS TO DEFENDANT'S NEW MATTER AND COUNTERCLAIMS TO PLAINTIFF'S AMENDED COMPLAINT Filed on Behalf of: PLAINTIFF Counsel of Record for This Party: Matthew B. Taladay Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P. O. Box 487 DuBois, PA 15801 814-371-7768 JURY TRIAL DEMANDED

FILED
MAY 17 2004
William A. Shaw
Prothonotary/Clerk of Courts

#45

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

PRELIMINARY OBJECTIONS TO DEFENDANT'S NEW MATTER AND COUNTERCLAIMS TO PLAINTIFF'S AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby files Preliminary Objections to Defendant's New Matter and Counterclaims to Plaintiff's Amended Complaint, averring as follows:

1. Plaintiff files these Preliminary Objections under Pennsylvania Rule of Civil Procedure 1028(a)(2) for inclusion of a scandalous or impertinent matter and/or failure of the pleading to conform to law or rule of court.

2. Specifically, Defendant's New Matter and Counterclaim fail to concisely plead material facts as required by Pennsylvania Rule of Civil Procedure 1019(a). In addition, Pennsylvania Rule of Civil Procedure 1030 permits a party to set forth as a new matter additional material facts which are not merely denials of the averments of the preceding pleading.

3. Defendant's New Matter and Counterclaim fails to conform to law or rules of Court 1019 and 1030.

4. The Defendant's New Matter and Counterclaim is not concise in that it repeats and extends without cause or reason the material facts which were pled in the Complaint and the denials pled in Defendant's Answer.

5. Defendant's New Matter and Counterclaim includes 102 paragraphs (paragraphs 32 - 134), along with numerous subparagraphs, before stating the affirmative defenses (at paragraphs 135 - 143) and counterclaims (at paragraphs 144 - 151). These preceding 102 paragraphs should be stricken as improper and unnecessary.

6. Defendant's New Matter and Counterclaim contains multiple allegations that are redundant. For example, Defendant makes the exact same allegations in the Answer at paragraphs 6, 10, 13 and 25. Defendant thereafter repeats these same allegations in the New Matter at paragraphs 33, 40 and 48.

7. Defendant's New Matter and Counterclaim contains multiple allegations that are irrelevant to the affirmative defenses and counterclaims.

8. Defendant's New Matter and Counterclaim is permeated with conclusions of law.

9. Defendant's pleading is not stated in a concise and summary form, and includes allegations which are not material to the

affirmative defenses and counterclaims in violation of Pennsylvania Rules of Civil Procedure 1019 and 1030.

10. Defendant's pleading is permeated with surplusate and impertinent matters, redundant allegations, and conclusions of law which must be separated from matters which are pertinent and relevant.

WHEREFORE, Plaintiff respectfully requests that this Court grant the Preliminary Objections and strike paragraphs 32 through 134 of Defendant's New Matter and Counterclaim.

A JURY TRIAL DEMANDED.

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 14th day of May, 2004, a true and correct copy of Plaintiff's Preliminary Objections to Defendant's New Matter and Counterclaim to Plaintiff's Amended Complaint was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
Plaintiff	:	
vs.	:	No. 03-1598-CD
Mid-East Oil Company,	:	
Defendant	:	
vs.	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
Additional defendants	:	

FILED

MAY 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "**Defendant Mid-East's May 2004 Request for Admissions Served Upon Plaintiff Smyers**" was sent by U. S. mail, postage prepaid, on May 5, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Robert W. McFate, Esq.
McFate, McFate, & McFate
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Dated: May 5, 2004

(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

#4

CA

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LARRY F. SMYERS :

-vs- : No. 03-1598-CD

MID-EAST OIL COMPANY :

O R D E R

NOW, this 19th day of April, 2004, following argument on the Plaintiff's Motion for Protective Order, it is the ORDER of this Court that said Motion be and is hereby granted, Protective Order issued and the Plaintiff shall not be required to respond to any of the items as described within the Motion for Protective Order.

BY THE COURT,

President Judge

FILED

APR 20 2004

Prothonotary Clerk of Courts

#43

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "*Defendant's Brief in Opposition to Plaintiff's Motion for Protective Order*" was hand delivered, on April 19, 2004, to other counsel of record as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By _____
NATHANIEL C. PARKER, ESQ.

FILED

APR 19 2004

Prothonotary

{GL030288.1}

#LL7

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
Plaintiff	:	
vs.	:	No. 03-1598-CD
Mid-East Oil Company,	:	
Defendant	:	JURY TRIAL DEMANDED
vs.	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	
Additional Defendants	:	

ACCEPTANCE OF SERVICE

I hereby accept service of the Writ of Summons to join Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. as additional defendants, on behalf of both Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc., and hereby certify that I am Devonian Resources, Inc.'s and Van Hampton Gas & Oil Co., Inc.'s counsel and I am authorized to do so.

Dated: April 12, 2004

Robert W. McFate, Esq.
McFate Law Offices
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346
(814) 676-3933

APR 19 2004

Prothonotary Clerk of Courts

#L11

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "**Answer, New Matter & Counterclaims of Plaintiff's Amended Complaint**" was sent by U. S. mail, postage prepaid, on APRIL 7, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Robert McFate, Esq.
McFate Law Offices
P.O. Box 407
3178 Star Route, Suite B
Seneca, PA 16346

Dated: 4-7, 2004

(SEAL)
NATHANIEL C. PARKER, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853

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APR 0 8 2004

William A. Shaw
Prothonotary

04/07/2004 12:46 PMlam{GL030310.1}

#40

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	**JURY TRIAL DEMANDED**
Defendant	:	
	:	***Answer, New Matter & Counterclaims to Plaintiff's Amended Complaint***
	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
	:	Pa. Id. #16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Pa. Id. #90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853

FILED

APR 0 8 2004

William A. Shaw
Prothonotary

#39

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE IS SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 1300

FOR DEFENDANT MID-EAST OIL COMPANY:

DOM W. GRECO, ESQ.
Pa. Id.# 16829

NATHANIEL C. PARKER, ESQ.
Pa. Id.# 90993

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

ANSWER, NEW MATTER, AND COUNTERCLAIMS TO PLAINTIFF'S AMENDED COMPLAINT

And now, comes Defendant, Mid-East Oil Company ("Mid-East"), by its attorney, Greco & Lander PC, and hereby asserts the following answer, new matter, and counterclaims to the amended complaint against plaintiff Larry F. Smyers ("Smyers"), as follows:

1. Admitted in part denied in part.
    a. Admitted that the plaintiff is Larry F. Smyers, an individual.
    b. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that the address of Smyers is 300 East Second Ave., Dubois, Clearfield County, Pennsylvania 15801, so such allegation is denied.
    c. All else is denied.
2. Admitted.
3. Denied.

a. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that on or about August 3, 1999, plaintiff Smyers met with Stan Thompson, so such allegation is denied.

b. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that plaintiff Smyers on or about August 3, 1999 believed Stan Thompson to be an officer and representative of Van Hampton Oil & Gas Company, a/k/a Van Hampton Gas & Oil Company, Inc. ("Van Hampton" hereinafter), and Devonian Resources, Inc. ("Devonian" hereinafter), so such allegation is denied.

c. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that on or about August 3, 1999, plaintiff Smyers met with Stan Thompson to discuss a proposal of oil and gas prospects, so such allegation is denied.

d. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that on or about August 3, 1999, plaintiff Smyers met with Stan Thompson with respect to a proposal whereby plaintiff Smyers was to be paid a payment equal to 1/64 of all natural gas, associate liquids or crude oil from each well located in a

prospect or program proposed by plaintiff Smyers, so such allegation is denied.

e. Denied that on or about August 3, 1999 plaintiff Smyers entered into an agreement with Van Hampton for development of oil and gas prospects.

f. Also, denied that plaintiff was to be paid a 1/64th payment from the salable natural gas, associate liquids or crude oil from each well located in a prospect or program proposed by plaintiff Smyers in accordance with such agreement.

g. On or about August 3, 1999 plaintiff Smyers merely submitted a brief summary of a proposal for him to render services to Van Hampton with details to be worked out at a later date for the purpose of beginning discussions toward establishing a relationship, as such matters are set forth on page five of five of Exhibit 1 of plaintiff Smyers' complaint.

h. All else is denied.

4. Denied.

a. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that the terms of any discussion that Smyers alleges that he had with Stan Thompson with respect to Smyers offering his services to develop drilling prospects in consideration for a 1/64 payment from the production of each well proposed by

Smyers were set forth in any written proposal, so such allegation is denied.

b. All else is denied.

5. Denied.

a. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that the terms of any Smyers' proposal of August 3, 1999 were orally accepted by Stan Thompson or that Mr. Thompson was then the president of Van Hampton and/or Devonian, so such allegation is denied.

b. All else is denied.

6. Admitted in part denied in part.

a. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that on or about August 3, 1999 plaintiff proceeded to invest his time, effort, expertise and/or knowledge as a professional geologists to develop a drilling prospect in areas located in Centre and Clearfield Counties, Pennsylvania, referred to by Smyers collectively as "Pine Glen Prospect" and/or "AMI", so such allegation is denied. (Any reference hereinafter to the "Pine Glen Prospect", "AMI", or "Smyers' alleged AMI", is intended to reflect these term as set forth and defined in paragraph 6 of Smyers' amended complaint. Future reference to

"Mid-East's AMI" refers to the specific parcels and leases identified or described in the joint venture agreement attached as ***Exhibit 2***, and the assignment attached as ***Exhibit 3*** of the amended complaint, and specifically does ***not*** refer to the term "AMI" as defined in the amended complaint.)

b. If Smyers committed time, effort, expertise and/or knowledge as a professional geologists to develop a drilling prospect in the Pine Glen Prospect:

1. he did not commit any such time, effort, expertise and/or knowledge as an investment;
2. he did so as services rendered by an employee to an employer;
3. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided
4. he made such efforts and rendered such services as a licensed professional geologist;
5. while he was licensed by the Commonwealth of Pennsylvania; and
6. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

c. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that the area in which Smyers alleges that he invested

his time, effort, expense and/or knowledge as professional geologists to develop a drilling prospect is known collectively as Pine Glen Prospect, so such allegation is denied.

d. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that the areas located in Centre County and Clearfield County Pennsylvania that plaintiff refers to in the complaint as "known collectively as Pine Glen Prospect" are in fact known collectively as Pine Glen Prospect, since plaintiff failed to allege the identity of the person or persons who plaintiff is alleging know such areas "collectively as Pine Glen Prospect", so such allegation is denied.

e. All else is denied.

7. Admitted in part denied in part.

a. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that Devonian is a related Company of Van Hampton , so such allegation is denied.

b. Denied that such confidentiality agreement dated February 29, 2000 (assuming that such agreement is the agreement attached as pages 1-5 of exhibit 1 of Smyers' amended complaint) confirmed and supplemented any agreement of August 3, 1999 (assuming that such alleged agreement of August 3, 1999 is the agreement

referenced in the August 3, 1999 letter from Larry Smyers to Van Hampton attached as page five of five of exhibit 1 of the amended complaint).

c. The February 29, 2000 confidentiality agreement between Smyers and Devonian by its express terms was ***only*** intended "*to expand on and supplemented the terms of a letter dated August 3, 1999 to Van Hampton*", which August 3, 1999 letter (page five of Exhibit 1 of the amended complaint) itself was in accordance with its express terms:

1. "*a brief summary*"
2. of a "*proposal*" (not an agreement)
3. "*to begin discussion*",
4. so that "*details to be worked out at a later date*", and
5. not intended to confirm or supplement any prior *agreement* between plaintiff Smyers and Van Hampton, since the August 3, 1999 letter was not an agreement.

d. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that Exhibit 1 attached to the complaint identifies the general area or approximate geographical boundaries of the Pine Glen Prospect, so such allegation is denied.

e. Admitted that page three of five of Exhibit 1 to the amended complaint contains notary affidavits dated September 21, 2001.

f. However, it is denied that any part of Exhibit 1 of the amended complaint was actually notarized on September 21, 2001 because after reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment as to the date when such document was actually notarized.

g. Denied that Exhibit 1 to the amended complaint is a recorded document, since none of the pages of the exhibit have a book and page number or instrument number printed on them indicating that any part of Exhibit 1 is or was recorded.

h. Denied that Exhibit 1 to the amended complaint accurately represents the confidentiality agreement referenced in the amended complaint because after reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that each of the documents constituting Exhibit 1 to the complaint is or was part of the confidentiality agreement when entered into by the respective parties.

i. All else is denied.

8. Denied.

a. Plaintiff's allegations as to the legal consequences of the terms of the confidentiality agreement are conclusions of law, which

are therefore denied. The documents memorializing the terms of the confidentiality agreement speak for themselves.

b. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averments of complaint ¶ 8 because:

1. it is unclear what documents attached as Exhibit 1 to the amended complaint were actually part of the confidentially agreement when it was entered into; and

2. the ambiguity of plaintiff's allegation failing to indicate whether plaintiff is considering the written confidentiality agreement to incorporate the terms of the August 3, 1999 letter referred to in such confidentiality agreement, since the confidentiality agreement itself states that it "*is intended to expand on and supplemented the terms of a letter agreement dated August 3, 1999*", but does ***not*** state the reverse -- that the August 3, 1999 letter agreement is intended to be incorporated into the confidentiality agreement, so such allegation is denied.

c. All else is denied.

9. Admitted in part denied in part.

a. Admitted that Exhibit 1 to the amended complaint includes an addenda section.

b. Denied that the addenda section of Exhibit 1 of the amended complaint agreed to and accepted the terms of the August 3, 1999 proposal letter referred to in such addenda, because:

1. The addenda by its express terms provides that the confidentiality agreement between plaintiff Smyers and Devonian "*is intended to expand on and supplemented*" the August 3, 1999 letter between plaintiff Smyers and Van Hampton.

2. Van Hampton was not a party to the confidentiality agreement containing the addenda in Exhibit 1.

3. The confidentiality agreement between plaintiff Smyers and Devonian containing that addenda did not by its terms incorporate the August 3, 1999 letter agreement between Smyers and Van Hampton into the confidentiality agreement.

4. The confidentiality agreement is dated February 29, 2000.

5. The confidentiality agreement had a term.

6. The term of the confidentiality agreement was one year.

7. The confidentiality agreement ¶ 5 provided that it "*shall be binding on receiver and receiver's officers, directors, employees, agents, attorneys, accounts and representatives*".

8. The confidentiality agreement did **not** provide that it would be binding upon the successors or assigns of parties plaintiff Smyers or Devonian.

c. Admitted that the paragraph plaintiff Smyers quotes from is contained in the addenda found in Exhibit 1.

d. Admitted that the August 3, 1999 written proposal letter is attached as part of Exhibit 1.

e. All else is denied.

10. Admitted in part denied in part.

a. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that Smyers proceeded to invest his time, effort, expertise and/or knowledge as a professional geologists to develop drilling prospects for Smyers' alleged AMI, so such allegation is denied.

b. If Smyers committed time, effort, expertise and/or knowledge as a professional geologists to develop a drilling prospect in Smyers' alleged AMI:

1. he did not commit any such time, effort, expertise and/or knowledge as an investment;

2. he did so as services rendered by an employee to an employer;

3. he had already been compensated for time, efforts, expertise, knowledge and/or services he provided;

4. he made such efforts and rendered such services as a licensed professional geologist;

5. while he was licensed by the Commonwealth of Pennsylvania; and

6. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

c. All else is denied.

11. Denied. After reasonable investigation Mid-East is without knowledge or information sufficient to form a believe as to the truth of the averment that on or about February 29, 2000, Devonian began exploration and development of natural resources in Smyers' alleged AMI, so such allegation is denied.

12. Admitted in part denied in part.

a. Admitted that on or about August 23, 2000, Devonian entered into the joint venture agreement with defendant, Mid-East, and that a true and correct copy of the same is attached to the complaint as Exhibit 2.

b. Denied the conclusion of law that the joint venture agreement provided that Mid-East and Devonian would mutually develop Smyers' alleged AMI, but admitted that the terms of such joint venture agreement speak for themselves.

c. Denied that the joint venture agreement provides for payment of any kind to plaintiff Larry Smyers, since:

1. the joint venture agreement does not name or identify plaintiff Larry Smyers as an individual to whom any payments are to be made;

2. Paragraph 2 of the joint venture agreement (Exhibit 2 of the amended complaint):

i. does not provide for the assumption of any liability or obligation by defendant Mid-East, or any joint venturer, of any obligation to plaintiff Larry Smyers;

ii. merely provides that certain leases "shall be **subject to**" what the joint venture describes as "a 1/64 ORRI";

iii. describes such 1/64 ORRI "*as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area*";

iv. without the complaint:

(a) attaching, identifying, or describing such alleged "prior agreement" that Smyers alleges "mandated" the payments Smyers is claiming in his complaint; or

(b) alleging that Smyers was at the time of such August 23, 2000 joint venture agreement then "providing geologic services for this prospective area".

d. All else is denied.

13. Admitted in part denied in part.

a. Admitted that defendant Mid-East was a party to the joint venture agreement.

b. Denied that under the joint venture agreement defendant Mid-East assumed any obligation to compensate plaintiff Smyers, because:

1. The joint venture agreement merely acknowledged that "*a prior agreement between Devonian Resources Inc. and a third party providing geologic services*" made certain leases "*subject to a 1/64 ORRI as mandated*" by such prior agreement.

2. The amended complaint does not allege that Smyers was providing geologic services to the joint venture or Mid-East at the time of the August 2000 joint venture agreement.

3. If plaintiff Smyers did render any services with respect to the premises covered by the joint venture agreement:

i. he did not commit any such time, effort, expertise and/or knowledge as an investment;

ii. he did so as services rendered by an employee to an employer;

iii. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

iv. he made such efforts and rendered such services as a licensed professional geologist;

v. while he was licensed by the Commonwealth of Pennsylvania; and

vi. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

c. Denied that the joint venture agreement "subject all leases in Smyers' alleged AMI to 1/64 ORRI payable to the third-party geologist/plaintiff". The joint venture agreement ORRI provision:

1. is limited in its application only "*as mandated by a prior agreement between Devonian Resources Inc. and a third party providing geologic services for this prospective area*";

2. does not identify the alleged "*prior agreement*" that the plaintiff alleges "*mandated*" such payments; and

3. does not identify plaintiff Smyers as such party then providing such services.

d. All else is denied.

14. Admitted in part denied in part.

a. Admitted that Mid-East knew Smyers had provided geologic services to Devonian and Eastern States.

b. Denied that Smyers is or was a third-party beneficiary of the joint venture agreement, since:

1. the joint venture agreement makes no express reference to any intent of the parties to create third-party beneficiary rights;

2. does not name Smyers as a person to whom the parties to the joint venture agreement intended to confer third-party beneficiary rights;

3. does not identify Smyers as a party to the "prior agreement" that the joint venture agreement refers to; and

4. does not recite that Smyers, or any other geologist, was at the time that the joint venture agreement was entered into providing geologic services the provision of which the joint venture agreement expressly recites as a condition precedent to any entitlement to any such payments.

c. All else is denied.

15. Admitted in part denied in part.

a. Admitted that Devonian and defendant Mid-East entered into a January 16, 2002 Assignment and Bill of Sale, a copy of which is attached as Exhibit 3 to the complaint.

b. Admitted that such assignment and Bill of Sale conveyed from Devonian to defendant Mid-East all the rights that the terms of such Assignment and Bill of Sale (amended complaint Exhibit 3) provide were conveyed by Devonian to Mid-East.

c. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that Smyers' alleged AMI referred to by plaintiff Smyers in ¶ 6 of the complaint is the ***same*** 'AMI' referred to in such assignment and bill of sale (attached as Exhibit #3 of the amended complaint), so such AMI allegation of plaintiff Smyers in ¶ 15 of the amended complaint with respect to the interest allegedly conveyed and transferred from Devonian to Mid-East is denied.

d. All else is denied.

16. Denied.

a. The allegations of amended complaint ¶ 16 are conclusion of law and are therefore denied.

b. If such allegations are not a conclusion of law, then:

1. Admitted that at the time Mid-East entered into the January 16, 2002 Assignment and Bill of Sale, Mid-East

succeeded to and received an assignment of those ***rights*** from Devonian as are described in such Assignment and Bill of Sale as rights then being conveyed from Devonian to Mid-East.

2. Admitted that at the time that Mid-East entered into the Joint Venture Agreement attached as Exhibit 2 to the amended complaint that Mid-East succeeded to and received rights from Devonian as are described in such Joint Venture Agreement.

3. Denied that Mid-East succeeded to and/or received an assignment of all the rights of Devonian. Mid-East believes, and therefore avers, that Devonian did not assign or convey all of its rights to Mid-East, but that Devonian continued in existence doing business after Devonian entered into both:

   i. its Joint Venture Agreement in 2000 with Mid-East, and

   ii. its January 16, 2002 Assignment and Bill of Sale with Mid-East.

4. Denied that Mid-East was at the time that the amended complaint was filed, or is now, the successor to all of those rights that are conveyed by or described in such

Assignment and Bill of Sale. Mid-East no longer exclusively owns or possesses such rights.

5. Denied that Mid-East was at the time that the amended complaint was filed, or is now, the successor to all of those rights that are conveyed by or described in such Joint Venture Agreement. Mid-East no longer exclusively owns or possesses such rights.

6. Denied that defendant Mid-East is obligated to pay a 1/64 payment to plaintiff Smyers on all mineral resources produced within Smyers' alleged AMI, the reasons set forth in this paragraph and ¶ 1-15 above, which are incorporated herein by this reference thereto.

7. All else is denied.

17. Admitted in part denied in part.

a. Admitted that there exists within Smyers' alleged AMI multiple gas and/or oil wells.

b. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that all of the gas and/or oil wells within Smyers' alleged AMI are set forth in amended complaint Exhibit 4, so such allegation is denied.

c. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the

averment that the allegations of Smyers contained in ¶ 17 were based on information that he obtained from the Pennsylvania Department of Environmental Protection, so such allegation is denied.

d. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that the well numbers in the shaded area of amended complaint Exhibit 4 represent wells for which plaintiff received royalties through December 2, 2003, so such allegation is denied. The characterization of payments Plaintiff may have received as royalties, as apposed to compensation, is an impermissible conclusion of law and is therefore denied.

e. All else is denied.

18. Admitted in part denied in part.

a. Admitted that Mid-East did make payments to Smyers.

b. Denied that Mid-East was obligated to make any such payments, that any such payments were in recognition of a royalty interest, and that any such payments were for wells located in Smyers' alleged AMI.

19. Admitted in part denied in part.

a. Admitted that defendant has developed wells within Smyers' alleged AMI.

b. The allegation that Mid-East is obligated to make payments to Smyers for such additional wells developed independently by Mid-East is a conclusion of law and is therefore denied.

c. All else is denied.

20. Denied.

a. Denied that Mid-East has failed and refused to make payments due and owing to Smyers, for the reasons set forth in ¶ 1-19 above, which are incorporated herein by this reference thereto.

b. After reasonable investigation Mid-East is without knowledge or information sufficient to form a belief as to the truth of the averment that information required to specifically calculate the payment amounts due and owing to plaintiff, the dates upon which these payments become due, and the production information on which these payments are based is within the exclusive possession and control of Mid-East, so such allegation is denied. No amount of payment is due or owing from Mid-East to Smyers.

c. All else is denied.

21. Incorporated herein by reference are ¶ 1-20 above.

22. Denied. Plaintiff's allegations are conclusions of law and are therefore denied. Defendant has and has had no obligation to make the payments, or provide the accounting, or to record or otherwise document such matters set forth in subparagraphs (a) through(c). All else is denied.

23. Denied. Plaintiff's allegations are conclusions of law and are therefore denied. Smyers has no privity of contract or privity of the estate with Mid-East. Smyers employment arrangement with Devonian is not a covenant running with the land. Defendant did not assume or incur any such contract obligations, and therefore did not breach any such contractual obligations. Smyers did not incur any damages as a result of Mid-East's actions. All else is denied.

24. Incorporated herein by reference are ¶ 1-23 above.

25. Denied that Smyers conferred any benefits on Mid-East by performing geological services including preparation of a drilling prospects for Smyers' alleged AMI in which Mid-East is allegedly drilling, because:

a. plaintiff never entered into a contract with defendant to render any geologic services to defendant.

b. plaintiff never rendered any geologic services to defendant.

c. plaintiff never offered to render any geologic services to defendant and in fact refused defendant Mid-East's request that plaintiff render geologic services to defendant Mid-East.

d. any services rendered by Smyers with respect to Smyers' alleged AMI, if any were in fact rendered, that would have entitled Smyers to some form of compensation, were not rendered to Mid-East because:

1. he did not commit any such time, effort, expertise and/or knowledge as an investment;

2. he did so as services rendered by an employee to an employer;

3. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

4. he made such efforts and rendered such services as a licensed professional geologist;

5. while he was licensed by the Commonwealth of Pennsylvania; and

6. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

e. All else is denied.

26. Denied.

a. Plaintiff's allegation that Mid-East retained proceeds from wells located in Smyers' alleged AMI without payment to Smyers implies that Mid-East had a duty to make payments to Plaintiff that Mid-East did not make, and therefore is an impermissible conclusion of law and is therefore denied.

b. Mid-East did make certain payments to Smyers in anticipation that Smyers would in the future render services to Mid-East, but Smyers refused to render such services to Mid-East, never did render such services to Mid-East, and failed to refund the payments made back to Mid-East.

27. Denied. Plaintiff's allegation that Mid-East has been unjustly enriched and that Smyers is "entitled to receive the agreed-upon value for his professional services" is an impermissible conclusion of law and is therefore denied. Mid-East was not enriched at all because Smyers refused to perform, and did not perform, any services for Mid-East.

28. Denied. Smyers' allegation that Mid-East has been unjustly enriched at Smyers' expense is an impermissible conclusion of law and is therefore denied. Mid-East has no obligation to make any such payments to Smyers and no obligation to provide Smyers with any accounting. Smyers rendered no services to Mid-East, and refused to render services to Mid-East, therefore no benefit was conveyed to Mid-East, and therefore Mid-East was not enriched.

29. Incorporated herein by reference are ¶ 1-28 above.

30. Denied.

a. Smyers' allegation that he has an equitable interest in royalties which are being retained by Mid-East is an impermissible conclusion of law and is therefore denied. Smyers has no such equitable interest in any such royalties.

b. Denied that Mid-East is retaining all proceeds from drilling operations in Smyers' alleged AMI, because:

1. Mid-East does not own and is not entitle to all proceeds from drilling operations conducted in Centre and Clearfield Counties, Pennsylvania.

2. Mid-East does not own and is not entitled to all proceeds from drilling operations conducted in Smyers' alleged AMI referred to in the amended complaint.

3. Mid-East does not own all the drilling rights in Centre and Clearfield Counties, Pennsylvania.

4. Mid-East distributed any moneys that it received from drilling operations with respect to any part of Smyers' alleged AMI to those who were legally entitled to such moneys.

5. Mid-East currently owns very little, if any, interest in existing wells within the AMI referenced in the joint venture agreement attached to the amended complaint as Exhibit 2.

c. All else is denied.

31. Denied.

a. Smyers' allegation that Mid-East has refused to pay Smyers royalties which Smyers is owed by virtue of the alleged transactions and agreements referenced in the amended complaint is an impermissible conclusion of law and is therefore denied.

b. Mid-East has not refused to pay Smyers any amounts that he is entitled to.

c. All else is denied.

NEW MATTER

AND NOW, comes the defendant, Mid-East, by and through its counsel, the Law Offices of Greco & Lander, P.C., and files this New Matter in further response to the amended complaint filed in the above captioned action, and avers as follows:

32. On or about August 3, 1999 plaintiff Smyers submitted a brief summary of a proposal for him to render services to Van Hampton with details to be worked out at a later date for the purpose of beginning discussions toward establishing a relationship, as such matters are set forth on page five of five of Exhibit 1 of plaintiff Smyers' amended complaint.

33. If Smyers committed any time, effort, expertise and/or knowledge as a professional geologists to develop a drilling prospect in the Pine Glen Prospect:

a. he did not commit any such time, effort, expertise and/or knowledge as an investment;

b. he did so as services rendered by an employee to an employer;

c. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

d. he made such efforts and rendered such services as a licensed professional geologist;

e. while he was licensed by the Commonwealth of Pennsylvania; and

f. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

34. The February 29, 2000 confidentiality agreement between Smyers and Devonian by its express terms was only intended "to expand on and supplemented the terms of a letter dated August 3, 1999 to Van Hampton", which August 3, 1999 letter (page five of Exhibit 1 of the amended complaint) itself was in accordance with its express terms:

a. "*a brief summary*"

b. of a "*proposal*" (not an agreement)

c. "*to begin discussion*",

d. so that "*details to be worked out at a later date*", and

e. not intended to confirm or supplement any prior *agreement* between plaintiff Smyers and Van Hampton, since the August 3, 1999 letter was not an agreement.

35. The addenda section of Exhibit 1 of the amended complaint:

a. The addenda by its express terms provides that the confidentiality agreement between plaintiff Smyers and Devonian "is intended to expand on and supplemented" the August 3, 1999 letter between plaintiff Smyers and Van Hampton.

b. Van Hampton was not a party to the confidentiality agreement containing the addenda in amended complaint Exhibit 1.

c. The confidentiality agreement between plaintiff Smyers and Devonian containing that addenda did not by its terms

incorporate the August 3, 1999 letter agreement between Smyers and Van Hampton into the confidentiality agreement.

d. The confidentiality agreement is dated February 29, 2000.

e. The confidentiality agreement had a term.

f. The term of the confidentiality agreement was one year.

g. The confidentiality agreement ¶ 5 provided that it "shall be binding on receiver and receiver's officers, directors, employees, agents, attorneys, accounts and representatives".

h. The confidentiality agreement did not provide that it would be binding upon the successors or assigns of parties plaintiff Smyers or Devonian.

36. The joint venture agreement does not name or identify plaintiff Larry Smyers as an individual to whom any payments are to be made.

37. Paragraph 2 of the joint venture agreement (Exhibit 2 of the amended complaint):

a. does not provide for the assumption of any liability or obligation by defendant Mid-East, or any joint venture, of any obligation to plaintiff Larry Smyers;

b. merely provides that certain leases "shall be subject to" what the joint venture describes as "a 1/64 ORRI";

c. describes such 1/64 ORRI "as mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area";

d. without the amended complaint:

i. attaching, identifying, or describing such alleged "prior agreement" that Smyers alleges "mandated" the payments Smyers is claiming in his amended complaint; or

ii. alleging that Smyers was at the time of such August 23, 2000 joint venture agreement then "providing geologic services for this prospective area".

38. The joint venture agreement merely acknowledged that "a prior agreement between Devonian Resources Inc. and a third party providing geologic services" made certain leases "subject to a 1/64 ORRI as mandated" by such prior agreement.

39. The complaint does not allege that Smyers agreed to, or was providing geologic services to the joint venture or Mid-East at the time of the August 2000 joint venture agreement, or any time thereafter.

40. If plaintiff Smyers did render any services with respect to the premises covered by the joint venture agreement:

a. he did not commit any such time, effort, expertise and/or knowledge as an investment;

b. he did so as services rendered by an employee to an employer;

c. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

d. he made such efforts and rendered such services as a licensed professional geologist;

e. while he was licensed by the Commonwealth of Pennsylvania; and

f. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

41. The joint venture agreement does ***not*** subject all leases in Mid-East's AMI to any payment payable by Mid-East to plaintiff. The joint venture agreement ORRI provision:

a. is limited in its application only "as mandated by a prior agreement between Devonian Resources Inc. and a third party providing geologic services for this prospective area";

b. does not identify the alleged "prior agreement" that the plaintiff alleges "mandated" such payments; and

c. does not identify plaintiff Smyers as such party then providing such services.

42. The joint venture agreement did not create any third-party beneficiary of the joint venture agreement, since:

a. the joint venture agreement makes no express reference to any intent of the parties to create third-party beneficiary rights;

b. does not name Smyers as a person to whom the parties to the joint venture agreement intended to confer third-party beneficiary rights;

c. does not identify Smyers as a party to the "prior agreement" that the joint venture agreement refers to; and

d. does not recite that Smyers, or any other geologist, was at the time that the joint venture agreement was entered into providing geologic services the provision of which the joint venture agreement expressly recites as a condition precedent to any entitlement to any such payments.

43. Mid-East did not succeeded to and/or receive an assignment of all the rights of Devonian. Mid-East believes, and therefore avers, that Devonian did not assign or convey all of its rights to Mid-East, but that Devonian continued in existence doing business after Devonian entered into both:

a. its Joint Venture Agreement in 2000 with Mid-East, and

b. its January 16, 2002 Assignment and Bill of Sale with Mid-East.

44. The January 16, 2002 Assignment and Bill of Sale between Devonian and Mid-East, specifically provides that, "It is further specially warranted [by Devonian] that the said leases and agreements... contain all covenants and obligations of [Devonian] concerning the oil and gas operations on the leased premises".

45. Smyers never entered into a contract with Mid-East to render any geologic services to Mid-East.

46. Smyers never rendered any geologic services to Mid-East.

47. Smyers refused to render any geologic services to Mid-East.

48. Any services rendered by Smyers with respect to Smyers' alleged AMI, if any were in fact rendered, that would have entitled Smyers to some form of compensation, were not rendered to Mid-East because:

a. he did not commit any such time, effort, expertise and/or knowledge as an investment;

b. he did so as services rendered by an employee to an employer;

c. he has already been compensated for time, efforts, expertise, knowledge and/or services he provided;

d. he made such efforts and rendered such services as a licensed professional geologist;

e. while he was licensed by the Commonwealth of Pennsylvania; and

f. while he owed a statutory duty as a faithful agent or trustee to the one to whom he rendered services.

49. When Mid-East did own or have rights with respect to any part of Smyers' alleged AMI, Mid-East distributed any moneys that it received from such drilling operations to those who were legally entitled to such moneys.

50. Smyers has a bachelor's degree and master's degree in Geology and Geophysics, and he is and was a licensed professional geologist in Pennsylvania and Wyoming at all times relevant hereto.

51. Smyers is a current member in good standing of the American Association of Petroleum Geologist ("AAPG"), and was at all times relevant hereto.

52. It is and has been the practice of Smyers that when a client gives him consent to disclose their sensitive information to ask the client if they want to put their consent in writing.

53. Smyers entered into a confidentiality agreement with Devonian which provided confidentiality protection for Smyers' personal files.

54. Smyers entered into a confidentiality agreement with Devonian to protect his files which contained documents of public record.

55. It is the adopted practice of the geology profession to put geologists' proposals in writing.

56. Smyers' standard habit and practice is to put in writing his proposals to clients, and to keep a copy for at least seven years.

57. Proposals for drilling prospects that Smyers made to clients would normally include geological information of geographical area and an analysis of their productive capacity.

58. Smyers is not permitted to use non-public information of a former client to help a subsequent client, even if the former client has since gone out of business, without Smyers first obtaining the consent of the former client's successor.

59. Smyers claims that his proposals to Devonian or Van Hampton were based on only public information.

60. Smyers keeps detailed files of his work with clients.

61. Smyers keeps personal files of his geology practice that contain only public information and publications.

62. Smyers never provided Mid-East or Devonian with a copy of his September 19, 2001 engagement letter or fee agreement with Donald Sbarra prior to Smyers commencing this suit against Mid-East.

63. Smyers makes no claim of ownership to any payment with respect to a well that he did not locate or perform individualized services while employed with Devonian.

64. Smyers did not intend his February 29, 2000, confidentiality agreement with Devonian to terminate the agreement referred to in the August 3, 1999 letter Smyers sent to Van Hampton.

65. Smyers intended his February 29, 2000, confidentiality agreement with Devonian to supplement and expand the agreement referred to in the August 3, 1999 letter that Smyers sent to Van Hampton.

66. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI provided that Smyers would help operate, expand and develop his alleged AMI.

67. Any agreement Smyers' may have had with Devonian and/or Van Hampton regarding his alleged AMI required that Smyers was to provide a package of future services for a package of compensation for those services.

68. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI provided that Smyers was to provide technical assistance for the development of his alleged AMI.

69. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI, could not have been unilaterally changed or amended by Smyers.

70. Any agreement that Smyers had with Devonian and/or Van Hampton regarding Smyers' alleged AMI was never changed or amended.

71. Smyers owed Devonian a duty as a faithful agent or trustee because he was employed as a licensed professional geologist during the time period of January 2000 through December 2003.

72. Smyers quit working for Devonian in December 2003, when other opportunities became available for him.

73. Any agreement that Smyers had regarding Smyers' alleged AMI provided that Smyers would provide advice and step-by-step assistance for drilling and fracturing wells.

74. Smyers has no written agreements with Van Hampton and/or Devonian except for the reference in the August 3, 1999 letter, and the February 29, 2000, confidentiality agreement.

75. Smyers never released Devonian or Van Hampton from the obligation to make payments to Smyers.

76. Smyers sued Mid-East to collect payments for oil and gas produced from geographic areas that are included within the scope of Smyers' agreement with Devonian and/or Van Hampton, but which geographic areas are not necessarily included in the January 16, 2002 assignment from Devonian to Mid-East.

77. Prior to his involvement with Van Hampton and Devonian, Smyers worked as a geologist for Eastern States.

78. Almost all oil and gas properties that Smyers worked on for Eastern States, as an employee of Eastern States, were within Smyers' alleged AMI.

79. As an employee of Eastern States working within Smyers' alleged AMI, Smyers worked with exploration, geology, and picking well sites.

80. Eastern Sates drilled wells within Smyers' alleged AMI when Smyers worked as an employee of Eastern States.

81. During his employment by Eastern States, Smyers had personal access to Eastern States exploration, development, and production information pertaining to geographic areas included within Smyers' alleged AMI.

82. Smyers' alleged AMI is an area that had been leased and developed for oil and gas by Devonian and others prior to the August 3, 1999 Smyers proposal letter to Van Hampton, a copy of which is attached to the amended complaint as Exhibit 1, page 5.

83. Oil and gas wells were drilled within Smyers' alleged AMI prior to the August 3, 1999 Smyers proposal letter to Van Hampton, a copy of which is attached to the amended complaint as a Exhibit 1, page 5.

84. Devonian acquired oil and gas rights located within Smyers' alleged AMI, prior to any proposal of a prospect from Smyers to Van Hampton or Devonian, including prior to the August 3, 1999 letter attached to the amended complaint as exhibit 1, page 5.

85. Smyers did not propose or sell any maps or geologic prospect area information to Van Hampton or Devonian.

86. Smyers was hired by Van Hampton and/or Devonian to perform professional services to develop certain prospects, because of his past experience in the geographic area.

87. After his employment with Eastern States ended, Smyers never disclosed to Eastern States, or any of its successors or assigns, anything about his subsequent activities in Smyers' alleged AMI.

88. After Smyers worked as an employee of Eastern States, Smyers never disclosed to Eastern States or any of its successors that he was claiming, or attempting to claim, any payments for production from his AMI.

89. Mid-East acquired oil and gas rights located within Smyers' alleged AMI, prior to the Joint Venture Agreement.

90. Devonian and Mid-East entered into their Joint Venture Agreement without Smyers knowledge or participation.

91. Smyers cannot explain why the Joint Venture Agreement that Devonian Resources Inc. and Mid-East entered into did not mention Smyers' name.

92. Smyers cannot identify what "prior agreement" the Joint Venture Agreement between Devonian and Mid-East indicates mandated the 1/64th payment that Smyers is claiming.

93. Smyers had no communications or dealings with Mid-East prior to Devonian and Mid-East entering into the August 23, 2000 Joint Venture Agreement.

94. Smyers did not see the Joint Venture Agreement between Devonian and Mid-East or the assignment from Devonian to Mid-East until sometime after the January 16, 2002 assignment from Devonian to Mid-East.

95. Smyers believes that he first met an individual named Donald Sbarra in 2001.

96. Donald Sbarra told Smyers that Donald Sbarra wanted to know if Smyers could assist Donald Sbarra in analyzing Donald Sbarra's investments in Mid-East's AMI.

97. The advice that Smyers gave Donald Sbarra was for the purpose of furthering the financial interest of both Smyers himself and Donald Sbarra.

98. Any consent that Devonian and Mid-East may have given Smyers with regard to his advising Donald Sbarra was limited to Smyers doing whatever it would take to keep Donald Sbarra investing with Mid-East in Mid-East's AMI.

99. Smyers believed that Donald Sbarra was a wealthy man with a lot of money to be invested.

100. Smyers solicited and/or encouraged Donald Sbarra to go into business with Smyers.

101. Donald Sbarra informed Smyers that Donald Sbarra wanted Smyers to go into business with Donald Sbarra.

102. Smyers and Donald Sbarra discussed doing drilling programs together, separate from Mid-East and either AMI.

103. Smyers proposed to Donald Sbarra that Donald Sbarra enter into transactions with Smyers that would give Donald Sbarra more control than Donald Sbarra had in his transactions with Mid-East.

104. Smyers furthered his proposed plan to have Donald Sbarra invest in prospects other than in Mid-East's AMI, by Smyers teaming up with another person to further the plan.

105. Smyers entered into an agreement with a third party to further Smyers' plan to entice Donald Sbarra to invest in drilling prospects outside Mid-East's AMI with someone other than Mid-East.

106. Devonian did not learn that Smyers was working for Donald Sbarra until after Smyers started working for Donald Sbarra.

107. At the time that Smyers was working for Donald Sbarra, Smyers was also still an employee of Devonian.

108. When Devonian learned that Smyers was working for Donald Sbarra, Devonian was "upset".

109. Smyers had no authority to do anything for Donald Sbarra that would be harmful to the interests of Devonian or Mid-East.

110. When Smyers was working for Donald Sbarra, Smyers was aware that his encouraging Donald Sbarra to invest with someone other than Mid-East or Devonian would be harmful to Mid-East and Devonian.

111. Donald Sbarra used Smyers for purposes other than in connection with Mid-East's AMI.

112. During the course of Smyers' work with Donald Sbarra, Smyers never told Mid-East or Devonian that Donald Sbarra wanted to do things against the best interest of Mid-East and/or Devonian.

113. The last contact Smyers had with Donald Sbarra occurred sometime during the period between March and May 2002.

114. Smyers required Devonian to enter into a confidentiality agreement to treat geologic information about Smyers' alleged AMI as confidential, but Smyers

did not get Donald Sbarra to sign a confidentiality agreement to cover the geologic information that Smyers was giving Donald Sbarra about Mid-East's AMI prospects.

115. Smyers knew or should have known that Donald Sbarra was not bound by any confidentiality agreement as to the geologic information that Smyers provided to Donald Sbarra about prospects in Mid-East's AMI.

116. Donald Sbarra used Smyers to advise Donald Sbarra on where further wells should be drilled in Mid-East's AMI.

117. Donald Sbarra's use of Smyers was not limited to advising Donald Sbarra as to whether or not wells that had already been drilled in Mid-East's AMI should be completed.

118. Smyers was still an employee of Devonian when Smyers was providing Donald Sbarra with technical information, projections, charts, and graphs.

119. Smyers provided valuable information to Donald Sbarra about Mid-East's AMI that Smyers did not provide to Mid-East or to Devonian.

120. Smyers gave Donald Sbarra cost information when Smyers knew that Donald Sbarra was considering engaging in a business transaction separate and apart from Mid-East.

121. Smyers helped Donald Sbarra get information about the attractiveness of drilling wells in areas other than in Mid-East's AMI.

122. Smyers gave Donald Sbarra cost data and reserve information about drilling prospects in an area where Smyers personally had prospects, which prospects were not in either AMI.

123. The cost information that Smyers gave to Donald Sbarra came from Mid-East.

124. Smyers met with John McNally at the request of Donald Sbarra.

125. Smyers met with John McNally on behalf of Donald Sbarra to evaluate drilling prospects that McNally had for drilling outside either AMI.

126. After Smyers met with John McNally to evaluate drilling prospects outside either AMI, Smyers told Donald Sbarra that McNally's prospects were promising.

127. Smyers believes that the reason for Donald Sbarra having Smyers meet with John McNally was that Donald Sbarra was looking for a place to put his money and McNally was looking to get some drilling money.

128. Smyers was motivated to find an opportunity for Donald Sbarra to invest his drilling money with John McNally, because Smyers expected to get a contingent fee if Donald Sbarra made such an investment with McNally.

129. As a result of Smyers' efforts to have Donald Sbarra invest in prospects other than Mid-East's AMI, Donald Sbarra instituted a partition action against Mid-East in order to recover his investments in Mid-East's AMI.

130. Mid-East suffered damages from Smyers diverting Donald Sbarra as an investor in the form of Mid-East management time, legal fees, and other expenses incurred as a result of the above referenced partition action in excess of $25,000.

131. Smyers never had any contract with Mid-East in which Mid-East assumed any obligations to make any payments to Smyers.

132. Smyers never did any work for Mid-East.

133. Smyers could have provided services to Mid-East that would have improved production from wells drilled in Mid-East's AMI, but Smyers did not.

134. Smyers never intended to, nor did he ever in fact, perform any services for Mid-East.

Affirmative Defense #1: Statute of Frauds

135. Defendant incorporates by reference the averments set forth in paragraphs 32 - 134 hereinabove set forth the same as if set forth herein in their entirety.

136. There are no documents evidencing the rights Smyers' is claiming in any part of either AMI, other than those documents attached as exhibits to the amended complaint.

137. The documents attached to the amended complaint as exhibits do not individually or collectively:

a. evidence a ***present*** grant or conveyance of an interest in land to Smyers;

b. describe any specific piece or parcel of land, or any specific lease, sufficiently to enable a competent surveyor to locate the property or properties conveyed; or

c. bear the signature(s) of the parties making any present grant or conveyance.

138. No contracts or agreements were entered into between Smyers and Mid-East.

139. Smyers never received a present assignment of any overriding royalty interest in any oil and/or gas rights in either AMI from either Van Hampton or Devonian.

140. Smyers never received a present assignment of any overriding royalty interest in any oil and/or gas rights in either AMI from Mid-East.

141. Smyers' claim is barred by the Statute of Frauds.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff's complaint.

Affirmative Defense #2: Failure of Consideration

142. Defendant incorporates by reference the averments set forth in paragraphs 32 - 141 hereinabove set forth the same as if set forth herein in their entirety.

143. Smyers' claim is barred by the doctrine of Failure of Consideration, because Smyers failed to, and refused to, perform services for Mid-East.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff's complaint.

Counterclaim #1: Breach of Contract

144. Defendant incorporates by reference the averments set forth in paragraphs 32 - 143 hereinabove set forth the same as if set forth herein in their entirety.

145. Smyers breached the contract alleged by Smyers as the basis of his claims against Mid-East by Smyers failing and refusing to perform for Mid-East the services described in Exhibit 1 of the amended complaint.

146. Mid-East made payments to Smyers in anticipation that Smyers would perform licensed professional geological services for Mid-East of the type described in amended complaint Exhibit 1, but Smyers failed to either (i) perform such services to Mid-East, or (ii) to refund such payments back to Mid-East.

147. Mid-East was damaged by Smyers' breach of contract in an amount in excess of $25,000 for (i) Smyers' failure and refusal to perform services for Mid-East, and (ii) Smyers' failure to refund payments previously made by Mid-East to Smyers.

WHEREFORE, Defendant respectfully requests that this Court enter judgment against plaintiff in an amount in excess of $25,000.

Counterclaim #2: Breach of Fiduciary Duty

148. Defendant incorporates by reference the averments set forth in paragraphs 32 - 147 hereinabove set forth the same as if set forth herein in their entirety.

149. Smyers breached his fiduciary duty to Devonian and/or Mid-East (directly and as successor to Devonian) by attempting to, and succeeding in, convincing Donald Sbarra to discontinue investing in Mid-East and to invest elsewhere.

150. Smyers breached his fiduciary duty to Devonian and/or Mid-East (directly and/or as successor to Devonian) by selling Mid-East and/or Devonian information to Donald Sbarra.

151. Mid-East was damaged by Smyers' breach of his fiduciary duty in an amount in excess of $25,000.

2. WHEREFORE, Defendant respectfully requests that this Court enter judgment against plaintiff in an amount in excess of $25,000.

FOR DEFENDANT MID-EAST OIL COMPANY:

Dated: 4-7, 2004

DOM W. GRECO, ESQ.
Pa. Id.# 16829

NATHANIEL C. PARKER, ESQ.
Pa. Id.# 90993

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

VERIFICATION

I, MARK THOMPSON, verify that the statements made herein are true and correct to the best of my knowledge, information, and belief and are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: Apr. 15, , 2004

Mark A Thompson
MARK THOMPSON

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Rule 1007.1(a) Demand For Jury***
Defendant	:	***Trial***
	:	
vs.	:	
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
Additional Defendants	:	Supreme Court Id. No. 16829
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6843
	:	Fax: (240) 465-7135
	:	Pa. I.D. #16829
	:	
	:	
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FILED

APR 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

#38

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	
	:	
vs.	:	
	:	
Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.,	:	
	:	
Additional Defendants	:	

RULE 1007.1(a) DEMAND FOR JURY TRIAL

Demand is hereby made by the undersigned, Defendant Mid-East Oil Company, for a jury trial in the above-captioned action, pursuant to Pennsylvania Rule of Civil Procedure 1007.1(a) by this "separate writing".

FOR DEFENDANT:
MID-EAST OIL COMPANY:

DATED: MARCH 31, 2004

NATHANIEL C. PARKER, ESQ.
Greco & Lander, P.C.
1390 East Main Street, Suite 2
P. O. Box 667
Clarion, PA 16214
(814) 226-6853
(814) 226-4951
Pa. I.D. #90993

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Praecipe for Writ of Summons***
Defendant	:	***To Join Devonian Resources, Inc.***
	:	***and Van Hampton Gas & Oil***
vs.	:	***Co., Inc. as Additional Defendants***
	:	
Devonian Resources, Inc., and Van Hampton Gas & Oil Co., Inc.,	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
Additional Defendants	:	Supreme Court Id. No. 16829
	:	
	:	Nathaniel C. Parker, Esq.
	:	Supreme Court Id. No. 90993
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6843
	:	Fax: (240) 465-7135
	:	Pa. I.D. #16829
	:	
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FILED
APR 05 2004
William A. Shaw
Prothonotary Clerk of Courts

#37

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

PRAECIPE FOR WRIT OF SUMMONS TO JOIN DEVONIAN RESOURCES, INC. AND VAN HAMPTON GAS & OIL CO., INC. AS ADDITIONAL DEFENDANTS

TO THE PROTHONOTARY:

Kindly issue a writ of summons in the above-captioned action to join **Devonian Resources, Inc.** and **Van Hampton Gas & Oil Co., Inc.** as additional defendants.

(SEAL)

NATHANIEL C. PARKER, ESQ.
Attorney for Defendant Mid-East Oil
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214-0667
(814) 226-6853
Fax (814) 226-4951
Pa. I.D. #90993

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Larry F. Smyers

Plaintiff(s)

Vs.

Mid East Oil Company 2003-01598-CD

Defendant(s)

Vs.

Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.

Additional Defendant(s)

To: Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc.

You are notified that Mid-East Oil Company has joined you as an additional defendant in this action, which you are required to defend.

Dated: April 5, 2004

_____

Prothonotary

Filing Attorney: Nathaniel C. Parker, Esq.
PO Box 667
Clarion, PA 16214-0667
(814) 226-6853

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

CERTIFICATE
OF SERVICE

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

MAR 24 2004
m/10:30 (cm)
William A. Shaw
Prothonotary Clerk of Courts
No cc

#30

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 23rd day of March, 2004, a true and correct copy of Order of Court dated March 19, 2004 was mailed by United States First Class Mail to the following:

Dom W. Greco, Esq.
Nathaniel C. Parker, Esq.
Attorneys for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

LARRY F. SMYERS	:	
	:	
vs.	:	No. 03-1598-CD
	:	
MID-EAST OIL COMPANY	:	

ORDER

AND NOW, this 19th day of March, 2004, it is the ORDER of the Court that argument on Plaintiff's Motion for Protective Order in the above matter has been rescheduled from April 1, 2004 to **Monday, April 19, 2004 at 9:00 A.M**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED

MAR 19 2004

William A. Shaw
Prothonotary

#35

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LARRY F. SMYERS Plaintiff,	:	
	:	03-1598-CD
vs.	:	No. 03-~~1589~~-CD
MID-EAST OIL COMPANY Defendant.	:	

MAR 18 2004

William A. Shaw
Prothonotary

ORDER

AND NOW this 18 day of March, 2004 following oral argument on Defendant's Preliminary Objections, it is the ORDER of this Court as follow:

1. Defendant's first Preliminary Objection to all counts of Plaintiff's Amended Complaint is DENIED.
2. Defendant's second Preliminary Objection to all counts of Plaintiff's Amended Complaint is DENIED.
3. Defendant's Preliminary Objection for failure to Join an Indispensable Party is DENIED.
4. Defendant's Preliminary Objection to Plaintiff's Amended Complaint for Failure to Attach Writing is DENIED. The Court notes that Defendant withdrew said Preliminary Objection.
5. Defendant's Preliminary Objection to Plaintiff's Amended Complaint for Insufficient Specificity is DENIED.

#3,4

6. Defendant's Preliminary Objection to Plaintiff's Amended Complaint for Failure to Plead Satisfaction of Conditions is DENIED. The Court notes that Defendant withdrew said Preliminary Objection.

7. Defendant's Preliminary Objection to Plaintiff's Amended Complaint for Misjoinder of Defendant is DENIED. The Court notes that Defendant withdrew said Preliminary Objection.

By the Court:

President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

ORDER

AND NOW, this 11 day of March, 2004, upon Motion of Plaintiff for Protective from oppressive and annoying discovery in the form of Request for Admission,

IT IS HEREBY ORDERED that Plaintiff is excused from responding to the Request for Admissions submitted by the Defendant. It is further ordered that a hearing shall be heard on the 1st day of April, 2004 at 1:30 P m. at which time individual Request for Admissions propounded by Defendant to Plaintiff may be considered for exception to this Protective Order.

BY THE COURT,

Fredric Ammerman
J.

FILED

MAR 12 2004

William A. Shaw
Prothonotary/Clerk of Courts

#57

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Dom W. Greco, Esq., hereby certify that a true and correct copy of the foregoing "**Outline of Defendant's Argument in Support of Preliminary Objections to Complaint**" was hand delivered, on March 11, 2004, to other counsel of record addressed as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
DuBois, PA 15801

Dated: March 11, 2004

_____(SEAL)

DOM W. GRECO, ESQ.
Attorney for Defendant
Law Offices of Greco & Lander, P.C.
P. O. Box 667
Clarion, Pennsylvania 16214
(814) 226-6853
Fax: (240) 465-7135

FILED

MAR 1 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

#32

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Nathaniel C. Parker, Esq., hereby certify that a true and correct copy of the foregoing "*Outline for Argument of Remaining Defendant's Rule 4014 (c) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions*" was hand delivered, on March 11, 2004, to other counsel of record as follows:

Matthew B. Taladay, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

GRECO & LANDER, P.C.:

By_____
NATHANIEL C. PARKER, ESQ.

FILED

MAR 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

{GL029856.1}

#31

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Outline for Argument of Remaining***
	:	***Defendant's Rule 4014(c) Motion***
Defendant	:	***To Determine Sufficiency of***
	:	***Plaintiff's Answers to Defendant's***
	:	***Nov 19, 2003 Requests For Admissions***
	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
	:	Pa. Id. #16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
	:	Pa. Id. #90993
	:	Fax: (814) 226-4951
	:	
	:	Greco & Lander, P.C.
	:	P.O. Box 667
	:	Clarion, PA 16214
	:	(814) 226-6853
	:	
	:	
	:	

FILED

MAR 1 1 2004

William A. Shaw
Prothonotary/Clerk of Courts

#30

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

Outline for Argument of Remaining Defendant's Rule 4014 (C) Motion to Determine Sufficiency of Plaintiff's Answers to Defendant's November 19, 2003 Requests For Admissions

1. **Purpose of outline**.

    a. **Identify applicable legal authority**. Identify specific portions of Rule 4014 applicable to the ***remaining*** discovery issues in dispute -- **Rule 4014(b) and (c).**

    b. **Narrow discovery issues in dispute**. To limit defendant's motion to determine the sufficiency of plaintiff's responses to ***only*** plaintiff's response to **defendant's requests 15b.ii-iii and 16b**.

2. **History of pertinent discovery**.

    a. **The Request**. Defendant's November 19, 2003 requests for admissions.

    b. **The Response**. Plaintiff's December 30, 2003 response to request for admissions.

    c. **The Motion**. Defendant's motion to determine sufficiency of plaintiff's responses.

    d. **The Reply To the Motion**. Plaintiff's counsel's February 17, 2004 unfiled letter response to defendant's motion to determine sufficiency.

3. **Argument summary.**

    a. The purpose of a request for admissions is to ***narrow the issues*** for trial.

    b. The response to a request:

        i. **must** be limited to an admission, denial, or objection.

        ii. if a denial,"*fairly meet the substance of the requested admission*".

        iii. "*specify so much of it as is true and qualify or deny the remainder.*"

        iv. is ***not*** an appropriate opportunity for legal argument.

Rule 4014(b) Grounds for Rule 4014(c) Motion to Determine Sufficiency of Answers

Rule 4014(b)

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it. **Pa.R.C.P. No. 4014(b)**

specific Rule 4014(b) grounds holding plaintiff's responses as admissions

1. **Failure of the denial to "fairly meet" the request**. "*A denial shall **fairly meet** the substance of the requested admission...*"

2. **Failure to deny remainder of request**. "*... when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or **deny the remainder**.*"

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

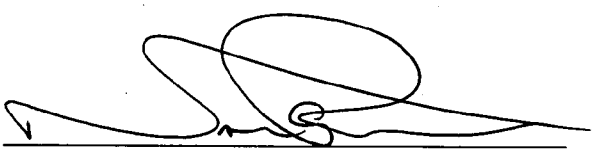
Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-2]*
15b.ii	The "*Oil & Gas Property*" that Devonian Resources Inc. transferred to defendant by the January 16, 2002 Assignment and Bill of sale included "*all royalty and/or overriding royalty interests of Devonian within the AMI*", which abbreviation represents the area referred to in the complaint as the Area of Mutual Interest.	***Denied*** "The plaintiff does not deny inclusion of the language in the bill of sale as set forth in the Request for Admission, and further does not deny that the term "AMI" refers to the area of mutual interest. However, plaintiff does deny that this agreement in any way extinguishes plaintiff's right to receive overriding royalty interest as set forth in the complaint."	**Failure of the denial to "fairly meet" the request (#1).** Therefore, plaintiff's denial is a "***deemed admission***" of the following, since while plaintiff denied the defendant's requests, plaintiff's explanation of the denials expressly admits [*highlighted to the left*] the ***factual*** accuracy of the defendant's request and only argues the legal significance of such plaintiff's admissions of the facts. **Deemed Admission Summary:** **The January 16, 2002 Assignment and bill of sale between Devonian Resources Inc. conveyed the" *Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".**
15b.iii	The January 16, 2002 Assignment and Bill of sale between Devonian Resources Inc. conveyed the" *Oil & Gas Property*" to defendant "*free and clear of all liens and encumbrances*".	***Denied.*** "The plaintiff admits that the January 16, 2002 assignment and bill of sale contains the language "free and clear of all liens and encumbrances". However, plaintiff denies that the inclusion of this terminology in any way extinguishes his right to obtain oil and gas royalties for all resource production within the [area of mutual interest] as set forth in plaintiff's complaint."	

Plaintiff's "Deemed Admissions"

For Failure of Answers to Comply with Requirements of Rule 4014(B)

Req #	*Requested admission that plaintiff denied*	*Plaintiff's answer to defendant's requested admission*	*Reason why denial is deemed admission under rule 4014(b) [see exhibit A grounds for rule 4014(c) motion #1-2]*
16b	Plaintiff did not provide defendant with all of the "*services to develop drilling prospects, and provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development*" with respect to the area of Mutual Interest referred to in the complaint.	***Denied.*** "Plaintiff did provide all services necessary to the development of drilling prospects and technical assistance in preparation of drilling program for the establishment of the [area of mutual interest] and the initial drilling program for Devonian, which entitles plaintiff to ongoing overriding royalty interest payments for all resource development and production within the area of mutual interest."	• **Failure of the denial to "fairly meet" the request (#1).** • **Failure to deny remainder of request. (#2).** **Deemed Admission Summary:** **Therefore, plaintiff's denial is a "*deemed admission*" that plaintiff did *not* provide certain services to Mid-East,** since plaintiff's denial ignored and failed to "*fairly meet*" the portion of the defendant's request [*highlighted to the left*] as follows: Plaintiff ***failed*** to deny that plaintiff did not provide ***any*** services to defendant, Mid-East. Plaintiff ***failed*** to deny that plaintiff did not provide the services described in defendant's request. Plaintiff, instead, denied that plaintiff failed to provide services that the plaintiff considered "***necessary***" to defendant's predecessor in interest. Plaintiff ***failed*** to deny that plaintiff did not provide defendant "***...services to... provide technical assistance in the preparation of drilling program prospectuses as well as the various stages of project development...***"

Respectfully Submitted:



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IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Outline of Defendant's Argument in***
Defendant	:	***Support of Preliminary Objections to***
	:	***Complaint***
	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
	:	Pa. Id. #16829
	:	Fax: (240) 465-7135
	:	
	:	Nathaniel C. Parker, Esq.
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MAR 1 1 2004

William A. Shaw
Prothonotary Clerk of Courts

#24

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 03-1598-CD
	:	
Mid-East Oil Company,	:	
	:	
Defendant	:	

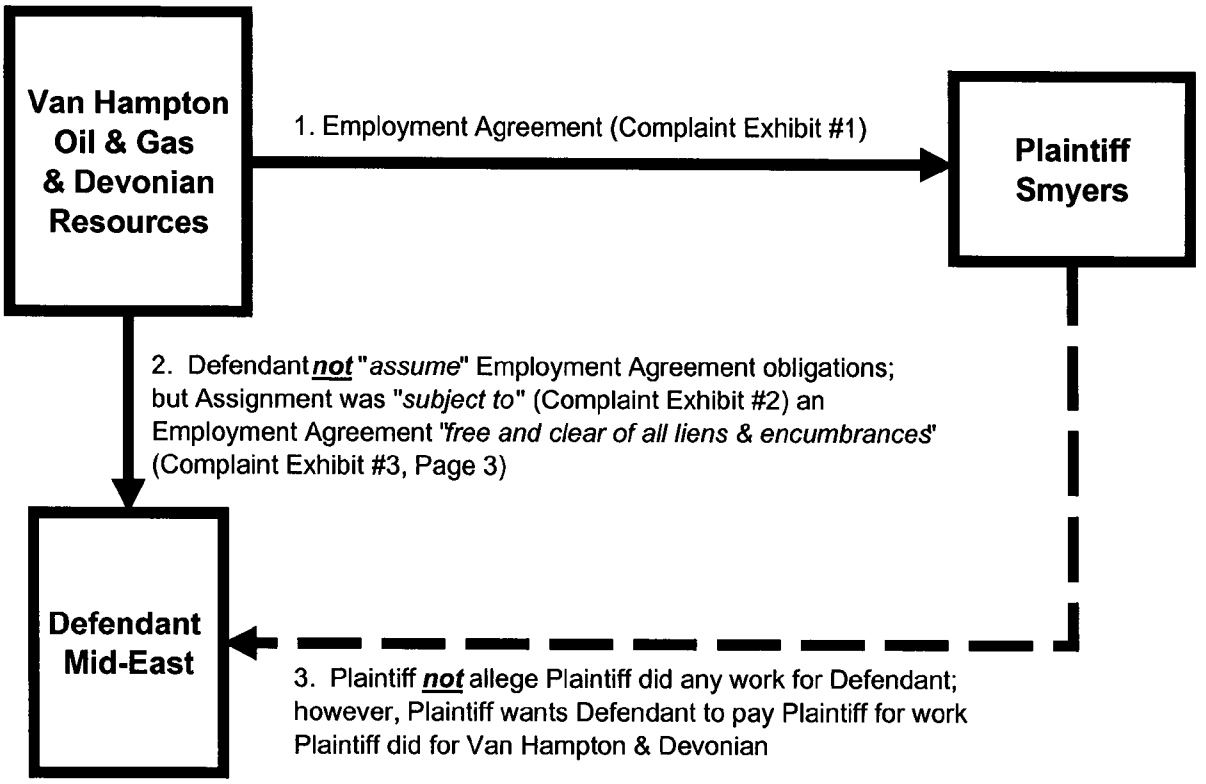
OUTLINE OF DEFENDANT'S ARGUMENT IN SUPPORT OF PRELIMINARY OBJECTIONS TO COMPLAINT

Defendant, Mid-East Oil Company, by its undersigned counsel, Dom W. Greco, Esq., of Greco & Lander, P.C., hereby presents the following Outline of Defendant's Argument in Support of Preliminary Objections to Complaint, which argument was presented to the Court on March 11, 2004:

Summary of Defendant Mideast's Arguments in Support of Preliminary Objections to Amended Complaint				
PO#	***Rule/Type***	***Defendant Mideast argument summary***	***Summary of plaintiff response***	***Conclusion***
1	1028(a)(4); Demurrer all counts	**Plaintiff failed to allege he satisfied required condition:** • plaintiff duty to "propose" well prospects (complaint in ¶ 3) • plaintiff agreed to present prospects (complaint ¶ 8) • ***however***, complaint failed to allege plaintiff satisfied condition by making required "proposals" • allegations of ***other*** work performed by plaintiff insufficient to satisfy condition	Plaintiff's alleged that he invested time, effort, expertise, and knowledge "*to develop*" (***not*** "propose") prospects	**Plaintiff failed to allege satisfaction of the required condition.** Demurrer must be sustained for failure of plaintiff to plead satisfaction of required condition -- that plaintiff ***proposed*** required well prospects

DIAGRAM OF DEFENDANT'S PRELIMINARY OBJECTION #2 DEMURRER TO ALL COUNTS

Question: Did Defendant Mid-East assume the employment agreement obligations of Van Hampton Oil & Gas and Devonian Resources to Plaintiff Smyers?



Conclusion: No. If anyone owes Plaintiff Smyers any money it is ***not*** Defendant Mid-East, but ***is*** Van Hampton and Devonian, who apparently entered into an earlier employment agreement with Plaintiff Smyers.

Request: Defendant requests an opportunity to brief the legal issues raised by the "question".

Summary of Defendant Mideast's Arguments in Support of Preliminary Objections to Amended Complaint				
PO#	***Rule/Type***	***Defendant Mideast argument summary***	***Summary of plaintiff response***	***Conclusion***
3	1028(a)(2) & 2227; Failure join indispensable parties	**The court does *not* have jurisdiction because:** • of the failure of plaintiff to join indispensable parties Devonian and Van Hampton • whose rights & obligations would be impaired by the outcome of this litigation, as the parties to the original employment agreements with plaintiff which are being litigated, pursuant to: o complaint exhibit #1 (Devonian); o complaint exhibit #1, pg 5 (Van Hampton) • justice cannot be done without Devonian and Van Hampton as parties.	• Plaintiff had an *employment contract* with third-parties Devonian and Van Hampton. • defendant received an *assignment* of such rights under that employment contract. • its defendant's obligation to join Devonian and Van Hampton, not plaintiff's obligation.	**It is the obligation of the plaintiff, not the defendant, to cure the jurisdictional defect caused by the plaintiffs failure to join indispensable parties.**
4	1028(a)(2) and 1019(i); Failure attach writing	Objection withdrawn by defendant	Objection withdrawn by defendant	Objection withdrawn by defendant

Summary of Defendant Mideast's Arguments in Support of Preliminary Objections to Amended Complaint				
PO#	***Rule/Type***	***Defendant Mideast argument summary***	***Summary of plaintiff response***	***Conclusion***
5	1028(a)(3); Insufficient specificity	**The complaint contains insufficient specificity** for defendant to plead in response, ***including*** with respect to whether the percentage payments that plaintiff is seeking from defendant is: • **100% or Just Defendant's Share**. For only the production that defendant itself receives from the properties ***or*** from the total proceeds received by both defendant and Devonian combined? • **During Ownership or Forever**. For production only during the term of defendant's ownership of its interest ***or*** forever? • **Drilled or Operated**. For production from wells defendant drills ***or*** for wells defendant operates? • **Which Wells**. For production from all wells on the property ***or*** only those wells drilled after the 2000 joint venture agreement?	Plaintiff contends that these pleading insufficiencies are "*factual minutia*" and that defendant does not need to know these things in order to be able to plead in response to the plaintiff's allegations in the complaint.	**The objection should be sustained and Plaintiff should be ordered to file an amended complaint** prayed with sufficient specificity so that defendant will be on fair notice of the nature and extent of the liability that plaintiff's complaint seeks to impose upon defendant, so that defendant may be able to plead admissions or denials in response.

Summary of Defendant Mideast's Arguments in Support of Preliminary Objections to Amended Complaint				
PO#	***Rule/Type***	***Defendant Mideast argument summary***	***Summary of plaintiff response***	***Conclusion***
6	1028(A)(2) and 1019(c); Failure plead satisfaction of conditions	Objection withdrawn by defendant.	Objection withdrawn by defendant.	Objection withdrawn by defendant.
7	1028(a)(2) and 2128(a); Misjoinder of defendant	Objection withdrawn by defendant.	Objection withdrawn by defendant.	Objection withdrawn by defendant.

FOR DEFENDANT MIDEAST OIL COMPANY:

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Pa. Id.# 16829

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LARRY F. SMYERS,
Plaintiff

vs.

MID EAST OIL COMPANY,
Defendant

CIVIL ACTION - AT LAW

No. 03-1598-CD

Type of Pleading:

MOTION FOR
PROTECTIVE ORDER

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Matthew B. Taladay
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

814-371-7768

JURY TRIAL DEMANDED

FILED

MAR 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

#28

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

MOTION PROTECTIVE ORDER FROM OPPRESSIVE DISCOVERY

AND NOW, comes the Plaintiff, Larry F. Smyers, by his attorneys, Hanak, Guido and Taladay, and hereby moves your Honorable Court for a Protection Order under Rule 4012 of the Pennsylvania Rules of Civil Procedure based on the following:

1. On March 5, 2004, your undersigned counsel for Plaintiff received by first class mail a discovery request entitled "Defendant's March 2004 Request for Admissions & Interrogatories".

2. The discovery document is 85 pages in length and sets forth 127 separate requests for admission.

3. The Interrogatories attached to Request for Admissions contain attached Interrogatories with multiple subparts, as well as requests for description of witness's documents and information.

4. Defendant has previously submitted Request for Admissions which included 16 separate requests and multiple Interrogatory subparts. Plaintiff has in good faith responded to these

discovery requests. In addition, Plaintiff has submitted to a discovery deposition approximately eight hours in length.

5. Response to the attached Request for Admissions would require an inward expenditure of attorney time and Plaintiff's resources.

6. The vast majority of the questions set forth in these requests refer to deposition testimony given by Plaintiff under oath and therefore these requests are redundant and unduly burdensome and vexatious.

7. The attached Request for Admissions are calculated merely to harass, annoy and cause undue burden and expense to the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that your Honorable Court enter an Order to protect the Plaintiff from Defendant's unduly burdensome discovery requests, or in the alternative, to conduct a hearing to determine which individual requests may be reasonably submitted to the Plaintiff. In addition, Plaintiff requests a stay of the thirty day response period for reply to the Request for Admissions pursuant to Pa.R.C.P. 4013.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By _____
Matthew B. Taladay
Attorney for Plaintiff

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant's March 2004 Request For***
Defendant	:	***Admissions & Interrogatories***
	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
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	:	Nathaniel C. Parker, Esq.
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	:	Clarion, PA 16214
	:	(814) 226-6853

IN THE COURT OF COMON PLEAS
OF CLEARIELD COUNTY, PENNSYLVANIA

Larry F. Smyers,	:	No. 03-1598-CD
	:	
Plaintiff	:	Type of Case
	:	Civil Action – Law
vs.	:	
	:	Type of Pleading:
Mid-East Oil Company,	:	
	:	***Defendant's March 2004 Request For***
Defendant	:	***Admissions & Interrogatories***
	:	
	:	Counsel of Record for This Party:
	:	
	:	Dom W. Greco, Esq.
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(2) ***Identification***. State its title, number, code or other identifying data;

(3) ***Pages***. State the number of pages, if the document contains more than one page;

(4) ***Attachments & Supplements***. Identify any attachments or supplemental items incorporated with the document;

(5) ***Date Of Preparation***. State the date on which the document was prepared but if not known the approximate date;

(6) ***Date On Documents***. State the date appearing on the document;

(7) ***Transaction & Substance***. State the transaction, act or occurrence to which each such document relates and the substance of the document;

(8) ***General Description***. State the general description of the document;

(9) ***Disposition Of Document***. If such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it; and

(10) ***Custodian***. Identify the present custodian of such writing or document.

(c) ***Oral Communication***. When identifying an oral communication:

(1) ***Persons***. Identify the person who made the communication and the person to whom the communication was directed;

(2) ***Date***. Give the date, time and place of the communication;

(3) ***Content***. Give the content of the communication in as verbatim a form as possible;

(4) ***Context***. Give the conversational context in which such statement or utterance was made;

(5) ***Other Persons***. Identify any other persons present when the communication was made;

(6) ***Reduction To Writing***. State whether such statement or utterance was later reduced to writing, in whole or in part, and, if so, identify such writing; and

(7) ***Related Documents***. Identify each document relating or referring to such oral statement or utterance.

2. ***"Document" or "Documents"*** means the originals, or any copies when originals are not available, unless otherwise stated, and any non-identical copies, whether different from originals because of notes made on such copies or otherwise, and writings of every kind and description, whether inscribed by hand or by mechanical, electronic, photographic, or other means, as well as phonic, such as tape recordings, or visual representations or oral statements, conversations or events and including, but not limited to, correspondence, letters, agreements, reports, records, price lists, quotations, memoranda, financial statements, telephone call slips, information stored in computers, teletype messages, internal memoranda, notes, reports, contracts, records of meetings, conferences or telephone or other conversations or communications, photographs, computer

printouts, computer stored data, plans, maps, drawings, diaries, calendars, books, minutes of meetings, known to you or any of your employees, agents, consultants, contractors, or any person acting or purporting to act on its behalf.

3. ***"Oral Communication"*** as the term is used herein shall include any utterance heard by any person, whether in person, by telephone, or otherwise.

4. ***"Person" or "Persons"*** The term "person" or "persons" means natural persons, firms, partnerships, governmental entities, associations and corporations, and divisions, departments or units thereof.

5. ***"And/Or"*** When used in the course of an enumeration of items as to which documents or information is required, the words "or" and "and" are to be construed as requesting documents or information as to each item in the enumeration, the same as if the entire request had been addressed solely to that item.

6. ***Use Of Documents In Place Of An Answer***. Whenever a full and complete answer to any interrogatory or part of an interrogatory is contained in a document or documents, the documents, if appropriately identified as answering a specific numbered interrogatory or part of any interrogatory, may be supplied in place of a written answer at the time of answering, and only the author, date and type need be provided.

7. ***Numeral Information***. Interrogatories calling for numeral or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it shall be identified as such together with a source of information underlying the estimate.

8. ***Sources Of Information***. In answering these interrogatories, every source of information to which you have access shall be consulted, regardless of whether the source is within Defendants' immediate possession or control. All documents or other information in the possession of experts or consultants should be consulted.

9. ***Partial Answers***. If any interrogatory cannot be answered fully, as full an answer as possible should be provided. State the reason for your inability to answer fully, and give any information, knowledge or belief you have regarding the portion unanswered.

10. ***Deletions From Documents***. Where anything has been deleted from a document produced in response to the requests for production:

(a) ***Nature***. Specify the nature of the material deleted;

(b) ***Reason***. Specify the reason for the deletion; and

(c) ***Person***. Identify the person responsible for the deletion.

11. ***Claim Of Privilege Or Exclusion***. If objection is made to answering any interrogatory or disclosing the substance of any document on the basis of any claim of privilege or exclusion, specify in writing the nature of such information or documents, along with the nature of the privilege claim, so that the Court may rule on the proprietary of the objection. In case of documents, state:

(a) ***Title***. The title of the document;

(b) ***Notice***. The nature of the document (interoffice memorandum, correspondence, report, etc.);

(c) ***Author Or Sender***. The author or sender;

(d) ***Addressee***. The addressee;

(e) ***Date***. The date of the document;

(f) ***Others***. The name of each person to whom the original or a copy was shown or circulated;

(g) ***Circulation List***. The names appearing on any circulation list relating to the document;

(h) ***Basis Of Privilege Claim***. The base upon which privilege is claimed; and

(i) ***Subject Matter***. A summary statement of the subject matter of the document in sufficient detail to permit the Court to rule on the propriety of the objections.

12. ***"Relating to"*** means constituting, defining, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

13. ***"Smyers"*** refers to the Plaintiff in the above captioned action, Larry F. Smyers.

14. ***"AMI"*** and ***"Area of Mutual Interest"*** mean the Area of Mutual Interest as defined in paragraphs 4 and 5 of the complaint.

15. ***"Devonian"*** and ***"Devonian Resources"*** refers to the business entity known and referred to in the complaint as Devonian Resources, Inc.

16. ***"Van Hampton"*** refers to the business entity known and referred to in the complaint as Van Hampton Oil and Gas Company.

17. ***"Mideast"*** refers to the Defendant.

INSTRUCTIONS

1. If your answer to any Request for Admission which follows is any response other than an unqualified admission, then please copy, answer and complete the following "Interrogatory" as part of your response to each such Request for Admission.

Then for each such Interrogatory, please insert the number of the Request for Admission to which each such Interrogatory answer and response relates:

INTERROGATORY NO.__:

A. ***State The Facts***. If your answer to the Request for Admission is any response other than an unqualified admission, state with particularity and in detail all facts (not opinions) on which you have relied, and on which you intend to rely at trial, to support any such response to the admission requested.

B. ***Identify Documents & Communications***. Identify all documents, notes, reports, memorandums, electronic and/or tape recordings, photographs, oral statements, communications, or any other tangible or intangible thing that supports in any manner your refusal to admit or your qualification of your admission.

C. ***Custodians***. The name and address of a custodian of all tangible or intangible things identified in response to B. above.

D. ***Identify All Persons***. The name and address of all persons, including consultants, purporting to have any knowledge or factual data upon which you base your refusal to admit or the qualification of your admission.

ANSWER TO INTERROGATORY NO. __:

2. In answering each interrogatory;

(a) ***Document Identification***. Identify the date, sender, recipient, location and custodian of each document relied upon or which corroborates the answer given or the substance of what is given in answer to the interrogatories.

(b) ***Personal Knowledge***. State whether the information furnished is within your personal knowledge and, if not, the name, if known, of each person to whom the information is a matter of personal knowledge; and

(c) ***Other Persons***. Identify each person who assisted or participated in preparing or supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories.

(d) ***Additional Space Needed***. If more space is needed for your answer to any interrogatory, insert extra pages.

(e) ***Required Execution & Verification Of Answers***. The answers must be signed and verified as required by the Pennsylvania Rules of Civil Procedure.

3. All references to "*LARRYS~1.ASC." are references to page numbers and line numbers of the transcript of the January 19, 2004 deposition of Plaintiff Larry F. Smyers taken by Defendant.

REQUEST FOR ADMISSIONS

Request For Admission No. 1:

Smyers has a bachelor's degree and master's degree in Geology and Geophysics.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

*LARRYS~1.ASC: Page 7 Line 2 to Page 7 Line 8

2 Q. What is your educational background post high
3 school?
4 A. Bachelor's of Science Degree and a Master's of
5 Science.
6 Q. What is your Master's of Science in?
7 Specialization?
8 A. Yes, it is. Geology and geophysical thesis.

Request For Admission No. 2:

Smyers is a licensed professional geologist in Pennsylvania and Wyoming.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 7 Line 9 to Page 7 Line 12

9 Q. Are you licensed as a professional geologist?
10 A. Yes, I am.
11 Q. By which jurisdiction?

12 A. Pennsylvania and the State of Wyoming.

Request For Admission No. 3:

Smyers is a current member in good standing of the American Association of Petroleum Geologist ("AAPG").

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 7 Line 15 to Page 7 Line 18

15 Q. Are you a member of any professional associations?
16 A. Yes.
17 Q. Which ones?
18 A. AAPG, American Association of Petroleum Geologist.

Request For Admission No. 4:

The compensation a geologist charges a client must be reasonable.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* S~1.ASC: Page 48 Line 5 to Page 48 Line 16

5 Q. Is a geologist permitted to charge compensation
6 only to the extent that it's determined to be reasonable
7 compensation?
8 A. Reasonable?
9 Q. Right.
10 A. What would be the definition of reasonable?
11 Q. Well, in the event of a dispute, it would be
12 whatever the court would determine would be reasonable.
13
14 MR. TALADAY: I think we'll stipulate for the

15 record certainly that's the standards that not only apply to
16 geologist services but to lawyer services.

Request For Admission No. 5:

Smyers claims that he never obtained any oil or gas leases and then subleased or farmed out such leases, or well drilling locations on any such lease premises, to someone else.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 122 Line 16 to Page 122 Line 22

16 Q. Do you consider yourself a promoter of oil and gas?
17 A. No.
18 Q. Did you ever go out and obtain any oil and gas
19 leases in your own name as a lessee?
20 A. In Pennsylvania?
21 Q. Pennsylvania.
22 A. No.

*LARRYS~1.ASC: Page 122 Line 23 to Page 123 Line 2

23 Q. I assume, therefore, that you've never gone out and
24 got any leases in your own name. Have you ever subleased
25 them or farmed them out to anybody else? You're shaking your
00123
1 head no?
2 A. No. I have not individually, no.

Request For Admission No. 6:

Smyers claims that he always keeps client geologic information confidential, unless he obtains the consent of the client authorizing disclosure.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 11 Line 8 to Page 11 Line 13

8 Q. If the client provides you with geologic
9 information, are there some instances where you do not keep
10 that information confidential?
11 A. No. I always keep that confidential. It's up to
12 them -- you know, whenever the report is done, it's kept
13 confidential between the client and myself.

*LARRYS~1.ASC: Page 11 Line 14 to Page 11 Line 17

14 Q. Do you sometimes request consent of the client to
15 disclose confidential, geologic information?
16 A. Yes, I do. If in fact the need arises, I certainly
17 would.

Request For Admission No. 7:

It is the practice of Smyers when receiving information from a client to ask the client if the information is sensitive information.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 16 Line 11 to Page 16 Line 14

11 Q. First you ask him if it's sensitive information?
12 If you could say yes or no for the record, rather than

13 nodding your head?
14 A. Yes. Yes. Yes.

Request For Admission No. 8:

It is and has been the practice of Smyers that when a client gives him consent to disclose their sensitive information to ask the client if they want to put their consent in writing..

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 16 Line 15 to Page 16 Line 17

15 Q. If they say it's sensitive information, then you
16 ask them if they want to put the consent in writing?
17 A. Yes.

Request For Admission No. 9:

Smyers entered into a confidentiality agreement with Devonian Resources Inc. which provided confidentiality protection for Smyers' personal files.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 10:

Smyers entered into a confidentiality agreement with Devonian Resources to protect his files which contained documents of public record.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 131 Line 22 to Page 132 Line 3

22 Q. Well, let me go back. Maybe I misunderstood
23 something. Did you say your personal files contained
24 documents of public record?
25 A. Yes.
00132
1 Q. And then you said you wanted that to be kept
2 confidential, and you got a confidentiality agreement?
3 A. Yes.

Request For Admission No. 11:

It is the adopted practice of the geology profession to put geologists' proposals in writing.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 16 Line 24 to Page 17 Line 8

24 Q. You make proposals for prospects. Is that a common
25 practice among geologists?
00017
1 A. Yes.

2 Q. Do you put your proposals in writing?
3 A. Yes.
4 Q. Is that common practice?
5 A. Yes.
6 Q. Do you give a copy of the written proposal to the
7 client?
8 A. Yes.

Request For Admission No. 12:

Smyers' standard habit and practice is to put in writing his proposals to clients, and to keep a copy for at least seven years.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 17 Line 11 to Page 17 Line 20

11 Q. How do you decide when to keep a copy of your
12 proposal and when not to?
13 A. There is many times whenever you have a proposal if
14 -- I do not keep anything that is like over seven or ten
15 years just due to the fact of filings, keeping the papers
16 together. Sometimes I keep a copy; sometimes I do not. Most
17 of the time I do.
18 Q. Am I correct in understanding that you keep them
19 for seven years, and then dispose of them?
20 A. Normally.

*LARRYS~1.ASC: Page 18 Line 2 to Page 18 Line 5

2 Q. I'm not concerned about 15 years or 7 years. I'm
3 just trying to make sure that I understand that you put your
4 proposals in writing and you keep them at least seven years?
5 A. Yes.

Request For Admission No. 13:

Proposals for drilling prospects that Smyers made to clients would normally include geological information of geographical area and an analysis of their productive capacity.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 18 Line 6 to Page 18 Line 17

Q. What type of format would a proposal be in? What type of subject matter would you include? Kind of give me an overview. Kind of give me an outline of what a proposal normally entails.
A. You include a geographical area that has been worked up to have some scientific merit that would have the potential of oil and gas like in this instance and have a good chance of success of drilling. Normally that would entail a study of the geology, and some type of analysis of how easy it would be to get an area on production, pipe lines, etc. It's essentially what the basis of a proposal would be.

*LARRYS~1.ASC: Page 19 Line 6 to Page 19 Line 8

Q. Now when you make a proposal of a prospect, if I understand you, you include data and geologic information?
A. Yes.

Request For Admission No. 14:

In presenting a prospect to a client Smyers never used confidential information belonging to someone other than Smyers or the client to whom Smyers was presenting his prospects.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 20 Line 18 to Page 21 Line 1

18 Q. Are you saying that you never used non-public
19 information from a former client to make a proposal to a new
20 client?
21 A. For instance, the last one that I used it was the
22 information that was in a private field that was on a public
23 ground, and the information was public. But I have not --
24 no, I have not used something that had been deemed
25 confidential or within files that was not publically known
00021
1 out there or was not publically released.

*LARRYS~1.ASC: Page 22 Line 19 to Page 22 Line 24

19 A. You're asking me if I've taken information that has
20 been privy for one company and used it in order to get
21 another -- in order to make a proposal to another?
22 Q. Yes.
23 A. No, I have not. I have not taken information from
24 one company and used it for another.

Request For Admission No. 15:

Smyers is not permitted to use non-public information of a former client to help a subsequent client, even if the former client has since gone out of business, without Smyers first obtaining the consent of the former client's successor.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 22 Line 25 to Page 23 Line 10

25 Q. As part of your answer, you talked about a company
00023
1 going out of business. I'm a little confused by that part of
2 your answer. Are you saying that if the original client is
3 not in business anymore, then you are free to use that
4 non-public information for subsequent clients?
5 A. No. You have to find it. There's been many
6 instances where subsequent companies -- the original company
7 have files, and you have to search for another who might be
8 the successor of this company and call them and obtain that
9 information from them. They can either give it to you or
10 they don't give it to you.

*LARRYS~1.ASC: Page 23 Line 11 to Page 23 Line 13

11 Q. So if your former client is no longer in existence,
12 you look for the successors to ask for consent?
13 A. Yes.

Request For Admission No. 16:

Smyers proposed the AMI to Devonian Resources Inc. and/or Van Hampton Oil and Gas, then located and prioritized potential drilling locations.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 46 Line 14 to Page 47 Line 6

14 Q. Now, I want to talk about prospects. Earlier we
15 talked about your proposing a prospect, your proposing the
16 area of mutual interest, the Pine Glenn area, which is the
17 subject of this lawsuit. As I understand it, your proposal
18 of that prospect consisted of two things. One was the
19 confidentiality agreement that is Exhibit 1 to the complaint,
20 and the second part would be the two maps that are now
21 Exhibits B1 and B2; is that correct?
22 A. That's correct.
23
24 MR. TALADAY: Just for the record, I think he also
25 said there was a visual and verbal presentation given.
00047
1
2 Q. On the visual and verbal presentation, what did the
3 visual presentation include?
4 A. Presenting the maps and outlining the areas where
5 leases should be picked up, prioritize the drilling
6 locations, and locating such.

Request For Admission No. 17:

Smyers claims that his proposals to Devonian Resources Inc. or Van Hampton Oil and Gas were based on public information only.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 105 Line 4 to Page 105 Line 7

4 Q. Was there any information that was collected by
5 Eastern States that you used in your proposal that was not on
6 record as public information?
7 A. To my knowledge, no.

Request For Admission No. 18:

Smyers proposal to Van Hampton Oil and Gas and/or Devonian Resources Inc. for the drilling and development of the AMI included specific well locations.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 119 Line 15 to Page 119 Line 19

15 Q. Now when you made the proposal of the proposed
16 prospect to Devonian or Van Hampton, did you follow the same
17 practice of including specific designated locations that you
18 recommended?
19 A. Yes.

Request For Admission No. 19:

The proposal that Smyers made to Van Hampton Oil and Gas and/or Devonian Resources Inc. included specific drilling techniques for drilling and developing the AMI.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 119 Line 20 to Page 119 Line 23

20 Q. Did your proposal become even more specific to
21 Devonian or Van Hampton that you would suggest specific
22 drilling techniques -- fracturing techniques to use?
23 A. Yes.

Request For Admission No. 20:

Smyers uses e-mail to communicate with clients.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 23 Line 19 to Page 23 Line 20

19 Q. Do you use e-mail?
20 A. Yes.

Request For Admission No. 21:

Smyers keeps detailed files of his work with clients.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 23 Line 14 to Page 23 Line 18

14 Q. Earlier we talked about some of your record keeping
15 practices. I'd like to ask you a few questions about those
16 record keeping practices. Do you keep, in your opinion,
17 detailed files on the work that you do for your clients?
18 A. Yes, I do.

Request For Admission No. 22:

Smyers keeps personal files of his geology practice that contain only public information and publications.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 24 Line 10 to Page 24 Line 13

10 Q. So when you would refer to your personal files,
11 you're talking about files that contain just public
12 information?
13 A. Public information and publications, yes.

Request For Admission No. 23:

Smyers issued a signed written geological opinion for the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 27 Line 9 to Page 27 Line 23

9 Q. Do clients sometimes ask you for your professional
10 opinion on a subject?
11 A. Yes.
12 Q. Do you sometimes put it in writing?
13 A. Yes.
14 Q. Do you sign it?
15 A. Yes.
16 Q. With the expectation that the client will rely on
17 it?
18 A. Yes.
19 Q. In connection with Pine Glenn, the area of mutual
20 interest, which is the subject of this lawsuit, did you ever
21 render a written legal opinion -- a written geologic opinion
22 that you signed?
23 A. Yes.

Request For Admission No. 24:

Smyers provided Devonian Resources Inc. with supporting data for his geological opinion in connection with the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 27 Line 24 to Page 28 Line 3

24 Q. Could tell me when that was?
25 A. The project proposal was summarized and sent to
00028
1 Devonian, and subsequently I met with the personnel and
2 reviewed the opinions and recommendations, and I also
3 provided the back ups for the opinions.

Request For Admission No. 25:

All of the information contained on the maps identified as defendant's deposition exhibits B1 and B2 of the Smyers deposition was obtained by Smyers exclusively from public sources.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 36 Line 3 to Page 36 Line 7

3 Q. Now, your proposal map, Exhibits B1 and B2, it has
4 information on it. Where did you get the information?
5 A. Public sources.
6 Q. Exclusively public sources?
7 A. Exclusively public sources, yes.

Request For Admission No. 26:

Smyers never gave a photocopy of the content of a client's file to another client, without the consent of the first client.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 40 Line 3 to Page 40 Line 8

3 Q. Well, I was thinking that you could answer the
4 question yes or no. Did you ever make a photocopy of a
5 client's file without the client's consent and give it to
6 another client based upon the belief that information is
7 already in the public record?
8 A. To my knowledge, never.

Request For Admission No. 27:

When Smyers encounters a professional conflict of interest while working for a client, it is his practice to immediately explain the conflict to the client and to explain all the circumstances surrounding the conflict.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 40 Line 18 to Page 41 Line 2

18 Q. Have you ever in your practice encountered a
19 situation that presented a conflict of interest?
20 A. Yes, I did.
21 Q. What is your usual procedure when --
22 A. Inform the people whoever had approached me that
23 I've already been committed to this, and I cannot do it.
24 Otherwise, if this is another unique situation, explain to
25 the party who I'm working for or doing studies for, that this
00041
1 came up in an instance where it might be helpful to you in
2 order to get to your ends -- you know, work together on this.

*LARRYS~1.ASC: Page 41 Line 8 to Page 41 Line 17

8 Q. Earlier you told us what you understood to be a
9 conflict of interest. Now, when you encounter those
10 situations that fall within what you consider to be a
11 conflict of interest, do the rules of your profession require
12 you to make a disclosure to a client or potential client in

13 the existence of a conflict?
14 A. Yes. If you have a conflict, immediately -- it is
15 mostly verbal. I do not want to get into a situation where
16 it does require any -- I tell them immediately that it's a
17 conflict, and I won't do it.

*LARRYS~1.ASC: Page 42 Line 1 to Page 42 Line 4

1 Q. When you're asked to perform a task or you're asked
2 to accept an engagement and you perceive this potential
3 conflict of interest, do you make disclosure of that?
4 A. Yes.

*LARRYS~1.ASC: Page 43 Line 3 to Page 43 Line 16

3 Q. Well, let me give you something more specific then
4 maybe that will help. If you're doing work on a project for
5 client A and Mr. B comes along or company B comes along and
6 asks you to do work that would involve you utilizing some of
7 the information that you got in performing the work for
8 client A, I would assume that represents a conflict. Would
9 that in your opinion represent a conflict?
10 A. I would immediately ask the client A if this is
11 going to pose a conflict. If there is any question, I would
12 ask if there is a conflict. If they said there would be,
13 certainly I would either drop it or ask for a waiver, and
14 they would be entirely privy to all of the circumstances
15 surrounding it. I would either get permission, or I would
16 not. If I did not get permission, I would not do it.

Request For Admission No. 28:

It is the practice of Smyers when starting an engagement to ask the client to identify confidential information.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 45 Line 15 to Page 46 Line 3

15 Q. When you start an engagement for a client, do you
16 at any time try to get the client to tell what non-public
17 information is confidential and what is not?
18 A. Oh, yes.
19 Q. How do go about getting them to tell you that?

20 A. Directly ask them. I ask what is sensitive and
21 what is not sensitive.
22 Q. They give you their answer orally or in writing?
23 A. Orally.
24 Q. Do you make notations in your file of what their
25 answer is and your question?
00046
1 A. Yes. If they require confidential information, I
2 ask them what is confidential and have them mark it
3 confidential.

Request For Admission No. 29:

The files that Smyers retains for each client contain notation as to confidential information identified by the client.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 46 Line 8 to Page 46 Line 13

8 Q. So in your files then, if I understand you
9 correctly, if we go to each of your clients, there would be
10 some notation as to what their wish or policy is regarding
11 non-public information? What's confidential and what's not;
12 is that correct?
13 A. There would be indications of such.

Request For Admission No. 30:

Smyers never provided Mideast or Devonian Resources Inc. with a copy of his September 19, 2001 engagement letter or fee agreement with Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 207 Line 6 to Page 207 Line 9

6 Q. Did you ever provide a copy of this September 19,
7 2001, engagement letter or fee agreement that you had with
8 Sbarra? Did you provide one to Devonian or Mid-East?
9 A. No.

Request For Admission No. 31:

Smyers makes no claim of ownership to any overriding royalty with respect to a well prior to the well being drilled and put in line.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 50 Line 22 to Page 51 Line 8

22 Q. At what moment in time did you consider that you
23 became the owner of these overrides that you're claiming in
24 this lawsuit?
25 A. When it was drilled in an area that was outlined,
00051
1 and it went on production.
2 Q. So that if in the year 2000 you had made a proposal
3 and it was accepted that you would render services to get an
4 overriding royalty, it only attached on a well by well basis
5 as the wells were drilled at some future time; is that your
6 understanding?
7 A. Yes. As a well is drilled and successfully put in
8 line, that is when the override comes in force.

Request For Admission No. 32:

Smyers did not intend his February 29, 2000, confidentiality agreement with Devonian Resources Inc. to terminate the August 3, 1999 letter agreement that he had with Van Hampton Oil and Gas.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 65 Line 19 to Page 65 Line 24

19 Q. Now, the Exhibit 1 on page 2 under addenda, it
20 says, "This confidentiality agreement was intended to expand
21 on and supplement the terms of a letter agreement dated
22 August 3, 1999, to Van Hampton." When you entered into this
23 confidentiality agreement, you didn't intend to terminate the
24 1999 letter with Van Hampton, did you?
25 A. No, I did not.

Request For Admission No. 33:

Smyers intended his February 29, 2000, confidentiality agreement with Devonian Resources Inc. to supplement and expand the August 3, 1999 letter agreement that he had with Van Hampton Oil and Gas.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 66 Line 1 to Page 66 Line 4

1 Q. This confidentiality agreement, as you said there,
2 was to supplement and expand on that 1999 agreement, wasn't
3 it?
4 A. Yes.

Request For Admission No. 34:

The agreement that Smyers had with Devonian Resources Inc. and/or Van Hampton Oil and Gas was partially written and partially oral.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 66 Line 18 to Page 66 Line 24

18 Q. Your overall agreement, part of it was oral and
19 part of it was written? Is that what you're telling me?
20 A. This is what I was told that would be happening
21 with this project.
22 Q. You're nodding your head yes. I assume part of the
23 answer is yes, so that the court reporter can note that?
24 A. Yes.

*LARRYS~1.ASC: Page 67 Line 17 to Page 67 Line 24

17 Q. Let me say what I understand, and then we'll see if
18 we understand what you understand. What I understand is that
19 you had an agreement with Devonian, and the agreement
20 provided for a variety of different services. Some of those
21 are spelled out in this confidentiality agreement, and some
22 of your understandings and agreements were oral and not
23 spelled out here; is that right?
24 A. That's right.

*LARRYS~1.ASC: Page 69 Line 12 to Page 69 Line 15

12 Q. So if I understand you correctly, there was an
13 understanding that you would be offered employment that was
14 in addition to the terms of the confidentiality agreement?
15 A. Yes. Yes.

Request For Admission No. 35:

The agreement that Smyers had with Devonian Resources Inc. and/or Van Hampton Oil and Gas regarding the area of mutual interest provided that Smyers would help operate, expand and develop the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 66 Line 5 to Page 66 Line 17

5 Q. And further on the addenda, it says, "This letter
6 outlines the terms to provide technical assistance to explore
7 for and develop natural gas and associated hydrocarbons in
8 the geographical area outlined in Exhibit 1." So as I read
9 this, the scope of your service was not just to propose
10 prospects or locations, it was to do more than that; is that
11 correct?
12 A. During the initial conversations -- as this would
13 be a successful program, I would be hired to help run and
14 expand this and develop this prospect. There was a verbal
15 agreement that if the original well would be successful, then
16 there would be a program started, and then I would become
17 part of the organization to help develop it.

*LARRYS~1.ASC: Page 69 Line 12 to Page 69 Line 15

12 Q. So if I understand you correctly, there was an
13 understanding that you would be offered employment that was
14 in addition to the terms of the confidentiality agreement?
15 A. Yes. Yes.

Request For Admission No. 36:

Smyers' agreement with Devonian Resources Inc. and/or Van Hampton Oil and Gas regarding the area of mutual interest required Smyers to provide a package of future services for a package of compensation for those services.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 70 Line 20 to Page 70 Line 25

20 Q. So as I read this letter, I come away with the
21 impression that you were agreeing to provide a package of
22 services for a package of compensation. The package of
23 services you described here and the compensation you
24 described here. Would that be a correct reading on my part?
25 A. Yes.

Request For Admission No. 37:

Smyers' agreement with Devonian Resources Inc. and/or Van Hampton Oil and Gas regarding the area of mutual interest required Smyers to provide technical assistance for the development of the area mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 71 Line 1 to Page 71 Line 7

1 Q. And part of the package of services that you would
2 get or that you would provide would be to develop the
3 drilling prospect, provide technical assistance in the
4 preparation of the drilling program prospectus, as well as
5 the various stages of project development. Is that your

6 understanding of the package?
7 A. Yes.

Request For Admission No. 38:

Smyers' agreement with Devonian Resources Inc. and/or Van Hampton Oil and Gas regarding the area of mutual interest could not be unilaterally changed or amended by Smyers.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 72 Line 19 to Page 73 Line 10

19 Q. Was it your understanding that Devonian could
20 unilaterally on it's own change this deal and decide to
21 modify it or eliminate certain compensation?
22 A. No.
23 Q. Was it your understanding that you could
24 unilaterally decide that you weren't going to provide certain
25 service?
00073
1 A. This was between Devonian and myself.
2 Q. So they couldn't decide, in fact, to take a pencil
3 and cross out part of what they were going to pay you, and
4 you couldn't take a pencil and cross out part of what you
5 were going to perform in services?
6 A. No.
7 Q. So you both had to agree to change it?
8 A. Yes. We had to agree to change this.
9 Q. There wasn't any agreement to change it later on?
10 A. No.

Request For Admission No. 39:

Smyers' agreement with Devonian Resources Inc. and/or Van Hampton Oil and Gas regarding the area of mutual interest was never changed or amended.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 73 Line 9 to Page 73 Line 10

9 Q. There wasn't any agreement to change it later on?
10 A. No.

Request For Admission No. 40:

Smyers quit working for Devonian Resources Inc. in December 2003, when other opportunities became available for him.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 104 Line 14 to Page 104 Line 18

14 Q. Now, you stopped working for Devonian December of
15 2003; is that correct?
16 A. Yes.
17 Q. Why did you stop working for them at that time?
18 A. Actually opportunity came up.

Request For Admission No. 41:

Smyers' agreement with Devonian Resources Inc. and/or Van Hampton Oil and Gas with respect to the area of mutual interest provided that Smyers would provide them with advice and step-by-step assistance for drilling and fracturing wells.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 120 Line 3 to Page 120 Line 17

3 Q. So was it a process that orally you said, here's
4 the area of mutual interest I suggest, and then over time,
5 orally you got more specific about where is the well to drill
6 and what fracturing techniques to use, and things like that.
7 Is that the process that you follow?
8 A. Yes.
9 Q. There was no one document -- a written report that
10 said, this is my proposal of the prospect, and here is the
11 area and here are the locations and here are the fracturing
12 techniques. There wasn't any report, was there?
13 A. No. There was not. Originally I was not in the
14 original drilling -- I was not there originally.
15 Q. So you kind of provided these services step by step
16 over time?
17 A. Yes.

Request For Admission No. 42:

Smyers has no written agreements with Van Hampton Oil and Gas and/or Devonian Resources Inc. except for the August 8, 1999 letter agreement and the February 29, 2000, confidentiality agreement.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 122 Line 10 to Page 122 Line 12

10 Q. Is there some other document other than these two
11 documents, the 1999 letter or the confidentiality agreement?
12 A. No.

Request For Admission No. 43:

Smyers does not believe that Devonian Resources Inc. has any responsibility to Smyers for the claims he is making against Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 128 Line 8 to Page 128 Line 16

8 Q. I understand your claim. My question just deals
9 with, do you believe that you have recourse -- any rights
10 against Devonian, who signed one of these documents that you
11 attached to the compliant? Yes or no?
12 A. I do not believe that -- no.
13 Q. You do not believe that you have rights; is that
14 your answer?
15 A. No. I do not believe that Devonian has any
16 responsibility for this.

Request For Admission No. 44:

Smyers never released Devonian Resources Inc. or Van Hampton Oil and Gas from the obligation to make overriding royalty payments to Smyers.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 180 Line 19 to Page 181 Line 2

19 Q. Do you know of any release or other documentation
20 that you may have given to Devonian that said, after January
21 16, 2002, you fellows aren't liable to me anymore for any
22 override?
23 A. No, I'm not aware of any. No.
24 Q. Did you give any release to Van Hampton Oil and Gas
25 releasing them from any claims for any override they might
00181
1 owe you?
2 A. No.

Request For Admission No. 45:

Prior to the January 19, 2004 deposition, Smyers did not search his computer to determine if it contained documents requested by Mideast to be provided to Mideast for its review prior to or during the deposition.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 74 Line 10 to Page 74 Line 13

10 Q. When you searched your files to identify documents
11 to produce today, did you search your computer memory?
12 A. No. No. These were -- all this data was what I

13 had hard copies of.

Request For Admission No. 46:

Smyers acknowledged during the January 19, 2004 depostition that his computer might contain some additional documents of the type the Mideast had requested Smyers produce at the deposition.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 74 Line 10 to Page 74 Line 18

10 Q. When you searched your files to identify documents
11 to produce today, did you search your computer memory?
12 A. No. No. These were -- all this data was what I
13 had hard copies of.
14 Q. So it's possible that you might have some other
15 documents on your computer memory?
16 A. Possibly, but I don't recollect though.
17 Q. You didn't check for this?
18 A. No. I didn't check for that.

Request For Admission No. 47:

Smyers sued Mideast to collect overriding royalty payments for oil and gas produced from geographic areas that are included within the scope of Smyers' agreement with Devonian Resources Inc. and/or Van Hampton Oil and Gas, but which geographic areas are not necessarily included in the January 16, 2002 assignment from Devonian to Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

<u>In Answering, You May Want To Consider</u>:

*LARRYS~1.ASC: Page 82 Line 4 to Page 82 Line 11

MR. TALADAY: No, that's not correct. We are suing and claiming overriding royalty interest of 1/64th on any wells that are drilled within the area of mutual interest that was originally entered into with Larry and Devonian and/or Van Hampton.
MR. GRECO: Even if it exceeds the area covered by the Exhibit 3 assignment from Devonian to Mid-East?
MR. TALADAY: Correct.

<u>Request For Admission No. 48:</u>

All of the rights of the Devonian Resources Inc. and Van Hampton Oil and Gas agreements with Smyers regarding the area of mutual interest were transferred to Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

<u>In Answering, You May Want To Consider</u>:

* LARRYS~1.ASC: Page 82 Line 13 to Page 84 Line 1

MR. TALADAY: Just to put on the record, it's my belief that that assignment conveyed essentially all of the interest of Devonian to that area of mutual interest, so I don't know what the described parameters are, but our position is that it was the spirit and intent of that agreement to give everything that Devonian had to Mid-East.
MR. GRECO: Let me ask Mr. Smyers since he is the one under oath here testifying.

Q. Do you agree with what your counsel says?
A. The area of --

MR. TALADAY: That's a yes or no question, Larry.
00083

A. Yes.
Q. Now, your counsel, I believe, said that all of the

4 interest that Devonian had with respect to this area -- all
5 of their rights, contractual or whatever -- your position is
6 that this was all transferred over to Mid-East; is that
7 correct?
8 A. Yes.
9 Q. That would include the rights under the August 3,
10 1999, letter that's attached as page 5 of 5 of Exhibit 1?
11 A. This contractual rights was with Devonian
12 exclusively.
13
14 MR. TALADAY: If you're asking for a statement of
15 legal position, it's our position as stated in the complaint,
16 but obviously, Mid-East is being sued as the successors to
17 Devonian, so the contractual rights and obligations that
18 Larry had with Devonian we believe were assumed by Mid-East.
19 MR. GRECO: Okay. Again I just want to make sure
20 that the record reflects --
21
22 Q. Are you agreeing with your counsel?
23 A. Yes.
24 Q. So that would apply to the 1999 letter, as well as
25 the confidentiality agreement?
00084
1 A. Yes.

Request For Admission No. 49:

When Smyers produced documents for examination by Mideast at the January 19, 2004 deposition in response to Mideast's request for production documents regarding the area of mutual interest, Smyers did not produce a bound booklet that pertains to the Council Run Field.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 93 Line 20 to Page 94 Line 24

20 MR. GRECO: I've been handed a bound booklet that
21 says Eastern States Exploration Company Columbia 1990-i or 1,
22 Drilling Program, Council Run Field, Center County,

23 Pennsylvania, April 1990.
24
25 Q. Mr. Smyers, is this the packet of documents that
00094
1 sets forth that employee drilling plan investment that you
2 participated in?
3 A. Yes.
4 Q. And this packet of documents pertains to the
5 drilling of at least some wells in the Pine Glenn prospect?
6 A. Yes.
7 Q. And you just had your counsel hand this to me
8 today? This was not produced earlier for my review?
9
10 MR. TALADAY: I'll answer that. When I handed the
11 documents off to your secretary on Friday, I did not provide
12 those documents in that I did not believe that was responsive
13 to the subpoena that was attached to the deposition, so you
14 have my apologies if you think it is responsive to that. As
15 I explained to you, we believe that that's not contemplated
16 in the lawsuit that's currently pending. I think it has a
17 separate origin as far as genus of the claim.
18 MR. GRECO: Let the record show that because it
19 wasn't presented that we didn't have a chance to review it or
20 ask any questions about.
21 MR. TALADAY: I would agree.
22 MR. GRECO: Will you make a copy of that available
23 to us?
24 MR. TALADAY: Sure.

Request For Admission No. 50:

Smyers did not produce for inspection at the January 19, 2004 deposition a written agreement with Devonian Resources Inc. or Van Hampton Oil and Gas regarding Smyers consulting with Devonian or Van Hampton prior to August 3, 1999.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 96 Line 22 to Page 97 Line 12

22 Q. My earlier question as I recall, was whether you
23 had any type of engagement letter with Devonian or

24 Van Hampton prior to the 1999 letter attached to the
25 complaint as an exhibit and it's addressed to Van Hampton?
00097
1
2 MR. TALADAY: If I understand your question, you're
3 asking whether he had any agreement in writing with Devonian
4 or Van Hampton regarding his consulting services prior to
5 August 3, 1999?
6 MR. GRECO: Correct.
7
8 A. Particularly in this Pine Glenn area?
9 Q. No. First this is a general question. Anywhere?
10 A. Oh, yes. Yes, I did.
11 Q. By chance were they produced today?
12 A. No.

Request For Admission No. 51:

At the time of his August 3, 1999 agreement with Van Hampton regarding the area of mutual interest Smyers had a relationship of adviser to Van Hampton.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 97 Line 25 to Page 98 Line 12

25 Q. When you were dealing with Van Hampton in 1999;
00098
1 when you sent them the letter that's an exhibit, was your
2 relationship with them one of advisor where you were advising
3 them as to what you thought would be in their best interest,
4 or was it in the position of a seller, selling them something
5 where you were looking out for your own interest and not for
6 their interest, as is common with someone in a buying and
7 selling relationship? Which of those two characterize your
8 relationship at that time?
9 A. An advisor.
10 Q. Advisor sitting on the same side of the table, so
11 to speak, in advising them; is that correct?
12 A. That's correct.

Request For Admission No. 52:

Prior to his August 3, 1999 agreement with Van Hampton, Smyers did not propose or sell any geologic prospect areas to Van Hampton or Devonian.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 97 Line 25 to Page 98 Line 12

25 Q. When you were dealing with Van Hampton in 1999;
00098
1 when you sent them the letter that's an exhibit, was your
2 relationship with them one of advisor where you were advising
3 them as to what you thought would be in their best interest,
4 or was it in the position of a seller, selling them something
5 where you were looking out for your own interest and not for
6 their interest, as is common with someone in a buying and
7 selling relationship? Which of those two characterize your
8 relationship at that time?
9 A. An advisor.
10 Q. Advisor sitting on the same side of the table, so
11 to speak, in advising them; is that correct?
12 A. That's correct.

Request For Admission No. 53:

Prior to his involvement with Van Hampton and Devonian, Smyers worked as a geologist for Eastern States.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 84 Line 8 to Page 84 Line 9

8 Q. Did you at one point work for Eastern States?
9 A. Yes, I did.

Request For Admission No. 54:

Almost all oil and gas properties that Smyers worked on for Eastern States, as an employee of Eastern States, were within the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 84 Line 24 to Page 85 Line 7

24 Q. Did you do any work for Eastern States within the
25 area of mutual interest?
00085
1 A. Yes.
2 Q. What area within the area of mutual interest did
3 you work on for Eastern States?
4 A. Almost entirely everything.
5 Q. The whole area of mutual interest that you worked
6 on for Eastern States?
7 A. Yes.

Request For Admission No. 55:

As an employee of Eastern States working within the area of mutual interest, Smyers worked with exploration, geology, and picking well sites.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 85 Line 8 to Page 85 Line 17

8 Q. What did you do for Eastern States with respect to
9 that area of mutual interest?
10 A. Exploration, geology.
11 Q. What type of exploration did you do, if you could
12 be more specific?
13 A. Looked for drillable well sites.
14 Q. Did you find any?
15 A. Yes.
16 Q. Did they drill any?
17 A. Yes.

Request For Admission No. 56:

Eastern Sates drilled wells within the area of mutual interest when Smyers worked as an employee of Eastern States.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 88 Line 9 to Page 88 Line 16

9 Q. So when we talk about Pine Glenn, the area of
10 mutual interest, we're talking about the same thing, aren't
11 we?
12 A. Yes.
13 Q. When you were with Eastern States, did Eastern
14 States drill any wells within that area of mutual interest --
15 that Pine Glenn prospect?
16 A. Yes.

Request For Admission No. 57:

During his employment by Eastern States, Smyers had personal access to Eastern States exploration, development, and production information from the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 89 Line 9 to Page 89 Line 16

9 Q. When you were with Eastern States, did you have
10 access to information about the production that Eastern
11 States got from the Pine Glenn prospect? Production records,
12 logs, things of that type?
13 A. Yes.
14 Q. Did you personally work on any matters within the
15 Pine Glenn prospect when you were employed by Eastern States?
16 A. Yes.

Request For Admission No. 58:

After his employment with Eastern States ended, Smyers never disclosed to Eastern States, or any of its successors or assigns, anything about his subsequent activities in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 90 Line 5 to Page 90 Line 8

5 Q. Did you ever disclose to Eastern States or any
6 successor of Eastern States anything about your activities in

7 the Pine Glenn prospect since you left Eastern States?
8 A. No.

Request For Admission No. 59:

After Smyers worked as an employee of Eastern States, Smyers never disclosed to Eastern States or any of its successors that he was getting or claiming an overriding royalty for production from the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 90 Line 9 to Page 90 Line 15

9 Q. You never told them that you were getting an
10 override or had a right to an override from the area?
11 A. Eastern States?
12 Q. Right. Did you ever tell Eastern States or any
13 successor to Eastern States that, hey, I'm Larry Smyers, and
14 I'm getting an override from the Pine Glenn prospect?
15 A. No, I did not.

Request For Admission No. 60:

Smyers cannot recall if he had any type of employment agreement with Eastern States when he was an employee of Eastern States.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 90 Line 16 to Page 90 Line 20

16 Q. When you worked for Eastern States, did you sign

17 any type of employment agreement with them?
18 A. I don't recall. I really don't. I don't recall.
19 Q. You might have but you just don't remember?
20 A. I don't remember.

Request For Admission No. 61:

Smyers cannot recall any employee handbook of Eastern States that was in effect during his employment with Eastern States that contained any type of provisions or restrictions with respect to what an employee could do with information that they came into contact with while working for Eastern States.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 91 Line 1 to Page 91 Line 6

00091
1 Q. Do you recall whether that handbook contained any
2 type of provisions or restrictions with respect to what an
3 employee could do with information that they come in contact
4 with while working for Eastern States?
5 A. As I recall, no. I did not see nothing or recall
6 anything like that.

Request For Admission No. 62:

Smyers cannot recall any practices at Eastern States while he was an employee of Eastern States that would indicate that Eastern States wanted to restrict what an employee could do with geological information that an employee obtained during the course of his employment by Eastern States.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 91 Line 7 to Page 91 Line 12

7 Q. Do you recall any practices at Eastern States that
8 would indicate that Eastern States wanted to restrict what an
9 employee could do with geological information that an
10 employee would obtain during the course of employment by
11 Eastern States?
12 A. During the normal -- no.

Request For Admission No. 63:

Prior to an rendering a geologic opinion, Smyers performs a due diligence investigation, which investigation includes researching and reviewing all available data.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 100 Line 18 to Page 101 Line 6

18 Q. Now, I need to know whether there was any degree
19 in what you gave them that you were telling them that they
20 could rely on. That you, Larry Smyers, a professional
21 geologist, a master's degree, that you added value to that
22 data that you got from other sources?
23 A. When you use public data, you try to do as much due
24 diligence as you can. You cannot guarantee absolutely the
25 accuracy of anything reported or -- you know, the files. You
00101
1 try to see if they do fit in with the scheme of things. You
2 give them your best opinion based upon the data and the
3 availability of it, and it's truth and accuracy originally.
4 That has always been a practice. You say that this is your
5 best opinion, and these were checked out as far as possible.
6 There is always the inherent risk in any of these ventures.

Request For Admission No. 64:

The proposal that Smyers made to Van Hampton and/or Devonian Resources Inc. regarding the area of mutual interest represented to Van Hampton and/or Devonian that Smyers had done a due diligence investigation of the area of mutual interest to support the merits of his proposal to Van Hampton and/or Devonian.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 101 Line 7 to Page 101 Line 21

Q. Does your proposal letter say that? What you've just said to me, does it say that? Does it give that qualification in so many words that it's not a guarantee, but I've done due diligence on it and so forth? Does it kind of repeat that kind of language?
A. It was done verbally.
Q. And so when you gave the verbal proposal, you're saying that you gave those verbal qualifications and assurances that you've just described to me; is that correct?
A. Yes.
Q. So you did more than just pass along public data then?
A. Yes.
Q. You did due diligence?
A. Yes.

Request For Admission No. 65:

The geology profession has certain guidelines or steps that a geologist should follow or take as part of a geologist's due diligence investigation of an area being considered for possible drilling and development.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 101 Line 22 to Page 101 Line 25

22 Q. Does the geology profession have any kind of
23 guidelines or handbooks where they say, here are the steps of
24 a geologist's due diligence -- what a geologist should do?
25 A. There are general guidelines.

*LARRYS~1.ASC: Page 102 Line 24 to Page 103 Line 5

24 Q. If I got to the geology department and I retain a
25 professor there as an expert and I say to him, are there
00103
1 certain steps that a geologist should take in general as part
2 of due diligence, is he going to tell me yes?
3 A. Yes.
4 Q. And you say you did those steps?
5 A. Yes.

Request For Admission No. 66:

Devonian Resources Inc. and Mideast entered into their joint venture agreement without Smyers knowledge or participation.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 134 Line 19 to Page 134 Line 24

19 Q. Did that surprise you that they formed a joint
20 venture without you knowing about it -- without your
21 participation?
22 A. From the original agreement, yes.
23 Q. Why did it surprise you?
24 A. It was never alluded to before.

Request For Admission No. 67:

Smyers had no knowledge as to why the joint venture agreement that Devonian Resources Inc. and Mideast entered into did not mention Smyers' name.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 135 Line 24 to Page 136 Line 13

24 Q. Do you have any understanding why they didn't put
25 your name in there instead of referring to this unnamed third
00136
1 party?
2 A. No, I do not.
3 Q. Is it possible that there could have been some
4 other third party other than you that they're referring to?
5 A. No.
6 Q. How do you know that?
7 A. Well, I would have been informed of that I suppose.
8 Q. Well, they didn't inform you of the joint venture
9 agreement. Why do you suppose they would inform you of that?
10 A. I have no idea.
11 Q. So you have no idea why they didn't mention your
12 name?
13 A. That's right.

Request For Admission No. 68:

Smyers has no knowledge as to what "prior agreement" the joint venture agreement between Devonian Resources Inc. and Mideast indicates mandated the 1/64th overriding royalty that Smyers is claiming.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 136 Line 14 to Page 136 Line 17

14 Q. Where it says, "A 1/64th overriding royalty
15 interest as mandated by a prior agreement", which specific
16 agreement are they referring to?
17 A. I have no idea.

Request For Admission No. 69:

Smyers claims that he is entitled to get the overriding royalty that he is now claiming from Mideast because Smyers was providing geologic services at the time that the joint venture agreement was entered into between Devonian Resources Inc. and Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 137 Line 5 to Page 137 Line 15

5 Q. If I didn't expressly state it, I'm meaning what is
6 your understanding or your personal knowledge? I'm not
7 asking you to be a lawyer. Do you have any understanding of
8 what -- you're claiming that this was you. That you're

9 entitled to this 1/64th. That you're the third party. Now,
10 it says, "third party providing geologic services",
11 therefore, I take it you're saying that you were providing
12 geologic services?
13 A. I was providing geological services, yes.
14 Q. That's why you were going to get the royalty?
15 A. Yes.

Request For Admission No. 70:

Smyers had no communications or dealings with Mideast prior to or after Devonian Resources Inc. and Mideast entering into the August 23, 2000 joint venture agreement until the filing of the Smyers Complaint against Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 139 Line 16 to Page 139 Line 20

16 Q. So let me break that down. Before this August 23,
17 2000, joint venture was signed, did you have any
18 communications or dealings with Mid-East about this joint
19 venture agreement?
20 A. No.

*LARRYS~1.ASC: Page 139 Line 21 to Page 140 Line 1

21 Q. The overriding royalty interest referred to in this
22 joint venture agreement before it was signed, did you have
23 any contact or discussion with them?
24 A. I don't recall. Before this was signed?
25 Q. Right.
00140
1 A. The answer is no to that.

*LARRYS~1.ASC: Page 140 Line 2 to Page 140 Line 10

2 Q. So the answer is no that you never talked to
3 Mid-East or had contact with them about the overriding
4 royalty prior to the August 23, 2000, joint venture
5 agreement.
6 Subsequent to the August 23, 2000, joint venture
7 agreement, did you have any direct communications or dealings
8 with Mid-East about the joint venture agreement prior to

9 filing this complaint?
10 A. No.

Request For Admission No. 71:

Smyers did not see the joint venture agreement between Devonian Resources Inc. and Mideast or the assignment from Devonian to Mideast until sometime after the January 16, 2002 assignment from Devonian to Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 140 Line 17 to Page 140 Line 20

17 Q. So you didn't see the joint venture or the
18 assignment until some time after January 16, 2002, which is
19 the date of the assignment; is that correct?
20 A. That's correct.

Request For Admission No. 72:

Smyers believes that he first met Donald Sbarra in 2001.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 150 Line 12 to Page 150 Line 20

12 Q. Let's talk about Donald Sbarra. Do you know Mr.
13 Sbarra?
14 A. Yes. I'm acquainted with him.
15 Q. When did you first meet him?
16 A. I had a phone call one time. I don't recall the
17 exact date, but I had a telephone call from him.

18 Q. Do you have an approximate date, year -- 2000,
19 2001, 2003?
20 A. I believe it might have been in 2001.

Request For Admission No. 73:

Donald Sbarra told Smyers that Donald Sbarra wanted to know if Smyers could assist Donald Sbarra in analyzing Donald Sbarra's investments in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

*LARRYS~1.ASC: Page 151 Line 10 to Page 151 Line 14

10 Q. What did he tell you?
11 A. He told me that he was an investor in the Pine
12 Glenn project, and he wanted to know if somebody could assist
13 him in analyzing his investments there. I said, I don't
14 know. That was the first contact.

Request For Admission No. 74:

When Donald Sbarra asked Smyers to do work for him pertaining to production from the area of mutual interest Smyers told Donald Sbarra that Smyers was already entitled to be paid overriding royalty from someone else for production from the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 151 Line 20 to Page 151 Line 23

20 Q. Then what happened?
21 A. Then he asked me if I would do some work for him.
22 I said, I can't do this. I said, do you realize that I have
23 an override in the area.

Request For Admission No. 75:

The advice that Smyers gave Donald Sbarra was for the purpose of furthering the interest of Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 154 Line 9 to Page 154 Line 11

9 Q. Were you advising him on behalf of Devonian and
10 Mid-East? Who were you advising him on behalf of?
11 A. On himself.

Request For Admission No. 76:

The consent that Devonian Resources Inc. and Mideast gave Smyers with regard to his advising Donald Sbarra was limited to Smyers doing whatever it would take to keep Donald Sbarra investing with Mideast in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 154 Line 12 to Page 154 Line 16

12 Q. Does that present a conflict?
13 A. No. It did not provide a conflict because I was
14 informed by my employer that whatever it would take to keep
15 him -- to advise him on the wells is fine with them, and also
16 Mid-East would encourage me to do the same.

Request For Admission No. 77:

Smyers believed that Donald Sbarra was a wealthy man with a lot of money to be invested.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 239 Line 5 to Page 239 Line 12

5 Q. What did you know about Sbarra's background before
6 you started doing work for him? Did you do a little inquiry?
7 A. No. I asked him directly.
8 Q. What impression did you have? Was he a man of
9 limited means, or was he on the other extreme with a group of
10 wealthy people with a lot of money to be invested?
11 A. I was led to believe that he was well-shoed
12 himself.

Request For Admission No. 78:

Smyers testified under oath when deposed by Mideast that Smyers never encouraged Donald Sbarra to invest with someone other than Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 155 Line 13 to Page 155 Line 16

13 Q. Did you encourage him to invest with somebody else?
14 Did you say, hey, don't invest with these people. Invest
15 over here with this other deal?
16 A. No. No.

Request For Admission No. 79:

Smyers never solicited or encouraged Donald Sbarra to go into business with Smyers.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 156 Line 3 to Page 156 Line 12

3 MR. GRECO: I asked him if he felt that if it was
4 within the permissible scope of the consent that he had from
5 Mid-East and from Devonian, that he could encourage
6 Mr. Sbarra to go into business with him. I didn't ask if he
7 did, I asked if it was in the scope of what he could have
8 done.
9
10 A. Well, it didn't occur to me to encourage him to
11 split off and go in that area and do things on his own. No.
12 No. He never made any mention of that.

*LARRYS~1.ASC: Page 156 Line 24 to Page 157 Line 2

24 Q. But let me ask so I can get a yes or no answer.
25 Did you ever suggest to him that he could go into business
00157
1 with you and --
2 A. I never suggested to him, no.

Request For Admission No. 80:

Donald Sbarra informed Smyers that Donald Sbarra wanted Smyers to go into business with Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 157 Line 15 to Page 157 Line 20

15 Q. Let me go over the question again because
16 apparently -- I'm talking about -- did you ever, at any time
17 in any way, have any communication with Sbarra to discuss the
18 possibility of you and him going into business together?
19 A. Mr. Sbarra would like to have me work for him at
20 one time.

*LARRYS~1.ASC: Page 157 Line 21 to Page 158 Line 8

21 Q. Can my question be answered yes or no as to
22 whether you ever had any discussion about going into business
23 with him anywhere at any time?
24 A. Yes, he did mention that. Yes, he did mention it.
25 Q. He mentioned it?
00158
1 A. Yes.
2 Q. He sought to encourage that?
3 A. It was played with and then dropped.
4 Q. Did you ever bring it up and talk about it in any
5 correspondence you have?
6 A. No.
7 Q. So it was only communication from him?
8 A. He initiated, yes.

Request For Admission No. 81:

Smyers and Donald Sbarra discussed doing drilling programs together, separate from Mideast and the AMI.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 195 Line 1 to Page 195 Line 10

1 Q. The next paragraph after No. 5 says, "As we
2 discussed, there exists a potential for us to do programs on
3 our own". So now you and Larry(sic) are going to do programs
4 on your own?
5 A. Don Sbarra.
6 Q. You and Don Sbarra?
7 A. Uh-hum, yes. I was asking him -- you know, he was
8 just playing with the idea, and I never took it seriously
9 because he liked investing in these programs provided that
10 they were paying in Pine Glenn.

Request For Admission No. 82:

Smyers proposed to Donald Sbarra that Donald Sbarra enter into transactions with Smyers that would give Donald Sbarra more control than Donald Sbarra had in his transactions with Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 196 Line 1 to Page 196 Line 15

1 Q. Next it says, "You have much more control and
2 rewards to both of us is more likely". Was he having a
3 control problem? He wanted more control than he had with the
4 joint venture with Mid-East and Devonian?
5 A. Yes, he was.
6 Q. And you were going to offer him an alternative
7 where he could have something better for himself?
8 A. He was asking if he could get a little bit better
9 control on answering and data exchange etc.
10 Q. Then it says, "rewards to both of us is more
11 likely". That would be more for you? You would get a better
12 deal out of it?
13 A. It would be a deal that I would be able to get an
14 override on if it worked out, but it never conspired. To my

15 knowledge, he did nothing.

Request For Admission No. 83:

Smyers furthered his proposed plan to have Donald Sbarra invest in prospects other than in the area of mutual interest, by Smyers teaming up with another person to further the plan.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 197 Line 7 to Page 197 Line 15

7 Q. Now, in the last full paragraph of Exhibit E, which
8 is the September 27, 2002, fax from you, Larry, to Don
9 Sbarra, it says in the second sentence, "I'm sincerely
10 interested in starting the pursuit of these prospects in
11 earnest and have already teamed up with a very good land man
12 starting in that direction." Now, you have "starting a
13 pursuit of these prospects". Which prospects are those? The
14 upstate Pennsylvania one?
15 A. Yes.

Request For Admission No. 84:

Smyers entered into an agreement with a third party to further Smyers' plan to entice Donald Sbarra to invest in drilling prospects outside the area of mutual interest with someone other than Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 197 Line 16 to Page 197 Line 21

16 Q. "I have already teamed up with a very good land man
17 starting in that direction", who is the land man?
18 A. His name was Rick Hollencamp.
19 Q. When you say "teamed up", what does that mean? You
20 and Rick had an agreement?
21 A. Yes, we had one.

Request For Admission No. 85:

Devonian Resources Inc. did not learn that Smyers was working for Donald Sbarra until after Smyers started working for Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 161 Line 2 to Page 161 Line 7

2 Q. Now, if someone would say, when they first learned
3 that, it was after you started work, and that they hit the
4 roof and were rather disappointed or upset, would that be
5 incorrect?
6 A. They were upset. Stan was upset that I was
7 contacted.

Request For Admission No. 86:

At the time that Devonian Resources Inc. learned that Smyers was working for Donald Sbarra, Smyers was still an employee of Devonian.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 87:

When Devonian Resources Inc. learned that Smyers was working for Donald Sbarra, Devonian was "upset".

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 161 Line 2 to Page 161 Line 7

2 Q. Now, if someone would say, when they first learned
3 that, it was after you started work, and that they hit the
4 roof and were rather disappointed or upset, would that be
5 incorrect?
6 A. They were upset. Stan was upset that I was
7 contacted.

Request For Admission No. 88:

The purpose of Smyers working for Donald Sbarra was for Smyers to give Smyers' opinion to Donald Sbarra as to whether Donald Sbarra should or should not participate in investments in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 161 Line 11 to Page 161 Line 17

11 Q. Now, when you worked for Sbarra, would I be
12 accurate in saying that the purpose of your work was to
13 assist him in analyzing the technical data, the logs, and
14 things like that?
15 A. To give an opinion.
16 Q. To give an opinion on what?

17 A. Participating or not participating.

Request For Admission No. 89:

Smyers had no authority to do anything for Donald Sbarra that would be harmful to the interests of Devonian Resources Inc. or Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 163 Line 14 to Page 163 Line 17

14 Q. Did you feel that you had their authority to do
15 things for Mr. Sbarra even if it would be harmful to their
16 interest?
17 A. No.

*LARRYS~1.ASC: Page 163 Line 23 to Page 164 Line 5

23 Q. So what I'm trying to understand is whether I get
24 to a yes or no at the end of the question. So yes or no, did
25 you feel that you could help Mr. Sbarra even it would harm
00164
1 Mid-East and Devonian?
2 A. No.
3 Q. So you had that limit? You couldn't help Sbarra to
4 hurt them?
5 A. That's right.

Request For Admission No. 90:

When Smyers was working for Donald Sbarra, Smyers was aware that his encouraging Donald Sbarra to invest with someone other than Mideast or Devonian Resources Inc. would be harmful to Mideast and Devonian.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

<u>In Answering, You May Want To Consider</u>:

* LARRYS~1.ASC: Page 164 Line 18 to Page 164 Line 19

18 A. No. Encouraging him to invest with somebody else
19 would be harmful.

*LARRYS~1.ASC: Page 164 Line 20 to Page 164 Line 24

20 Q. To encourage him not to invest with Mid-East and
21 Devonian, and encouraging Sbarra to invest somewhere else,
22 that would be harmful to Mid-East and Devonian, wouldn't it?
23 A. If I would have brought it up, it would have been,
24 yes.

*LARRYS~1.ASC: Page 165 Line 5 to Page 165 Line 12

5 Q. Let me try to remove the ambiguity. Was there some
6 benefit to Mid-East and Devonian to have Sbarra invest with
7 them?
8 A. I believe there was, yes.
9 Q. If you were to advise Mr. Sbarra not to invest with
10 them, that would be contrary to the benefit of Devonian and
11 Mid-East, wouldn't it?
12 A. That would be.

<u>Request For Admission No. 91:</u>

Donald Sbarra used Smyers for purposes other than in connection with the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

<u>In Answering, You May Want To Consider</u>:

* LARRYS~1.ASC: Page 167 Line 21 to Page 168 Line 9

21 Q. Did your relationship with the scope of your
22 services change over time because in the beginning I thought
23 you said that you were hired to help him and assist him in
24 evaluating his investments?
25 A. Right. Right.
00168

1 Q. But later you're giving him information about
2 drilling elsewhere?
3 A. Yes, there were added things. It was starting to
4 crunch in with my time that I had to devote with Devonian.
5 Q. He wanted to expand the scope of your services to
6 include things other than Pine Glenn?
7 A. Yes. Yes.
8 Q. You did that to some degree before you quit?
9 A. Yes, I did. I said, I cannot do anymore of this.

Request For Admission No. 92:

Neither Devonian Resources Inc. nor Mideast ever gave Smyers consent for Smyers to escalate the scope of services that Smyers was rendering to Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 168 Line 21 to Page 168 Line 25

21 Q. You didn't go back before you kind of escalated the
22 scope of your services, which occurred before you stopped?
23 Before you escalated the scope of your services, you didn't
24 go back to Mid-East and Devonian and ask them for consent?
25 A. No.

Request For Admission No. 93:

When Smyers asked Mideast and Devonian Resources Inc. for consent to work for Donald Sbarra, Smyers did not disclose to Mideast or Devonian that Donald Sbarra had told Smyers that Donald Sbarra was interested in investing in drilling other than in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 170 Line 16 to Page 170 Line 20

16 Q. When you asked for consent from Mid-East and from
17 Devonian, did you say, I suspect this man is interested in
18 going some place else?
19 A. It wasn't important. I just thought it was a
20 comment.

*LARRYS~1.ASC: Page 171 Line 3 to Page 171 Line 14

3 Q. When you asked for their consent, you didn't say,
4 you know it's funny he asked me about drilling elsewhere. He
5 may want to use me to help him drill elsewhere, and if he
6 does that, hey, guys it's not going to be in your best
7 interest. You didn't have that conversation with Devonian
8 and Mid-East, did you?
9
10 MR. TALADAY: At what point in the relationship?
11
12 Q. At the time that you asked for consent when you met
13 out in this small restaurant you described.
14 A. No. Because it never -- no.

Request For Admission No. 94:

During the course of Smyers' work with Donald Sbarra, Smyers never told Mideast or Devonian Resources Inc. that Donald Sbarra wanted to do things against the best interest of Mideast and/or Devonian.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 171 Line 15 to Page 171 Line 21

15 Q. Did you ever sit down with them before you
16 terminated with Sbarra and say, fellows, I know you gave me
17 consent to help Sbarra but when he's asking for help, that
18 leads me to believe that he wants to do something that's
19 against your best interest. Did you have any kind of
20 conversation like that with Mid-East or Devonian?
21 A. No.

Request For Admission No. 95:

The last contact Smyers had with Donald Sbarra occurred sometime during the period between March and May 2002.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 173 Line 10 to Page 173 Line 12

10 Q. When was last time that you had contact with
11 Sbarra?
12 A. I'm thinking March or April -- May 2002.

Request For Admission No. 96:

Smyers required Devonian Resources Inc. to enter into a confidentiality agreement to treat geologic information about the area of mutual interest as confidential, but Smyers did not get Donald Sbarra to sign a confidentiality agreement to cover the geologic information that Smyers was giving Donald Sbarra about the area of mutual interest prospects.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 173 Line 23 to Page 174 Line 14

23 Q. Did you have a confidentiality agreement with
24 Sbarra?
25 A. No.
00174
1 Q. Now, you were sharing with Sbarra information about
2 the Pine Glenn prospect; is that correct?
3 A. I was giving him geologic data or my best guess on
4 investing in wells.
5 Q. In the Pine Glenn area?
6 A. Yes.
7 Q. Now, you previously entered into a confidentiality
8 agreement with Devonian with regard to the Pine Glenn area?
9 A. Yes.
10 Q. That was your idea to have this confidentiality
11 agreement with Devonian?
12 A. Yes.
13 Q. But you didn't get Sbarra to sign one?
14 A. No.

Request For Admission No. 97:

Smyers had no knowledge that Donald Sbarra was bound by any confidentiality agreement as to the geologic information that Smyers provided to Donald Sbarra about prospects in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 174 Line 18 to Page 174 Line 20

18 Q. Did you know whether or not he was bound by a
19 confidentiality agreement?
20 A. No, I did not.

*LARRYS~1.ASC: Page 175 Line 10 to Page 175 Line 15

10 Q. Mid-East sent it to you, but in terms of what you
11 would give to Sbarra, you never read any document that
12 imposed a confidentiality obligation to him, did you?
13 A. No. I did not.
14 Q. And you didn't impose any obligation on him?
15 A. No, I did not.

Request For Admission No. 98:

Donald Sbarra used Smyers to advise Donald Sbarra on where further wells should be drilled in the AMI.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 210 Line 17 to Page 210 Line 23

17 Q. It says, "Don, the following locations I feel have

18 the most potential for the next 25 well program". Now, as I
19 read that, that letter is not addressed to the issue of
20 should wells be completed that have been drilled. It seems
21 to be directed toward advising Don where future wells should
22 be drilled. Would that be a correct interpretation?
23 A. That would be, yes.

Request For Admission No. 99:

Donald Sbarra's use of Smyers was not limited to advising Donald Sbarra as to whether or not wells that had already been drilled in the area of mutual interest should be completed.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 210 Line 17 to Page 210 Line 23

17 Q. It says, "Don, the following locations I feel have
18 the most potential for the next 25 well program". Now, as I
19 read that, that letter is not addressed to the issue of
20 should wells be completed that have been drilled. It seems
21 to be directed toward advising Don where future wells should
22 be drilled. Would that be a correct interpretation?
23 A. That would be, yes.

Request For Admission No. 100:

Smyers was still an employee of Devonian Resources Inc. when Smyers was providing Donald Sbarra with technical information, projections, charts, and graphs.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 213 Line 5 to Page 213 Line 8

5 Q. Now, as you provided Donald Sbarra with all of this
6 technical information, projections, charts, grafts, you were
7 still at that point an employee of Devonian?
8 A. Yes.

Request For Admission No. 101:

Smyers provided valuable information to Donald Sbarra about the area of mutual interest that Smyers did not provide to Mideast or to Devonian Resources Inc.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 214 Line 2 to Page 214 Line 19

2 Q. So at that point Devonian was out, and Mid-East was
3 in as the successor to Devonian?
4 A. Yes.
5 Q. So did you send copies of this to Mid-East?
6 A. No.
7 Q. So Mid-East stood in the shoes of Devonian as the
8 successor. So you were an employee of Devonian, you had an
9 agreement that was then held by Mid-East, but you didn't give
10 any of this information to either Devonian or Mid-East?
11 A. No. This information -- these logs would have come
12 from Mid-East's office.
13 Q. They would have come from Mid-East. You added
14 value to them by doing an analysis of them?
15 A. Yes.
16 Q. And you didn't share that added value with them?
17 A. This was added value for Don Sbarra.
18 Q. But not for them?
19 A. That's right.

Request For Admission No. 102:

Smyers gave Donald Sbarra cost information when Smyers knew that Donald Sbarra was considering engaging in a business transaction on his own.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 186 Line 11 to Page 186 Line 14

11 Q. So you knew he was considering doing something on
12 his own, and then you provided him with some cost information
13 to help him decide?
14 A. Yes.

Request For Admission No. 103:

Smyers helped Donald Sbarra get information about the attractiveness of drilling wells in areas other than the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 188 Line 15 to Page 189 Line 7

15 Q. Well, that paragraph 3 says, "Is a well AFE
16 supplied to me confidentially by a friend of mine who works
17 for an operator drilling 5,600 wells in upstate PA, where
18 they have a program going with good results. All
19 land/geology/geophysics/engineering/administrating is
20 included. I am working to get the goods on the recoverable
21 reserves for program wells such as this". What does that
22 mean that "you're working to get the goods on recoverable
23 reserves for programs like this"?
24 A. Trying to get some offset production data to see

25 exactly what kind of reserves you could expect from a typical
00189
1 well in the area.
2 Q. When you say "the area", that's upstate PA?
3 A. Yes.
4 Q. Where's upstate PA?
5 A. It would be the whole northern tier.
6 Q. That's not Pine Glenn?
7 A. No. No.

*LARRYS~1.ASC: Page 189 Line 8 to Page 190 Line 1

8 Q. So you're giving him cost information about the
9 AFEs; you're giving to Sbarra some other area other than Pine
10 Glenn; you tell him about costs; and you're working to get
11 the goods on recoverable reserves for that?
12 A. Trying to get some idea if there is any public data
13 out there to try to get. Never did get it.
14 Q. So you pretty well by that point knew that Sbarra
15 had a serious interest in drilling some place else?
16 A. He had not -- as far as when he alluded to it, he
17 never committed to anything.
18 Q. But he's paying you to get this information, right?
19 A. No. Actually, no.
20 Q. Well, you're getting it for him for free?
21 A. Well, this is what was requested, and that's when I
22 said, no, I'm not going to do anymore.
23 Q. But you didn't say that in the letter. You said, I
24 am working to get the goods on the recoverable reserves. You
25 didn't say, no way am I going to do this?
00190
1 A. Well, no. Not at that time, no.

Request For Admission No. 104:

Smyers gave Donald Sbarra cost data and reserve information about drilling prospects in an area where Smyers personally had prospects, which prospects were not in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 192 Line 14 to Page 192 Line 23

14 Q. Well, how could you say you never had anything to
15 start with when it says, "I started on my own"? You had
16 something.
17 A. I had prospects, but I didn't have any acreage at
18 the time.
19 Q. When you sell prospects, I mean, that's part of
20 what you do; isn't it?
21 A. Yes.
22 Q. So you had prospects up there?
23 A. Yes.

*LARRYS~1.ASC: Page 192 Line 24 to Page 193 Line 2

24 Q. In an area that you have prospects, you were
25 saying, let me get you cost data; let me get you reserve
00193
1 data. That's what you were doing then?
2 A. Yes.

Request For Admission No. 105:

Smyers did not deny that the cost information that Smyers gave to Donald Sbarra may have come from Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 198 Line 21 to Page 199 Line 4

21 Q. Now, attached to this exhibit there's a schedule
22 here. It looks like some cost information. Take a look at
23 it. There's a little sticky note on the side. My question
24 is going to be, where did that information come from?
25 A. I don't recall.
00199
1 Q. It says number two at the top?
2 A. It might have been --
3 Q. It couldn't have been from Mid-East?
4 A. I don't know. I'm not sure.

Request For Admission No. 106:

At times it appeared to Smyers that Donald Sbarra was part of an organization.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 207 Line 14 to Page 207 Line 20

14 Q. Now, when we talk about Sbarra, were you dealing
15 with just Don Sbarra or were you dealing with him as a
16 representative of other people? Was he kind of a lead man?
17 A. I am not sure how the organization was put
18 together. At times it appeared to be that he was the sole
19 representative, and at other times there would be other
20 people involved with it.

Request For Admission No. 107:

At times it appeared to Smyers that there were other people involved with Donald Sbarra that acted as though Smyers was working for them too.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 208 Line 21 to Page 208 Line 3

21 Q. When you went out to Kansas, were there other
22 people involved with you and Don?
23 A. Yes.
24 Q. Who were they?
25 A. Harry Abermight.
00208
1 Q. Did they react to you and act towards you as though
2 you were working for them too, as well as Don Sbarra?

3 A. Uh-huh.

Request For Admission No. 108:

Smyers claims that he did not make any notes during his trips to Kansas to meet with Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 228 Line 19 to Page 229 Line 3

19 Q. So you actually had two meetings in Wichita?
20 A. Yes. Two meetings.
21 Q. Earlier I thought there was only one. Now, when
22 you go to meetings, I assume you make notes?
23 A. No.
24 Q. You seem like kind of a meticulous guy, I assumed
25 you made some notes of the discussions?
00229
1 A. No. I did not take any notes. These were quick.
2 These were real quick trips and there was really nothing to
3 discuss.

Request For Admission No. 109:

Smyers claims that when he traveled to Kansas to meet with Donald Sbarra there was really nothing for him and Donald Sbarra to discuss with each other.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 228 Line 19 to Page 229 Line 3

19 Q. So you actually had two meetings in Wichita?
20 A. Yes. Two meetings.
21 Q. Earlier I thought there was only one. Now, when
22 you go to meetings, I assume you make notes?
23 A. No.
24 Q. You seem like kind of a meticulous guy, I assumed
25 you made some notes of the discussions?
00229
1 A. No. I did not take any notes. These were quick.
2 These were real quick trips and there was really nothing to
3 discuss.

Request For Admission No. 110:

On January 19, 2004, when Smyers was deposed and asked if the name John McNally meant anything to him, Smyers answered "I've heard of the name", but after further questioning Smyers admitted "I met with John McNally, yes."

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 232 Line 13 to Page 232 Line 17

13 Q. Does the name John McNally mean anything to you?
14 A. Yes, it does. I've heard of the name.
15 Q. What does it mean to you?
16 A. Just a gentleman that I heard in passing that had
17 acreage.

*LARRYS~1.ASC: Page 232 Line 24 to Page 233 Line 4

24 Q. Did you ever meet with John McNally or anybody from
25 Wood B. Resources?
00233
1 A. I met with John McNally, yes.
2 Q. So you more than just heard of him, you actually
3 met him?
4 A. I met him, yes.

Request For Admission No. 111:

Smyers met with John McNally at the request of Donald Sbarra.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 233 Line 8 to Page 233 Line 20

8 Q. What do you know about John McNally and Donald
9 Sbarra?
10 A. I do not know what relationship they got now. I
11 have no idea.
12 Q. You don't know what they have now, but what did
13 they have in the past?
14 A. Nothing at the time. I just met with the man. I
15 was requested to go meet with him, and I did.
16 Q. Who requested it?
17 A. It came through -- Don asked me to go meet with
18 this guy to see what he got.
19 Q. Don Sbarra?
20 A. Don Sbarra did, yes.

Request For Admission No. 112:

Smyers met with John McNally on behalf of Donald Sbarra to evaluate drilling prospects that McNally had for drilling outside the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 233 Line 24 to Page 234 Line 3

24 Q. So he told you to go meet with him. What did he
25 say to do when you met with him?
00234
1 A. To see what he had.
2 Q. To see what he had in acreage?
3 A. Yeah. Acreage or play or whatever.

Request For Admission No. 113:

After Smyers met with John McNally to evaluate drilling prospects outside the area of mutual interest Smyers told Donald Sbarra that McNally's prospects were promising.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 234 Line 9 to Page 234 Line 14

9 Q. Did you report back to Don Sbarra on the results on
10 your meeting?
11 A. I mentioned a couple of things to him, yes.
12 Q. Like what?
13 A. It looked promising. I had to use my best guess on
14 it.

Request For Admission No. 114:

Smyers believes that the reason for Donald Sbarra having Smyers meet with John McNally was that Donald Sbarra was looking for a place to put his money and McNally was looking to get some drilling money.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

<u>In Answering, You May Want To Consider</u>:

* LARRYS~1.ASC: Page 236 Line 15 to Page 236 Line 24

15 Q. What did John McNally want? Was he looking for
16 money or investors?
17 A. Probably, yes.
18 Q. You're not sure?
19 A. I'm not sure. He was probably trying to get some
20 drilling funds.
21 Q. So you were up there on behalf of Don Sbarra, and I
22 assume he was looking to place the foot money; is that
23 correct?
24 A. I suppose, yes.

*LARRYS~1.ASC: Page 237 Line 7 to Page 237 Line 11

7 Q. So John McNally was looking for drilling money?
8 A. Yes.
9 Q. And Sbarra was looking for a place to put drilling
10 money?
11 A. I suppose, yes. Yes. He was looking for a place.

<u>Request For Admission No. 115:</u>

Smyers was motivated to find an opportunity for Donald Sbarra to invest his drilling money with John McNally, because Smyers expected to get a contingent fee if Donald Sbarra made such an investment with McNally.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

<u>In Answering, You May Want To Consider</u>:

* LARRYS~1.ASC: Page 237 Line 21 to Page 238 Line 9

21 Q. Now, did you discuss with Mr. Sbarra I'll get a
22 thirty second, and I'll bring these prospects to you and I
23 won't charge you, I won't send you an invoice for this, but
24 I'll get an override?
25 A. Well, yeah. We could have worked out something
00238
1 like that, yes.

2 Q. You could have worked it out. Did you suggest it?
3 A. I mentioned it; that I do work -- you know, on a
4 contingency basis like this, yes.
5 Q. He understood that when you were heading up there
6 to have a meeting for him with McNally -- Sbarra understood
7 that you worked on a contingency basis?
8 A. If something would have worked out as a project,
9 yes, that's what I would have done.

Request For Admission No. 116:

Smyers served as Donald Sbarra's "eyes and ears" in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 200 Line 1 to Page 200 Line 5

1 Q. Now, you were like, it seems to me, his eyes and
2 ears in Pine Glenn out here. That's why he hired you? You
3 were knowledgeable about the Pine Glenn area that's why he
4 called you; is that correct?
5 A. That is correct.

Request For Admission No. 117:

Smyers believes that after January 19, 2003 Donald Sbarra was no longer interested in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 200 Line 9 to Page 200 Line 19

9 Q. And what's your best recollection of when he
10 stopped using you as his eyes and ears in connection with
11 Pine Glenn?
12 A. About a year ago. A little over a year ago.
13 Q. Do you know that he hired anybody else as his eyes
14 and ears for Pine Glenn?
15 A. No, I don't. No.
16 Q. So as far as you know, when he stopped using you,
17 he was no longer interested in Pine Glenn?
18 A. That's what I would assume. I was never told
19 differently if he hired someone else or not.

Request For Admission No. 118:

Donald Sbarra never told Smyers that Donald Sbarra considered lease cost, pipeline, engineering, geology or administrative costs as not being reasonable costs of well drilling and development.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 200 Line 20 to Page 201 Line 4

20 Q. Now, you provided Mr. Sbarra with cost information
21 and in the last sentence you made it clear that the cost
22 estimate for the 5,000 foot well does not include lease cost,
23 pipeline, engineering, geology, administrative, etc. So
24 these are realistic industry type additional costs that one
25 should expect?
00201
1 A. Yes.
2 Q. Did Sbarra ever get back to you and tell you that
3 he disagreed with that?
4 A. No.

Request For Admission No. 119:

Smyers never had a direct contract with Mideast in which Mideast assumed any obligations to pay an overriding royalty to Smyers.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 181 Line 6 to Page 181 Line 9

6 Q. Did you ever have a direct contract where they
7 signed a document saying, Larry Smyers, we agree that we have
8 an obligation to pay you an overriding royalty?
9 A. I have nothing.

Request For Admission No. 120:

Smyers never did any work for Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 181 Line 10 to Page 181 Line 11

10 Q. Did you ever do any work for Mid-East?
11 A. No.

*LARRYS~1.ASC: Page 181 Line 18 to Page 181 Line 19

18 Q. But you never worked for Mid-East?
19 A. No.

Request For Admission No. 121:

Smyers could have provided services to Mideast that would have improved production from wells drilled in the area of mutual interest.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

In Answering, You May Want To Consider:

* LARRYS~1.ASC: Page 181 Line 23 to Page 182 Line 1

23 Q. Do you think the services you could have rendered
24 would have been helpful in improving the production from
25 wells drilled in the area of mutual interest?
00182
1 A. Yes.

Request For Admission No. 122:

There are no documents evidencing Smyers' claimed overriding royalty interest in any part of the AMI, other than those documents attached to his Complaint as exhibits.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 123:

The documents attached to the Complaint are the only contracts or agreements Smyers entered into between Smyers and either Devonian or Van Hampton.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 124:

No contracts or agreements were entered into between Smyers and Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 125:

Van Hampton and/or Devonian promised to assign an overriding royalty interest in oil and gas rights in the AMI to Smyers, if Smyers performed certain services.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 126:

Smyers never received a present assignment of any overriding royalty interest in any oil and/or gas rights in the AMI from either Van Hampton or Devonian.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

Request For Admission No. 127:

Smyers never received a present assignment of any overriding royalty interest in any oil and/or gas rights in the AMI from Mideast.

Admitted: _____ Denied: _____

SEE INSTRUCTION #1 ABOVE REGARDING REQUIRED INTERROGATORIES

FOR DEFENDANT MIDEAST OIL COMPANY:

DOM W. GRECO, ESQ.
Pa. Id.# 16829

NATHANIEL C. PARKER, ESQ.
Pa. Id.# 90993

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW

LARRY F. SMYERS, Plaintiff	:	
vs.	:	No. 03-1598-CD
MID EAST OIL COMPANY, Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 10th day of March, 2004, a true and correct copy of Plaintiff's Motion for Protective Order was forwarded by United States First Class Mail to the following:

Dom W. Greco, Esq.
Attorney for Defendant
P.O. Box 667
Clarion, PA 16214

Matthew B. Taladay
Attorney for Plaintiff