

2006-2042-CD  
Devonian Res. Vs Mid-East Oil Co

06-2042-CD  
Devonian Res. Vs Mid-East Oil Co

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEVONIAN RESOURCES, INC. AND VAN  
HAMPTON GAS & OIL CO., INC.,

Plaintiffs

vs.

MID-EAST OIL COMPANY and

Defendant

ORIGINAL

No. 06-2042-CD

TYPE OF PLEADING FILED:

PRAECIPE FOR APPEARANCE

FILED ON BEHALF OF

Defendant

COUNSEL OF RECORD FOR  
THIS PARTY:

Wayne A. Kablack, Esquire  
PA I.D. #25818

Simpson, Kablack & Bell  
834 Philadelphia Street  
Indiana, PA 15701  
724-465-5559

FILED NOCC  
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JAN 22 2006 AM  
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William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEVONIAN RESOURCES, INC. AND VAN  
HAMPTON GAS & OIL CO., INC.,

Plaintiffs

: No. 06-2042-CD

vs.

MID-EAST OIL COMPANY and

Defendant

**PRAECIPE FOR APPEARANCE**

**TO THE PROTHONOTARY:**

Please enter my appearance on behalf of the Defendant, Mid-East Oil Company, in connection with the above-captioned matter.

Respectfully submitted,



Wayne A. Kablack, Esquire  
Simpson, Kablack & Bell  
834 Philadelphia Street  
Indiana, PA 15701  
724-465-5559

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEVONIAN RESOURCES, INC. AND VAN  
HAMPTON GAS & OIL CO., INC.,

Plaintiffs

No. 06-2042-CD

vs.

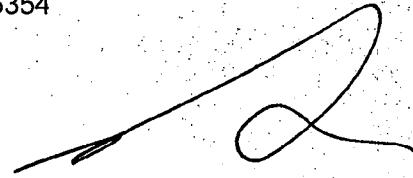
MID-EAST OIL COMPANY and

Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that Praecipe for Appearance was served upon the individual listed below by first class United States mail, postage prepaid at Indiana, Pennsylvania, this 18th day of January, 2007.

Joseph E. Altomare, Esquire  
228 East Central Avenue  
PO Box 373  
Titusville, PA 16354



Wayne A. Kablack, Esquire  
Simpson, Kablack & Bell  
834 Philadelphia Street  
Indiana, PA 15701

6A  
**ORIGINAL**

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

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

CIVIL ACTION

Plaintiffs

CASE NUMBER: 06-2042-CD

vs.

TYPE OF PLEADING:  
Preliminary Objections

MID-EAST OIL COMPANY,

FILED ON BEHALF OF:  
Mid-East  
Defendant

Defendant

NAME, ADDRESS AND TELEPHONE  
OF: Counsel of Record

Wayne A. Kablack, Esquire  
Attorney's State ID#: 25818

Mathew G. Simon, Esquire  
Attorney's State ID#: 91976

Simpson, Kablack & Bell  
834 Philadelphia Street  
Indiana, PA 15701  
(724) 465-5559

Attorney's Firm ID#: 25-0918627

FILED *2cc*  
*2011-01-20* Atty Simon  
FEB 20 2007  
*(6)*

William A. Shaw  
Prothonotary/Clerk of Courts

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

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

Plaintiffs : Case No. 06-2042-CD  
vs. :  
MID-EAST OIL COMPANY, : Civil Action - Law  
Defendant :  
:

NOTICE TO PLEAD

TO PLAINTIFFS, DEVONIAN RESOURCES, INC. and VAN HAMPTON GAS & OIL CO., INC.:

YOU ARE NOTIFIED TO PLEAD TO THE FOLLOWING PRELIMINARY OBJECTIONS  
WITHIN TWENTY DAYS FROM THE SERVICE OF THE SAME OR A DEFAULT JUDGMENT  
MAY BE ENTERED AGAINST YOU.

---

Mathew G. Simon, Esquire  
Simpson, Kablack, & Bell  
834 Philadelphia Street, Suite 200  
Indiana, Pa. 15701  
724-465-5559  
Attorneys for the Defendant

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

DEVONIAN RESOURCES, INC. and :  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs : Case No. 06-2042-CD  
vs. :  
MID-EAST OIL COMPANY, : Civil Action - Law  
Defendant :  
:

PRELIMINARY OBJECTIONS

TO THE HONORABLE JUDGES OF THE ABOVE COURT:

AND NOW, comes, Mid-East Oil Company, Defendant in the above captioned matter, by and through its attorneys, Wayne A. Kablack, Esquire and Mathew G. Simon, Esquire of Simpson, Kablack & Bell, and respectfully present these Preliminary Objections, pursuant to Pa. R.C.P. 1028, to Plaintiffs' Complaint and, in support of the same, aver as follows:

1. The Plaintiffs initiated this action by filing a Complaint in the Court of Common Pleas of Clearfield County.
2. The Plaintiffs' Complaint alleges four separate causes of action: (I) Breach of Contract, (II) Wrongful Use of Civil Proceedings (42 Pa.C.S. §8351), (III) Common Law Malicious Use of Process, and (IV) Common Law Malicious Abuse of Process.

Legal Insufficiency of the Complaint (Demurrer) to Court I – Breach of Contract

3. Pa.R.C.P. 1028(a)(4) provides that a party may file a Preliminary Objection based upon the legal insufficiency of a pleading.
4. Count I of Plaintiffs' Complaint alleges that Mid-East Oil Company (hereinafter "Mid-East") breached its contractual obligation and/or duty to Devonian Resources, Inc. (hereinafter "Devonian") to defend and hold Devonian harmless from certain claims pursuant to paragraph 5(b) of an Asset Purchase Agreement between Devonian and Mid-East.
5. Nowhere in the complaint is there any allegation that at any time a claim was asserted against Devonian which would invoke Mid-East's alleged defend and hold harmless duty obligations to Devonian.

6. Likewise, there is no allegation in the complaint that at any time Mid-East refused Devonian's request to defend and hold Devonian harmless from any specific claim or allegation.

7. The Plaintiffs have therefore failed to allege the requisite elements necessary to establish a *prima facie* claim for breach of contract.

8. Plaintiffs' Count I therefore fails to allege a cause of action upon which relief may be granted.

**WHEREFORE**, the Defendant respectfully requests this Honorable Court dismiss Count I of the Plaintiffs' Complaint, with prejudice.

**Legal Insufficiency of the Complaint (Demurrer) to Court II – Wrongful Use of Civil Proceedings (42 Pa. C. S. A. § 8351)**

9. The Defendant, Mid-East, incorporates by reference the averments of Paragraphs 1 through 8 above, as if set forth herein at length.

10. Pa.R.C.P. 1028(a)(4) provides that a party may file a Preliminary Objection based upon the legal insufficiency of a pleading.

11. Count II of Plaintiffs' Complaint alleges that Mid-East wrongfully instituted civil proceedings against Devonian and Van Hampton Gas & Oil Co., Inc. (hereinafter "Hampton") in violation of 42 Pa. C. S. A. § 8351.

12. The Dragonetti Act, codified at 42 Pa. C. S. A. § 8351, provides that a person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings if he:

- a) acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and
- b) the proceedings have terminated in favor of the person against whom they are brought.

13. Accordingly, to bring an action under this statute, a plaintiff must allege and prove "(1) that the underlying proceedings were terminated in their favor; (2) that defendants caused those proceedings to be instituted without probable cause; and (3) that the proceedings were instituted for an improper purpose." Bannar v. Miller, 701 A.2d 232, 238 (Pa. Super. 1997).

14. Plaintiffs' Complaint alleges that Mid-East intentionally and maliciously, and without probable cause, sought indemnification from Devonian and Hampton by *joining them* as

additional defendants. See Paragraph 25 of Plaintiffs' Complaint (emphasis added by Defendant's counsel).

15. The Dragonetti Act, and the interpretation of this Act by courts of this Commonwealth, makes it clear that to bring an action under the statute, the plaintiff must allege that the proceedings were instituted primarily for a purpose other than that of securing a joinder of parties....

16. The Plaintiffs' Complaint alleges that in the prior suit involving Larry F. Smyers (hereinafter "Smyers"), Mid-East joined Devonian and Hampton as additional defendants. It is clear under the Dragonetti Act that the actions of joining parties cannot constitute a cause of action.

17. Furthermore, the case law interpreting the Dragonetti Act states that the simple defensive act of joining an additional defendant in a prior suit cannot serve as the basis for a claim of wrongful use of civil proceedings.

18. The Dragonetti Act "permits one who is sued without probable cause to sue the original plaintiff in turn." Electronic Lab. Supply v. Cullen, 712 A.2d 304, 309 (Pa. Super. 1998).

19. The Dragonetti Act does not create a cause of action for the defense of a prior action as it would "penalize defendants for exercising their legal and statutory rights to put forth a defense." Paparo v. United Parcel Service, Inc., 43 F. Supp.2d 547, 548 (E.D. Pa. 1999).

20. In Young v. Shedd, 35 Pa. D & C. 3d 78 (Lycoming Co. 1984), which was cited by the district court in Paparo, the court stated:

[A]llowing individuals to be sued under this act [Dragonetti Act] for defending prior actions... would place a considerable burden on courts by creating a never ending progression of litigation[,] as well as hav[e] a chilling effect upon an individual's ability or willingness to defend a suit for fear that he may thereby become liable in a second suit. We do not believe such a result was ever intended.

Paparo, 43 F. Supp.2d at 549 (citing Young, 35 Pa. D & C. 3d at 82).

21. Moreover, a defendant should not be punished for nothing more than defending himself or herself against a claim made by another. Mi-Lor, Inc. v. DiPentino, 654 A.2d 1156, 1158 (Pa. Super. 1995).

22. In the Smyers action, Mid-East did not institute a counterclaim in the prior suit nor did it file a separate action against Devonian and Hampton. Mid-East merely joined Devonian and Hampton as additional defendants. As such, Mid-East cannot, and should not, have any liability under the Dragonetti Act for defending a suit brought by another and as such, the Plaintiffs have failed to state a claim upon which relief could be granted.

23. Lastly, the Plaintiffs' complaint only alleges that it is "believed that all claims of Mid-East against Devonian and Hampton *will have been* terminated in Devonian's favor by the time the within claim comes on for trial." See Plaintiffs' Complaint, Paragraph 28 (emphasis added by Defendant's counsel).

24. The Dragonetti Act specifically provides that prior to commencing an action under the statute, the prior proceeding has to have been terminated in favor of the plaintiff in the current action. See 42 Pa. C. S. A. § 8351(a)(2).

25. Pennsylvania law regarding the wrongful use of civil proceedings is in conformity with the Restatement of Torts, Second, § 674. See *Shaffer v. Stewart*, 473 A.2d 1017 (Pa. Super. 1984).

26. Section 674 states that it is the function of the court to determine whether the prior proceedings were terminated in favor of the plaintiff.

27. Nowhere in the complaint is it alleged that the underlying action complained of has, in fact, been finally determined in Devonian's favor.

28. There has been no final order entered in the Smyers action and therefore the Smyers action has in fact not been finally determined in the Plaintiffs' favor.

29. Because the underlying action has not been finally terminated, the present action by the Plaintiffs is not ripe and/or premature and therefore they have failed state a claim upon which relief can be granted.

30. For all the above reasons, the Plaintiffs' Complaint does not allege the statutorily required elements provided for under 42 Pa. C. S. A. § 8351 and as such, Count II of the Plaintiffs' Complaint is legally insufficient

**WHEREFORE**, for all the above reasons, the Defendant respectfully requests that this Honorable Court dismiss Count II of the Plaintiffs' Complaint, with prejudice.

**Lack of Conformity to Law or Rule of Court for Court II – Wrongful Use of Civil Proceedings (42 Pa. C. S. A. § 8351)**

31. The Defendant, Mid-East, incorporates by reference the averments of Paragraphs 1 through 30 above, as if set forth herein at length.

32. Pa.R.C.P. 1028(a)(2) provides that a party may file a Preliminary Objection based a lack of conformity to law or rule of court.

33. In Count II of the Plaintiffs' Complaint, it is alleged that as a direct result of Mid-East's actions, Devonian has been injured by having to incur the additional expense of bringing the current action and both Devonian and Hampton have sustained harm to their reputation. See Plaintiffs' Complaint, Paragraph 27.

34. The Dragonetti Act specifically addresses the only damages that can be pursued under the Act. See 42 Pa. C. S. A. § 8353(3).

35. It is clear that § 8353(3) does not permit the recovery of attorney's fees/expenses that are incurred in pursuing a wrongful use of civil proceedings action. See also Hart v. O'Malley, 781 A.2d 1211, 1217 (Pa. Super. 2001).

36. Moreover, the Dragonetti Act does not permit damages for harm sustained to one's reputation unless such harm is caused by defamatory matter alleged as the basis of the proceedings. See 42 Pa. C. S. A. § 8353(2).

37. The Plaintiffs' have not and cannot allege in their Complaint that the prior proceeding was based on a defamatory matter(s).

38. For these reasons, it is impermissible for the Plaintiffs' to allege and/or recover attorney's fees/expenses for the current action and any harm/damage to their reputation.

**WHEREFORE**, for all the above reasons, the Defendant respectfully requests that this Honorable Court dismiss Count II of the Plaintiffs' Complaint, with prejudice. In the alternative, the Defendant respectfully requests that Paragraph 27 (b) and (c) of the Complaint be stricken.

**Legal Insufficiency of the Complaint (Demurrer) to Court III – Common Law Malicious Use of Process**

39. The Defendant, Mid-East, incorporates by reference the averments of Paragraphs 1 through 38 above, as if set forth herein at length.

40. Pa.R.C.P. 1028(a)(4) provides that a party may file a Preliminary Objection based upon the legal insufficiency of a pleading.

41. Count III of the Plaintiffs' Complaint alleges a cause of action based on the common law tort of malicious use of process as a separate and distinct tort from Count II in the Plaintiffs' Complaint which relates to the cause of action pursuant to 42 Pa. C. S. A. § 8351.

42. The common law tort of malicious use of process has been codified and superseded by 42 Pa. C. S. A. § 8351-8354. See 2 Summ. Pa. Jur. 2d Torts §19:1 (citing Shaffer v. Stewart, 326 Pa.Super. 135, 140, 473 A.2d 1017, 1019 (Pa.Super. 1984)).

43. Furthermore, the Pennsylvania Supreme Court has held that the "Dragonetti Act has replaced the common law malicious prosecution cause of action with the statutory Wrongful Use of Civil Proceedings cause of action." Northwestern Nat. Cas. Co. v. Century III Chevrolet, Inc., 863 F. Supp. 247 (W.D. Pa. 1994) (citing Ludmer v. Nernberg, 553 A.2d 924, 925-926 (Pa. 1989) and Matter of Larsen, 616 A.2d 529, 587 (Pa. 1992)).

44. Therefore there is no standalone common law tort for malicious use of process separate and apart from the Plaintiffs' cause of action under 42 Pa. C. S. A. §8351.

45. Plaintiffs' Count III therefore fails to allege a cause of action upon which relief may be granted.

**WHEREFORE**, the Defendant respectfully requests that this Honorable Court dismiss Count III of the Plaintiffs' Complaint, with prejudice.

**Legal Insufficiency of the Complaint (Demurrer) to Court IV – Common Law Malicious Abuse of Process**

46. The Defendant, Mid-East, incorporates by reference the averments of Paragraphs 1 through 45 above, as if set forth herein at length.

47. Pa.R.C.P. 1028(a)(4) provides that a party may file a Preliminary Objection based upon the legal insufficiency of a pleading.

48. Count IV of Plaintiffs' Complaint alleges a cause of action based upon the common law tort of malicious abuse of process.

49. Abuse of process is, in essence, the use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process. McGee v. Feege, 535 A.2d 1020, 1026 (Pa. 1987). Thus, the gravamen of this tort is the perversion of legal process to benefit someone in achieving a purpose which is not an authorized goal of the procedure in question. Rosen v. American Bank of Rolla, 627 A.2d 190, 192 (Pa. Super. 1993).

50. A cause of action for abuse of process requires some definite act or threat not authorized by the process, and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion. Rosen v. Tesoro Petroleum Corporation, 582 A.2d 27, 32 (Pa. Super. 1990).

51. The Plaintiffs' Complaint only alleges that the Defendant joined Devonian and Hampton as additional defendants in the Smyers action without probable cause or for an improper purpose. See Plaintiffs' Complaint, Paragraphs 18, 25.

52. There are absolutely no allegations in the Plaintiff's Complaint of any definite act or threat not authorized by the process, or that the Defendant did anything other than carry out the process of joining additional defendants in the Smyers suit and did so to its authorized conclusion.

53. Under well-settled Pennsylvania common law concerning abuse of process, the allegations contained in the Plaintiffs' Complaint are legally insufficient for the common law tort of malicious abuse of process and as such, Count IV fails to set forth a cause of action upon which relief may be granted.

**WHEREFORE**, the Defendant respectfully requests that this Honorable Court dismiss Count III of the Plaintiffs' Complaint, with prejudice.

**Insufficient Specificity of a Pleading to Courts I, II, III, and IV (in the alternative)**

54. The Defendant, Mid-East, incorporates by reference the averments of Paragraphs 1 through 53 above, as if set forth herein at length.

55. Pa.R.C.P. 1028(a)(3) provides that a party may file a Preliminary Objection based upon the insufficient specificity of a pleading.

56. The Plaintiffs' Complaint fails to allege, with the requisite specificity, those facts which would provide the factual basis for the:

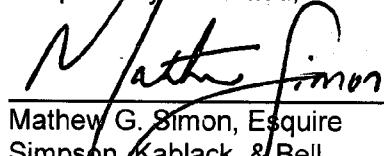
- a) alleged breach of contractual duty and/or obligation by the Defendant to defend and hold Devonian and Hampton harmless;
- b) alleged wrongful use of civil proceeding by the Defendant in joining Devonian and Hampton as additional defendants in the prior action; and
- c) alleged malicious abuse of process by the Defendant during the prior proceeding in which it joined Devonian and Hampton as additional defendants.

57. The Plaintiffs' Complaint lacks sufficient specificity to apprise the Defendant of the issues and facts to be litigated.

58. Because of the insufficient specificity in the Plaintiffs' Complaint, the Defendant is improperly precluded and impaired from formulating a responsive pleading thereto.

**WHEREFORE**, the Defendant respectfully requests that this Honorable Court dismiss the Plaintiffs' Complaint, with prejudice. In the alternative, the Defendant respectfully requests that the Court order the Plaintiffs to file a more specific pleading.

Respectfully submitted,



Mathew G. Simon, Esquire  
Simpson, Kablack, & Bell  
834 Philadelphia Street, Suite 200  
Indiana, Pa. 15701  
(724) 465-5559  
Attorneys for the Defendant, Mid-East

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

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

Plaintiffs : Case No. 06-2042-CD  
vs. : Civil Action - Law  
MID-EAST OIL COMPANY, :  
Defendant :  
:

ORDER OF COURT

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, upon careful  
consideration of the Defendant, Mid-East Oil Company, Preliminary Objections to the Plaintiffs'  
Complaint, it is hereby ORDERED, DIRECTED, and DECREED that the Defendant's  
preliminary objections are GRANTED and the Complaint against the Defendant is hereby  
dismissed with prejudice.

BY THE COURT:

\_\_\_\_\_  
J.

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

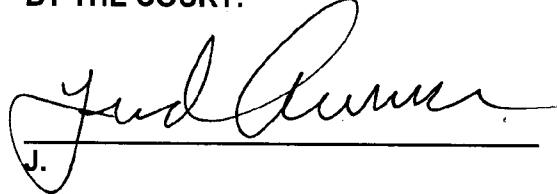
DEVONIAN RESOURCES, INC. and :  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs : Case No. 06-2042-CD  
vs. :  
MID-EAST OIL COMPANY, : Civil Action - Law  
Defendant :  
:

SCHEDULING ORDER OF COURT

AND NOW, this 14<sup>th</sup> day of March, 2007, upon the filing of Preliminary Objections by the Defendant, Mid-East Oil Company, through its counsel Mathew G. Simon and Wayne A. Kablack of Simpson, Kablack & Bell, it is hereby ORDERED, DIRECTED, and DECREED that an argument in this matter is set for the 16<sup>th</sup> day of April, 2007 at 11 : 00 A.m. in Courtroom No. 1 in the Clearfield County Courthouse.

FURTHERMORE, the parties are hereby ORDERED, DIRECTED, and DECREED to submit their respective briefs pursuant to the schedule established by this Court. The Defendant's brief shall be due on April 2nd, 2007 and shall be lodged with the Court Administrator. The Plaintiffs' Reply Brief shall be due on April 15, 2007 and shall also be lodged with the Court Administrator. The parties are directed to provide opposing counsel with a copy of the brief once it is lodged with the Court Administrator.

BY THE COURT:

  
J.

FILED

01/10/4/07  
MAR 16 2007

2cc  
Atty Simon  
William A. Shaw  
Prothonotary/Clerk of Courts

60R

**FILED**

**MAR 16 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/16/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney  Other

Special Instructions:

**ORIGINAL**

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

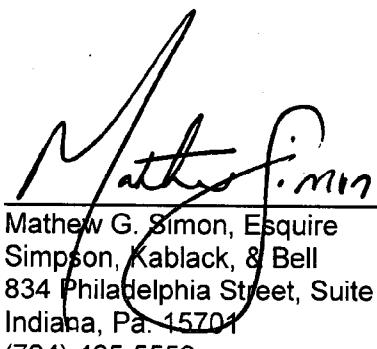
**DEVONIAN RESOURCES, INC. and  
VAN HAMPTON GAS & OIL CO., INC.**

Plaintiffs : Case No. 06-2042-CD  
vs. : Civil Action - Law  
MID-EAST OIL COMPANY, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Defendant, Mid-East Oil Company, Preliminary Objections filed at the above term and number was served upon the individual listed below, as counsel of record, by first class United States mail, postage prepaid at Indiana Pennsylvania, this 16<sup>th</sup> day of February, 2007.

Joseph E. Altomare, Esq.  
228 E. Central Avenue  
P.O. Box 373  
Titusville, PA 16354

  
\_\_\_\_\_  
Mathew G. Simon, Esquire  
Simpson, Kablack, & Bell  
834 Philadelphia Street, Suite 200  
Indiana, Pa. 15701  
(724) 465-5559  
Attorneys for the Defendant, Mid-East

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102221  
NO: 06-2042-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: DEVONIAN RESOURCES INC. AND VAN HAMPTON GAS & OIL CO. INC.  
vs.  
DEFENDANT: MID-EAST OIL COMPANY

**SHERIFF RETURN**

---

NOW, December 06, 2006, SHERIFF OF INDIANA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MID-EAST OIL COMPANY.

NOW, December 12, 2006 AT 1:20 PM SERVED THE WITHIN COMPLAINT ON MID-EAST OIL COMPANY, DEFENDANT. THE RETURN OF INDIANA COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

**FILED**

01/04/07  
MAR 09 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102221  
NO: 06-2042-CD  
SERVICES 1  
COMPLAINT

PLAINTIFF: DEVONIAN RESOURCES INC. AND VAN HAMPTON GAS & OIL CO. INC.  
VS.  
DEFENDANT: MID-EAST OIL COMPANY

**SHERIFF RETURN**

---

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	ALTOMARE	11524	10.00
SHERIFF HAWKINS	ALTOMARE	11524	21.00
INDIANA CO.	ALTOMARE	11523	40.00

Sworn to Before Me This

So Answers,

\_\_\_\_ Day of \_\_\_\_\_ 2007

  
Chester A. Hawkins  
Sheriff

## INDIANA COUNTY SHERIFF'S OFFICE

**PLAINTIFF** DEVONIAN RES **date received:** 12/6/2006 **status:** C

VS **case number:** 06CD2042

**DEFENDANT** MID EAST OIL C **paper type:** COMPLAINT

**ATTORNEY'S NAME:** JOSEPH E ALTOMARE ESQ **LAST DAY OF SERVICE:** 1/5/2007

**ATTORNEY'S ADDRESS:** 228 EAST CENTRAL AVE  
TITUSVILLE PA **# of services:** 1

**ADVANCE CHARGED:** \$100.00

**RECEIVING DOCKETING:** \$9.00 **SURCHARGE:** \$0.00

**FOUND SERVICE:** \$9.00 **NOTARY FEE:** \$5.00

**NOT FOUND** \$0.00 **MILEAGE:** \$17.00

**ADDITIONAL DEFENDANTS SERVED** \$0.00 **POSTAGE:** \$0.00

**DEPUTIZATION** \$0.00

**TOTAL COSTS:** \$40.00

**REFUND DUE:** \$60.00

**RETURN OF SERVICE:**

NOW 12/12/06 AT 1:20PM SERVED MID EAST OIL CO BY  
HANDING TO MARK THOMPSON, OWNER AT 255 AIRPORT RD  
INDIANA PA-HILL

SWORN AND SUBSCRIBED BEFORE ME  
THIS 20 DAY OF DEC 20 06

*Loretta J. Wissinger*

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
LORETTA J. WISSINGER, NOTARY PUBLIC
INDIANA, INDIANA CO
MY COMMISSION EXPIRES MAR. 15, 2010

*Robert E. Fyock*  
ROBERT E. FYOCK, SHERIFF  
BY: *Ryan Hill*  
DEPUTY RYAN HILL



CHESTER A. HAWKINS  
SHERIFF

**Sheriff's Office  
Clearfield County**

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986

FAX (814) 765-5915

ROBERT SNYDER

CHIEF DEPUTY

MARILYN HAMM

DEPT. CLERK

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

KAREN BAUGHMAN  
CLERK TYPIST

PETER F. SMITH  
SOLICITOR

**DEPUTATION**

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

PAGE 102221

TERM & NO. 06-2042-CD

DEVONIAN RESOURCES INC. AND VAN HAMPTON GAS & OIL CO. INC.

COMPLAINT

vs.

MID-EAST OIL COMPANY

**SERVE BY: 01/05/07**

**MAKE REFUND PAYABLE TO JOSEPH E. ALTOMARE, ESQ.**

**SERVE:** MID-EAST OIL COMPANY

**ADDRESS:** 255 AIRPORT ROAD, INDIANA, PA 15701

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF INDIANA COUNTY, Pennsylvania, to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, December 08, 2006.

RESPECTFULLY,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

**DEVONIAN RESOURCES, INC., : NO. 06-2042-CD**

**AND VAN HAMPTON GAS & OIL  
CO., INC.,**

## PLAINTIFFS

VS.

## MID-EAST OIL COMPANY,

NO. 06-2042-CD

## Civil Action

**PLAINTIFFS' ANSWER**  
**TO DEFENDANT'S**  
**PRELIMINARY OBJECTIONS**

**Counsel for Plaintiffs:  
Joseph E. Altomare  
Supreme Court ID #17156  
228 E. Central Avenue  
P. O. Box 373  
Titusville, PA 16354  
(814) 827-9626  
(814) 827-9143 - Fax  
jaltomar@msn.com**

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MAR 19 2007 CIR

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

DEVONIAN RESOURCES, INC., : NO. 06-2042-CD  
AND VAN HAMPTON GAS & OIL :  
CO., INC., :  
PLAINTIFFS :  
VS. : Civil Action  
: :  
MID-EAST OIL COMPANY, :  
: :  
DEFENDANT : :

**PLAINTIFFS' ANSWER TO DEFENDANT'S**  
**PRELIMINARY OBJECTIONS**

Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. (jointly referred to hereinafter as "Devonian"), by and through counsel, undersigned, state the following Answer to Defendant Mid-East Oil Company's ("Mid-East") Preliminary Objections:

1 through 58. Paragraphs 1 through 58 of the Mid-East Preliminary Objections are denied as conclusions of law.<sup>1</sup> To the extent an affirmative factual answer is required, Devonian incorporate herein by way of same each of the allegations of the Complaint.

Respectfully submitted,

By   
\_\_\_\_\_  
Joseph E. Altomare  
Attorney for Plaintiffs

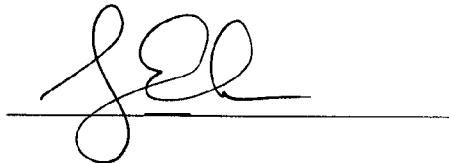
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<sup>1</sup> Defendant endorsed their preliminary objections with a Notice To Plead, to which this Answer is responsive. Plaintiffs however discern no allegation of fact in the preliminary objection to which a responsive pleading must be filed. The objections merely contain recitals of the facts pleaded in the Complaint, which are to be taken as true for purposes of preliminary objections. Plaintiffs therefore object to the inclusion of the Notice to Plead and question why they were put to the additional cost of having to plead.

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed by United States First Class Mail postage prepaid to the following, at the following addresses:

Wayne A. Kablack, Esq.  
Mathew G. Simon, Esq.  
SIMPSON KABLACK & BELL  
834 Philadelphia Street  
Indiana, PA 15701



Dated March 15, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

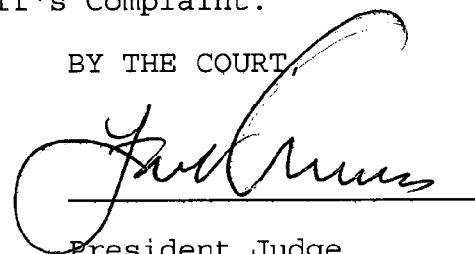
DEVONIAN RESOURCES, INC., and :  
VAN HAMPTON GAS & OIL CO., INC. :

VS. : NO. 06-2042-CD  
MID-EAST OIL COMPANY :  
O R D E R

AND NOW, this 16th day of April, 2007, following argument relative Preliminary Objections filed by the Defendant to the Plaintiff's Complaint, it is the ORDER of this Court, based upon the representation of Plaintiff's counsel, that Count III of the Plaintiff's Complaint is hereby withdrawn.

The Court shall issue subsequent Order on the merits regarding the Preliminary Objections to the remaining Counts contained within the Plaintiff's Complaint.

BY THE COURT,



President Judge

FILED <sup>cc Atlys.</sup>  
04/12/05 pm J. Altomare  
APR 19 2007 Kablack

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4-19-2007

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

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APR 19 2007

William A. Shaw  
Prothonotary/Clerk of Courts

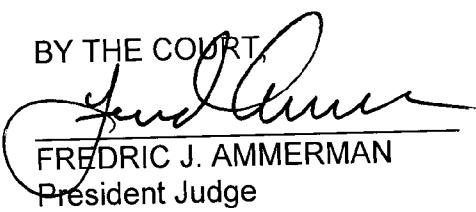
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DEVONIAN RESOURCES, INC. and \*  
VAN HAMPTON GAS & OIL CO., INC., \*  
Plaintiffs \* NO. 06-2042-CD  
\*  
vs. \*  
MID-EAST OIL COMPANY, \*  
Defendant \*

ORDER

NOW, this 6<sup>th</sup> day of June, 2007, following argument on the Preliminary Objections filed by the Defendant to the Plaintiff's Complaint; it is the ORDER of this Court that Defendant's Preliminary Objections to the Legal Sufficiency of Counts I & II of Plaintiff's Complaint be DENIED; that Defendant's Preliminary Objections to the Legal Sufficiency of Count IV be GRANTED and Count IV be and is hereby DISMISSED. It is the further ORDER of this Court that Defendant's Preliminary Objections to the specificity of Counts I and II be DENIED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED 1CC  
JUN 06 2007 Attnys:  
William A. Shaw  
Prothonotary/Clerk of Courts  
Attnmre Kablack  
GK

**FILED**

**JUN 06 2007**

**William A. Shaw  
Prothonotary/Clerk of Courts**

DATE: June 6, 2007

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

ORIGINAL <sup>CA</sup>

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

DEVONIAN RESOURCES, INC. and : CIVIL ACTION - LAW  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs, :  
vs. : CASE NUMBER: 06-2042-CD  
MID-EAST OIL COMPANY, :  
Defendant. :  
: TYPE OF PLEADING:  
: Motion for Clarification  
: FILED ON BEHALF OF:  
: Mid-East Oil Company,  
: Defendant  
: NAME, ADDRESS AND TELEPHONE  
: OF: Counsel of Record  
: Wayne A. Kablack, Esquire  
: Attorney's State ID#: 25818  
: Mathew G. Simon, Esquire  
: Attorney's State ID#: 91976  
: Simpson, Kablack & Bell  
: 834 Philadelphia Street  
: Indiana, PA 15701  
: (724) 465-5559  
: Attorney's Firm ID#: 25-0918627

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JUN 14 2007 AMY  
Simon  
William A. Shaw  
Prothonotary/Clerk of Courts  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DEVONIAN RESOURCES, INC. and :  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs, : Case No. 06-2042-CD  
vs. :  
MID-EAST OIL COMPANY, : Civil Action - Law  
Defendant. :  
:

**MOTION FOR CLARIFICATION**

AND NOW, comes, Mid-East Oil Company, Defendant in the above captioned matter, by and through its attorneys, Wayne A. Kablack, Esquire and Mathew G. Simon, Esquire of Simpson, Kablack & Bell, and respectfully files the within Motion for Clarification and avers the following:

1. The Plaintiffs, Devonian Resources, Inc. and Van Hampton Gas & Oil Co., Inc. initiated this action against the Defendant, Mid-East Oil Company, by filing a Complaint in the Court of Common Pleas of Clearfield County.
2. The Plaintiffs' Complaint alleges four separate causes of action: (I) Breach of Contract, (II) Wrongful Use of Civil Proceedings (42 Pa.C.S. §8351), (III) Common Law Malicious Use of Process, and (IV) Common Law Malicious Abuse of Process.
3. The Defendant filed Preliminary Objections to the Complaint.
4. These Preliminary Objections included the following:
  - a. Legal Insufficiency of the Complaint (Demurrer) to Count I – Breach of Contract;
  - b. Legal Insufficiency of the Complaint (Demurrer) to Count II – Wrongful Use of Civil Proceedings (42 Pa. C. S. A. § 8351);
  - c. Lack of Conformity to Law or Rule of Court for Count II – Wrongful Use of Civil Proceedings (42 Pa. C. S. A. § 8351);
  - d. Legal Insufficiency of the Complaint (Demurrer) to Count III – Common Law Malicious Use of Process;
  - e. Legal Insufficiency of the Complaint (Demurrer) to Count IV – Common Law Malicious Abuse of Process; and
  - f. Insufficient Specificity of a Pleading to Counts I, II, III, and IV (in the alternative)

5. During oral argument, Counsel for the Plaintiffs voluntarily withdrew Count III of the Complaint and this Honorable Court issued an Order of Court on April 16, 2007 confirming the withdrawal Count III of the Complaint.

6. On June 6, 2007, this Honorable Court issued an Order of Court which stated the following:

- a. Preliminary Objections to the Legal Sufficiency of Counts I and II are DENIED.
- b. Preliminary Objections to the Legal Sufficiency of Count IV is GRANTED and Count IV is DISMISSED.
- c. Preliminary Objections to the Specificity of Counts I and II are DENIED.

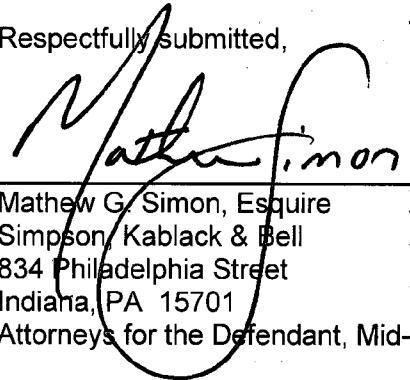
7. This Honorable Court's Order did not address the Defendant's Preliminary Objection to the Lack of Conformity to Law or Rule of Court for Count II.

8. The basis for the Defendant's Preliminary Objection to Count II for the Lack of Conformity to Law or Rule of Court was that it is impermissible for the Plaintiffs to allege, plead, and recover damages for the expenses of bringing the current action and harm to the Plaintiffs' reputation.

9. The Defendant's requested relief was for this Honorable Court to strike Paragraphs 27 (b) and (c) of the Complaint.

**WHEREFORE**, the Defendant, Mid-East Oil Company, respectfully requests this Honorable Court for clarification and a ruling regarding the Preliminary Objection to Count II for the Lack of Conformity to Law or Rule of Court.

Respectfully submitted,

  
\_\_\_\_\_  
Mathew G. Simon, Esquire  
Simpson, Kablack & Bell  
834 Philadelphia Street  
Indiana, PA 15701  
Attorneys for the Defendant, Mid-East

**ORIGINAL**

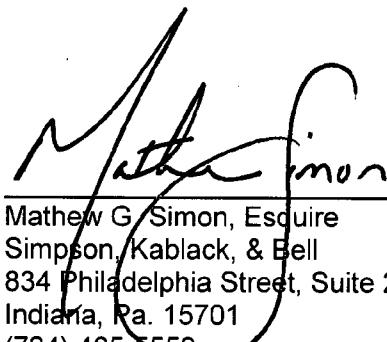
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

DEVONIAN RESOURCES, INC. and : Civil Action - Law  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs, :  
vs. : Case No. 06-2042-CD  
MID-EAST OIL COMPANY, :  
Defendant. :

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Defendant's Motion for Clarification filed at the above term and number was served upon the individual listed below, as counsel of record, by first class United States mail, postage prepaid at Indiana Pennsylvania, this 14<sup>th</sup> day of June, 2007.

Joseph E. Altomare, Esq.  
228 E. Central Avenue  
P.O. Box 373  
Titusville, PA 16354



Mathew G. Simon, Esquire  
Simpson, Kablack, & Bell  
834 Philadelphia Street, Suite 200  
Indiana, Pa. 15701  
(724) 465-5559  
Attorneys for the Defendant, Mid-East

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

DEVONIAN RESOURCES, INC. and :  
VAN HAMPTON GAS & :  
OIL CO., INC. :  
vs. : No. 06-2042-CD  
MID-EAST OIL COMPANY :  
:

FILED

JUN 21 2007

0/11/00/cu (6K)

William A. Shaw

Prothonotary/Clerk of Courts

SENT TO ATTY M. SIMON

J. Ammerman

ORDER

AND NOW, this 21 day of June, 2007, it is the ORDER of the Court that argument on Defendant's Motion for Clarification in the above-captioned matter has been scheduled for Friday, July 27, 2007 at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of the Petitioner to serve certified copy of said scheduling Order on the Plaintiff.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

DATE: 6-21-07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

Prothonotary/Clerk of Courts  
William A. Shaw

JUN 21 2007

FILED

ORIGINAL

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

DEVONIAN RESOURCES, INC. and  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs, :  
vs. :  
MID-EAST OIL COMPANY, :  
Defendant. :

Case No. 06-2042-CD

Civil Action - Law

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Atty Simon

William A. Shaw  
Prothonotary/Clerk of Courts

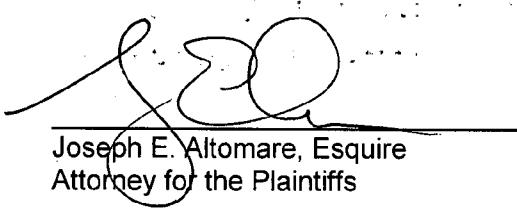
STIPULATION

AND NOW, comes the Defendant, Mid-East Oil Company, by and through its attorneys, Wayne A. Kablack, Esquire and Mathew G. Simon, Esquire of Simpson, Kablack & Bell and respectfully represents that the parties to the above captioned matter hereby stipulate and agree that:

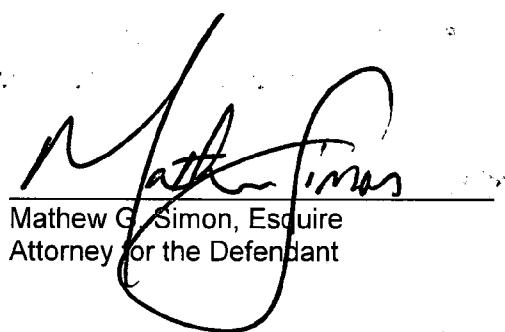
1. The Plaintiffs, Devonian Resources, Inc. and Van Hampton Gas & Oil Co., are represented by Joseph E. Altomare, Esquire.
2. The Defendant, Mid-East Oil Co., is represented by Wayne A. Kablack, Esquire and Mathew G. Simon, Esquire of Simpson, Kablack & Bell.
3. This action was initiated by a Complaint filed by the Plaintiffs.
4. Preliminary Objections were filed by the Defendant and oral argument was held before this Honorable Court.
5. On June 6, 2007, an Order of Court was issued with regard to the Defendant's Preliminary Objections.
6. On June 14, 2007, the Defendant filed a Motion for Clarification regarding the Preliminary Objection to the Lack of Conformity to Law or Rule of Court of Count II in the Plaintiffs' Complaint.
7. Counsel for the Plaintiffs and Defendant have stipulated and agreed that the Defendant's Preliminary Objection to Paragraphs 27 (b) and 27 (c) of the Complaint should be sustained by the Court.

WHEREFORE, counsel for the parties stipulate and agree that the following Order shall be entered.

Respectfully submitted,



Joseph E. Altomare, Esquire  
Attorney for the Plaintiffs



Mathew G. Simon, Esquire  
Attorney for the Defendant

**FILED**

AUG 13 2007

William A. Shaw  
Prothonotary/Clerk of Courts

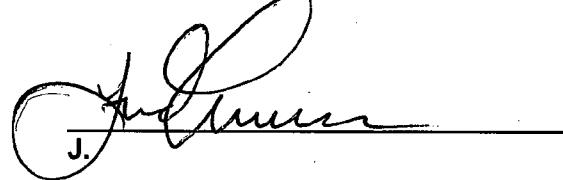
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DEVONIAN RESOURCES, INC. and : Civil Action - Law  
VAN HAMPTON GAS & OIL CO., INC. :  
Plaintiffs, :  
vs. : Case No. 06-2042-CD  
MID-EAST OIL COMPANY, :  
Defendant. :

ORDER OF COURT

AND NOW, this 10 day of August, 2007, upon consideration  
of the within Stipulation signed by Counsel for the Plaintiffs and Defendant, it is hereby  
**ORDERED, DIRECTED, and DECREED** that the Preliminary Objection to Paragraphs 27 (b)  
and (c) contained in Count II of the Plaintiffs' Complaint is **SUSTAINED** and these  
subparagraphs are **STRICKEN**.

BY THE COURT,



J.

FILED  
01/10/2007  
AUG 13 2007  
Atty  
Simon  
William A. Shaw  
Prothonotary/Clerk of Courts  
GK

**FILED**

**AUG 13 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/13/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) \_\_\_\_\_

Plaintiff(s) Attorney \_\_\_\_\_ Other \_\_\_\_\_

Defendant(s) \_\_\_\_\_

Defendant(s) Attorney \_\_\_\_\_

Special Instructions:

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

DEVONIAN RESOURCES, INC.,  
AND VAN HAMPTON GAS & OIL  
CO., INC.,

PLAINTIFFS

VS.

MID-EAST OIL COMPANY,

DEFENDANT

NO. 06-2042-CD

Civil Action

COMPLAINT

Counsel for Additional Defendants:

Joseph E. Altomare  
Supreme Court ID #17156  
228 E. Central Avenue  
P. O. Box 373  
Titusville, PA 16354  
(814) 827-9626  
(814) 827-9143 - Fax  
jaltomar@msn.com

FILED 100 Shaff  
12/06/06  
DEC 06 2006 Atty pd. 85.00

William A. Shaw  
Prothonotary/Clerk of Courts

## **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 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. (5982)**

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

<b>DEVONIAN RESOURCES, INC.,</b>	:	<b>NO. _____</b>
<b>AND VAN HAMPTON GAS &amp; OIL</b>	:	
<b>CO., INC.,</b>	:	
<b>PLAINTIFFS</b>		
<b>VS.</b>	:	<b>Civil Action</b>
	:	
	:	
<b>MID-EAST OIL COMPANY,</b>	:	
	:	
<b>DEFENDANT</b>		

**COMPLAINT**

Devonian Resources, Inc. (“Devonian”), and Van Hampton Gas & Oil Co., Inc. (“Hampton”, and jointly hereinafter, the “Plaintiffs”), by and through counsel, undersigned, state the following claims against Mid-East Oil Company (“Mid-East”):

**The Parties**

1. Plaintiffs Devonian and Hampton are each Pennsylvania business corporations engaged in the business of exploration and development of oil and gas having its principle place of business at PO Box 329, Rt. 36, Pleasantville, Venango County, Pennsylvania.
2. Defendant Mid-East is a Pennsylvania business corporations engaged in the business of exploration and development of oil and gas having its principle place at 255 Airport Road, Indiana County, Pennsylvania 15701.

**Allegations Common to All Counts**

3. Larry F. Smyers ("Smyers") is a petroleum geologist who, by letter of August 3, 1999, proposed to provide leasing services for the account of Hampton. That letter (the "Proposal Letter") is attached hereto and incorporated herein by reference as Exhibit "A".
4. Among other things, the letter proposed a that the consideration to be paid for the offered services would be a 1/64<sup>th</sup> overriding royalty interest in the project area to be identified ("ORRI").
5. The letter was addressed to Stan Thompson as the president of Hampton. Thompson, who also served as president of Devonian, an affiliated family owned company, decided to pursue the proposal on behalf of Devonian rather than Hampton, and negotiations ensued on that basis.
6. On February 29, 2000, the negotiations culminated in a written agreement which expressly incorporated by reference, and physical attachment, the terms of the Proposal Letter, including the ORRI. That agreement (the "Confidentiality Agreement") is attached hereto and incorporated herein by reference as Exhibit "B".
7. The Confidentiality Agreement, with the attachment of the Proposal Letter, was recorded in Clearfield County on September 24, 2001 as Instrument No. 200115082.
8. On August 23, 2000, Devonian and Mid-East entered into a letter agreement creating a joint venture between them. That agreement (the "Joint Venture Agreement") is attached hereto and incorporated herein by reference as Exhibit "C".
9. The Joint Venture Agreement expressly provides at paragraph 2 as follows:

*All leases, both existing and new, shall be subject to a 1/64 ORRI mandated by a prior agreement between Devonian Resources and a third party providing geologic services for this prospective area...*

10. The Joint Venture Agreement further provided that Mid-East was to serve as the exclusive operator of the joint venture. Mid-East did so serve, and at all times during the continuing existence of the joint venture, Mid-East received all of the revenue and paid all of the expenses of the joint venture, including the ORRI.

11. On November 15, 2001, the joint venture came to an end upon the acquisition by Mid-East of Devonian's interests pursuant to an asset purchase agreement and addendum thereto, each of that date. That agreement (the "Asset Purchase Agreement") is attached hereto and incorporated herein by reference as Exhibit "D" and the addendum thereto (the "Addendum To Asset Purchase Agreement") as Exhibit "E".

12. The Asset Purchase Agreement, at paragraph 5(b) contains the following indemnity and hold harmless covenant:

*(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, cost, 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. [counsel's emphasis]*

13. The Asset Purchase Agreement remained executory until Devonian executed and delivered to Mid-East an assignment and bill of sale at closing on January 16, 2002. That instrument (the "Assignment And Bill Of Sale") is attached hereto and incorporated herein by reference as Exhibit "F".

14. In describing the interests conveyed, the Assignment And Bill Of Sale, at (d) on page two, expressly incorporates by reference and physical attachment, the Joint Venture Agreement dated August 23, 2000 [Exhibit "C"], which, as stated above, contains the reservation of the ORRI.

15. Two years later, by letter dated December 2, 2003, Mid-East discontinued the payment of the ORRI to Smyers. That letter (the "Termination Letter") is attached hereto and incorporated herein by reference as Exhibit "G".

16. Until then, Mid-East had continuously paid the ORRI to Smyers.

17. In response, Smyers brought suit against Mid-East in this Court at NO. 03-1598-CD (hereinafter the "Smyers Action").

18. On or about July 4, 2003, Mid-East joined Devonian and Hampton as additional defendants in the Smyers Action alleging, *inter alia*, that Devonian and Hampton were, in the alternative, solely liable to Smyers, jointly liable with Mid-East, or liable over to Mid-East on the Smyers claims. The Mid-East Complaint Against Additional Defendants in the Smyers Action is incorporated herein by reference to the records of this Court.

COUNT I  
BREACH OF CONTRACT  
Devonian v. Mid-East

19. Each of the preceding allegations of this complaint are incorporated herein by reference as if herein fully set forth.

20. By reason of the foregoing Mid-East has breached its contractual obligation to defend and hold Devonian harmless.

21. As a direct and foreseeable consequence of the breach Devonian has incurred substantial expense, in excess of \$50,000 in defending the Smyers action.

WHEREFORE, as to this Count I, Devonian demands judgment against Mid-East for money damages in an amount, in excess of \$50,000, to be determined at trial, plus pre-judgment interest and costs.

COUNT II  
WRONGFUL USE OF CIVIL PROCEEDINGS (42 Pa.C.S. § 8351)  
Devonian and Hampton v. Mid-East

22. Each of the preceding allegations of this complaint are incorporated herein by reference as if herein fully set forth.
23. At all times pertinent hereto Mid-East knew that under the provisions of the Asset Purchase Agreement it had assumed and agreed to pay, irrespective of any independent liability on the part of Devonian or Hampton, any and all contractual obligations of the Joint Venture, and was obligated to indemnify and hold Devonian and Hampton harmless thereof.
24. By reason of the foregoing Mid-East at all pertinent times knew that it had not only waived its right to any contribution or indemnification from Devonian and Hampton on any contract claim against the Joint Venture as part of the consideration given to Devonian in the Asset Purchase Agreement, but that it was Mid-East, not Devonian, which incurred an indemnification and hold harmless obligation thereby.
25. Mid-East nevertheless intentionally and maliciously, and without any probable cause, sought indemnification from Devonian and Hampton by joining them as additional defendants in the Smyers Action.
26. The primary purpose of the joinder of Devonian and Hampton was not that of securing the proper adjudication of a claim, but on the contrary, for the abusive purpose of extorting Devonian's cooperation in Mid-East's defense of the claims brought by Smyers against Mid-East.
27. As a direct result of the foregoing, Devonian has been injured in the following particulars:

- (a) Devonian and Hampton have incurred substantial expense, in excess of \$50,000, in defending the Smyers action;
- (b) Devonian and Hampton have incurred additional expense, in bringing this action; and,
- (c) Devonian and Hampton have sustained harm to their reputation.

28. It is believed and therefore averred that all claims of Mid-East against Devonian and Hampton will have been terminated in Devonian's favor by the time the within claim comes on for trial.

WHEREFORE, as to this Count II, Devonian demands judgment against Mid-East for money damages in an amount, in excess of \$50,000, to be determined at trial, punitive damages, and pre-judgment interest and costs.

COUNT III  
COMMON LAW MALICIOUS USE OF PROCESS  
Devonian and Hampton v. Mid-East

29. Each of the preceding allegations of this complaint are incorporated herein by reference as if herein fully set forth.

WHEREFORE, as to this Count III, Devonian demands judgment against Mid-East for money damages in an amount, in excess of \$50,000, to be determined at trial, punitive damages, and pre-judgment interest and costs.

COUNT IV  
COMMON LAW MALICIOUS ABUSE OF PROCESS  
Devonian and Hampton v. Mid-East

30. Each of the preceding allegations of this complaint are incorporated herein by reference as if herein fully set forth.

WHEREFORE, as to this Count III, Devonian demands judgment against Mid-East for money damages in an amount, in excess of \$50,000, to be determined at trial, punitive damages, and pre-judgment interest and costs.

Respectfully submitted,

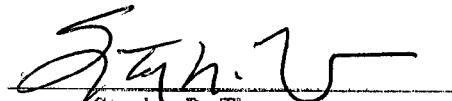
By \_\_\_\_\_

  
Joseph E. Altomare  
Attorney for Plaintiffs

VERIFICATION

I, Stanley R. Thompson, President of Devonian Resources, Inc., verify that the statements made in the foregoing pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated: 8/30/06, 2006

  
\_\_\_\_\_  
Stanley R. Thompson

# EXHIBIT “A”

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:

1500 LPS

1. Retainer fee of \$ 2,500, 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 <sup>of which copies</sup> 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

Exh. b. + II

Page 5 of 5

# EXHIBIT “B”



DPA / SIPES



## 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 Buenside 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 Geographical 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 GEOGRAPHICAL 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 GEOGRAPHICAL AREA FOR TERM OF AGREEMENT. SOME ROYALTY'S AND OWNERSHIP IN PREVIOUS DRILLING PROGRAMS BY ANOTHER OPERATOR ARE OWNED BY OFFEROR BUT DO NOT CONFLICT WITH THIS AGREEMENT (LFS)*

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*

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 notwithstanding 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:

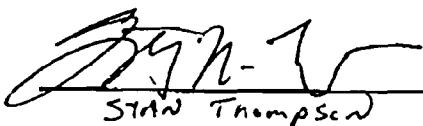
(a) THIS AGREEMENT AND THE RELATIONSHIP THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF PENNSYLVANIA WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PROVISION;

(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 Hamont Oil and Gas Company (RECEIVER) from Larry F. Snyder (OFFEROR) attached hereto 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 II. This agreement includes Van Hamont Oil and Gas, its 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 LS  
6/9/00

Page 2 of 5

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF Crawford:

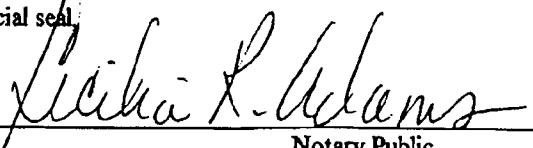
On this, the 21<sup>st</sup> day of September 2001, before me a Notary Public, the undersigned officer, personally appeared S.R. Thompson - President - Deverian Resources

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



Notary Public

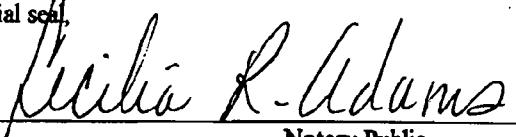
STATE OF Pennsylvania:

COUNTY OF Crawford:

On this, the 25<sup>th</sup> day of September 2001, before me a Notary Public, the undersigned officer, personally appeared Kathy F. Smoyer

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

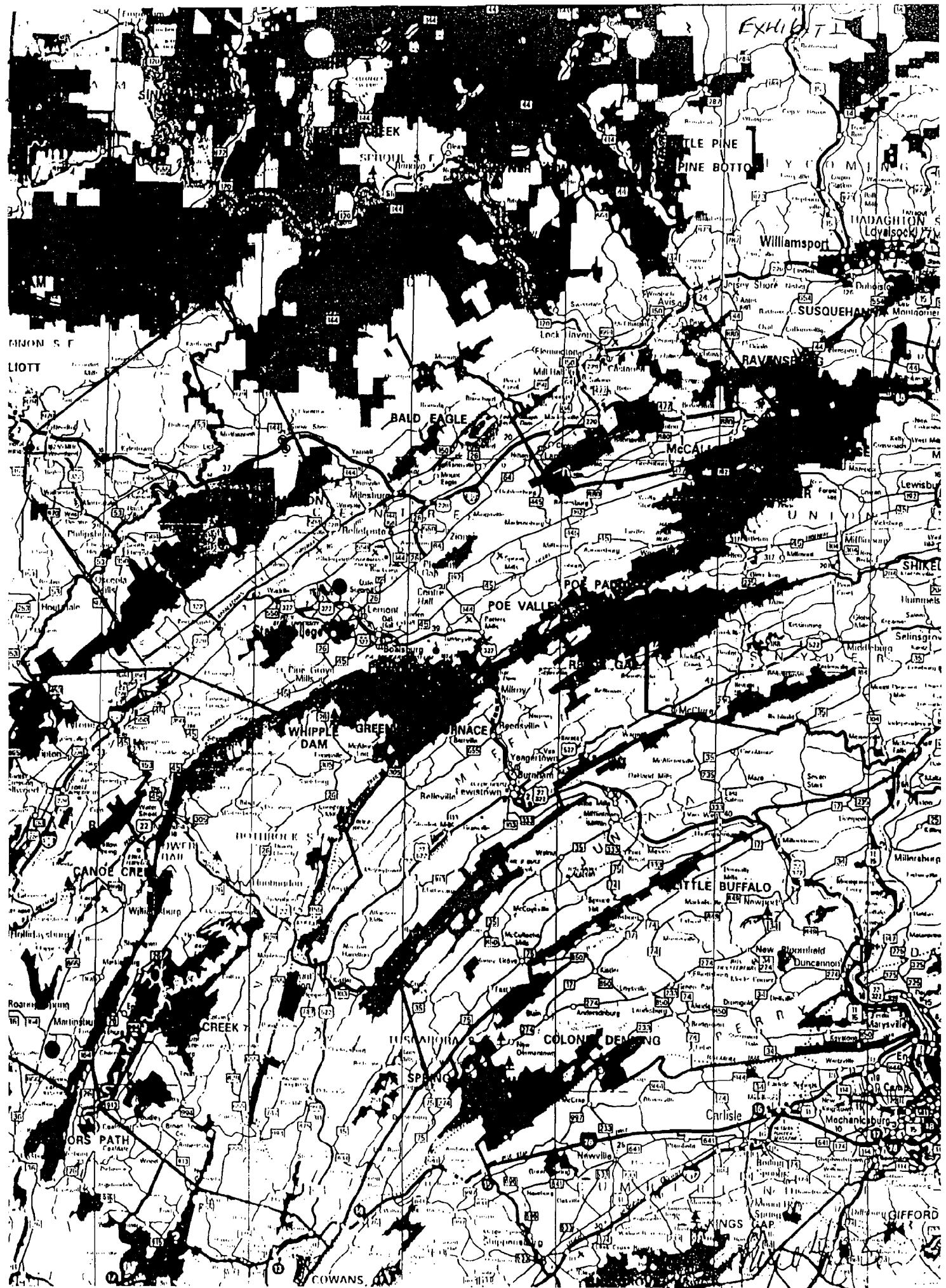


Notary Public

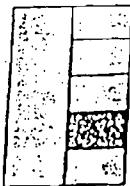
Notarial Seal  
Cecilia R. Adams, Notary Public  
City of Titusville, Crawford County  
My Commission Expires May 14, 2005

Member, Pennsylvania Association of Notaries

  
Page 345



# EXHIBIT “C”



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.

①. 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 is 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, Stanley R. Thompson, on behalf of Mid East Oil Company, agree to and accept the terms and conditions as set forth in this letter on this 20th day of August 2000.

# EXHIBIT “D”

ASSET PURCHASE AGREEMENT

This Agreement made and entered into this 15<sup>th</sup> 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

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, nor 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.

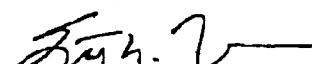
(i) Product of Negotiation. This Agreement is the product of extensive negotiation among the parties and no construction, interpretation, enforcement, inference or presumption, in favor of or against any party, shall be made as a consequence of the identity of the draftsman of this final statement of 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

# EXHIBIT “E”

**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 15<sup>th</sup> day of November 2001.

**SELLER**

DEVONIAN RESOURCES, INC.

by Stanley R. Thompson  
Stanley R. Thompson, President

**BUYER**

MID-EAST OIL COMPANY

by Mark A. Thompson  
Mark A. Thompson, President

# EXHIBIT “F”

## 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.

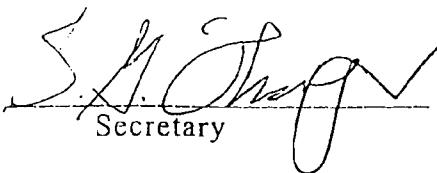
Devonian shall have the right to receive payment for all oil and gas produced and marketed from the leases described herein up to the date of the chart change on or about December 27, 2001. Devonian shall also make payment of all expenses incurred in the operation of the subject Wells including the payment of royalties through such production period. Mid-East shall receive payment of all proceeds from the sale of oil and gas from 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 16<sup>th</sup> day of January 2002.

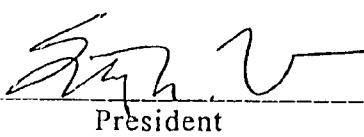
ATTEST:

  
Secretary

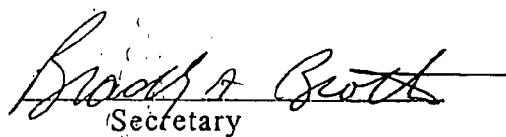
(CORPORATE SEAL)

DEVONIAN RESOURCES, INC.:

By:

  
President

ATTEST:

  
Secretary

(CORPORATE SEAL)

MID-EAST OIL COMPANY:

By:   
MARK A. THOMPSON - President

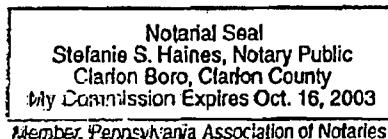
COMMONWEALTH OF PENNSYLVANIA :

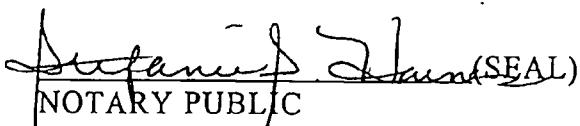
COUNTY OF Clarion : SS:

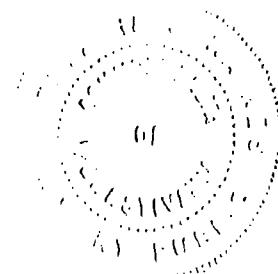
:

On this the 16<sup>th</sup> 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.



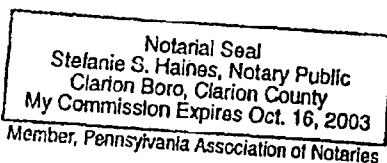
  
NOTARY PUBLIC



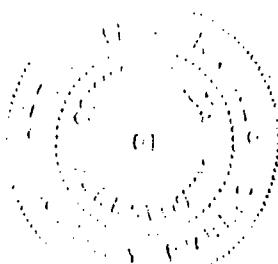
COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF Clarion : SS:

On this the 16<sup>th</sup> 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



# EXHIBIT “G”

*Mid-East Oil Company*

PO Box 1378  
Indiana, PA 15701

(724) 349-6690  
Fax (724) 349-6711

December 2, 2003

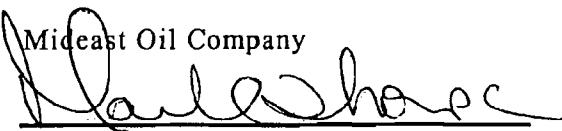
Mr. Larry Smyers  
300 East Second Avenue  
DuBois, PA 15801

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.

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

Mark Thompson

President

Cc: Matthew Taladay

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

FILED  
M 11/24/08  
DEC 17 2008  
No Certificate  
Requested  
(611)

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

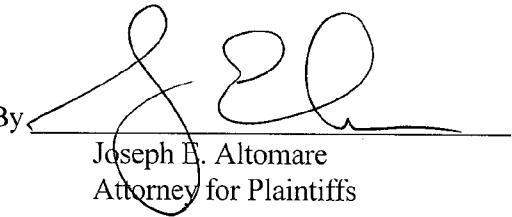
DEVONIAN RESOURCES, INC., : NO. 06-2042-CD  
AND VAN HAMPTON GAS & OIL :  
CO., INC., :  
PLAINTIFFS :  
VS. : Civil Action  
: :  
MID-EAST OIL COMPANY, :  
: :  
DEFENDANT :  
:

**PRAECIPE FOR DISCONTINUANCE**

TO THE PROTHONOTARY:

Please mark the above captioned matter settled and discontinued with prejudice.

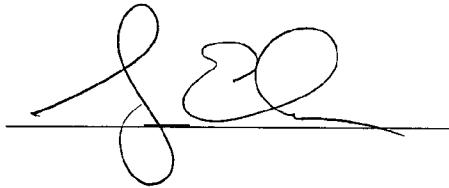
Respectfully submitted,

By   
Joseph E. Altomare  
Attorney for Plaintiffs

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed by United States First Class Mail postage prepaid to the following, at the following addresses:

Wayne A. Kablack, Esq.  
Mathew G. Simon, Esq.  
SIMPSON KABLACK & BELL  
834 Philadelphia Street  
Indiana, PA 15701

A handwritten signature in black ink, appearing to read "Wayne A. Kablack", is written over a horizontal line.

Dated December 15, 2008

553-4026  
Virginia Bird

---

Steve Bobby  
06-00453  
P4 int to  
Arbitrators

~~504-5559~~

Sandra - 724  
465-5559

Matt. Simon

Fax - 06-2042  
724-  
465-  
2046 send certified

counsel, Kline & Specter, P.C., respectfully request this Honorable Court to enter the attached Order granting

Plaintiffs' Motion for Continuance of the January 18, 2007 Settlement Conference. In support of the instant

Motion, plaintiffs aver as follows:

1. This medical malpractice case is currently scheduled to begin trial on February 20, 2007.
2. Plaintiffs were recently advised by counsel for the Pennsylvania Medical Society Liability Insurance Company ("PMSLIC") (the principal insurer for all defendants) that pursuant to a letter request

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

DEVONIAN RESOURCES, INC., : NO. 06-2042-CD  
AND VAN HAMPTON GAS & OIL :  
CO., INC., :

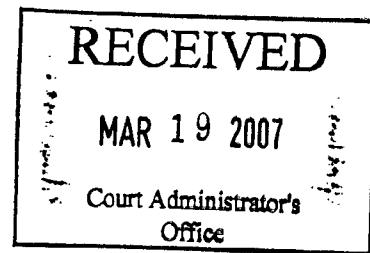
PLAINTIFFS :

VS. :

MID-EAST OIL COMPANY, :

PLAINTIFFS' BRIEF IN  
OPPOSITION TO  
DEFENDANT'S  
PRELIMINARY OBJECTIONS

Counsel for Plaintiffs:  
Joseph E. Altomare  
Supreme Court ID #17156  
228 E. Central Avenue  
P. O. Box 373  
Titusville, PA 16354  
(814) 827-9626  
(814) 827-9143 - Fax  
jaltomar@msn.com



**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

<b>DEVONIAN RESOURCES, INC.,</b>	:	<b>NO. 06-2042-CD</b>
<b>AND VAN HAMPTON GAS &amp; OIL</b>	:	
<b>CO., INC.,</b>	:	
<b>PLAINTIFFS</b>		
	:	
<b>VS.</b>	:	<b>Civil Action</b>
	:	
	:	
<b>MID-EAST OIL COMPANY,</b>	:	

**PLAINTIFFS' BRIEF IN OPPOSITION  
TO DEFENDANT'S PRELIMINARY OBJECTIONS**

Plaintiffs Devonian Resources, Inc. and Hampton Gas & Oil Co., Inc. (hereinafter jointly referred to as "Devonian"), set forth hereby their Brief in Opposition to Defendant Mid-East's Preliminary Objections.

**(1) Defendant's Demurrer to Count I  
(Breach of Contract)**

Mid-East first demurs to the breach of contract claim of Count I on two grounds, namely: (1) that the Complaint fails to allege that any claim was asserted against Devonian in the underlying matter (Mid-East v. Smyers) which would invoke Mid-East's contractual hold harmless obligation; and (2) that the Complaint fails to allege that Mid-East ever refused to defend and hold Devonian harmless.

The first of these proffered ground is unfathomable. Paragraph 18 of the Complaint, which incorporates by reference the proceedings in the underlying matter, Mid-East v. Smyers <sup>2</sup> (hereinafter the "Smyers Action") specifically alleges that,

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<sup>2</sup> Clearfield County No, 13-1598-CD

*On or about July 4, 2003, Mid-East joined Devonian and Hampton as additional defendants in the Smyers Action alleging, inter alia, that Devonian and Hampton were, in the alternative, solely liable to Smyers, jointly liable with Mid-East, or liable over to Mid-East on the Smyers claims. The Mid-East Complaint Against Additional Defendants in the Smyers Action is incorporated herein by reference to the records of this Court.*

As is clear from the Smyers Action, the plaintiff there sued for payment on a contract obligation against which Mid-East had agreed to defend and hold Devonian harmless – a legal conclusion which was vindicated by this Court’s granting of summary judgment to Devonian in that underlying matter. By joining Devonian in that action as a party alleged to be, in the alternative, solely or jointly liable to Smyers, Mid-East breached the promise that it would defend and hold Devonian harmless from precisely such a claim.

The second ground proffered (that the Complaint fails to allege that Mid-East ever refused to defend and hold Devonian harmless) is not only similarly unfathomable and without merit, but also an unabashed work of sophistry. To contend in the context of this case that Devonian’s contract claim requires it to specifically plead that Mid-East refused to defend and hold it harmless is like saying that the victim of a battery must plead that she first asked for and was refused a plea not to injure her. In effect, Mid-East has taken what, in another context (where for example some third party brought a direct suit against Devonian for which Devonian was owed indemnity from Mid-East), might be Devonian’s obligation to first affirmatively demand defense and indemnity from Mid-East, and convulsed it into the proposition that Devonian should have first asked for indemnity from the very party who joined them in the suit for which the indemnity was owed.

The contract here provides as follows:

*(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, cost, 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.* [counsel's emphasis]

[counsel's emphasis]

As the Complaint plainly alleges, Mid-East not only breached its promise to defend Devonian, but intentionally embroiled Devonian in precisely the kind of matter against which that promise was supposed to protect it.

For these reasons, Defendant's demurrer to Count I of the Complaint should be overruled.

## **(2) Defendant's Demurrer to Count II (Statutory Wrongful Use of Process)**

Mid-East next demurs to Count II, which is a claim under the Wrongful Use of Process statute known as the "Dragonetti Act" (42 Pa.C.S. § 8351, et seq.). It offers two grounds in support, namely: (1) that "...the case law interpreting the Dragonetti Act states that the simple defensive act of joining an additional defendant in a prior suit cannot serve as the basis for a claim of wrongful use of civil proceedings" [PO's ¶ 17]; and (2) that the Complaint fails to allege that the prior action has terminated in Devonian's favor.

As to the first of these grounds (that mere joinder cannot support a cause of action), not one of the case cited by Mid-East stands for such a proposition of law.<sup>3</sup> On the contrary, while some of the cited cases admonished that the statute not be construed too liberally lest it inordinately chill the adversary process, each of those cases in turn confirms that the cause of action nevertheless obtains where a litigant uses that process primarily for a purpose other than that for which it is designed. Indeed, it is

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<sup>3</sup> In one case cited by Mid-East for example [*Mi-Lor, Inc. v. Dipentino* [439 Pa. Super. 636; 654 A.2d 1156 (1995)] the Superior Court simply found that the prior action was supported by probable cause, saying: *the prior action suggest nothing more sinister or malicious than a legal dispute between the several parties and their lawyers.* *Id.*, 654 A.2d at 1158.

inconceivable that any court would even venture so far afield of the language of the statute which actually *expressly includes* “joinder” as a predicate upon which liability may be based. Section 8351(a) of the Act in pertinent part reads as follows:

*§ 8351. Wrongful use of civil proceedings*

*(a) ELEMENTS OF ACTION.-- A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:*

*(1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based;*

[counsel’s emphasis]

Moreover, the Complaint more than sufficiently pleads what the statute requires. Paragraphs 23 through 26 of the Complaint read as follows:

23. *At all times pertinent hereto Mid-East knew that under the provisions of the Asset Purchase Agreement it had assumed and agreed to pay, irrespective of any independent liability on the part of Devonian or Hampton, any and all contractual obligations of the Joint Venture, and was obligated to indemnify and hold Devonian and Hampton harmless thereof.*

24. *By reason of the foregoing Mid-East at all pertinent times knew that it had not only waived its right to any contribution or indemnification from Devonian and Hampton on any contract claim against the Joint Venture as part of the consideration given to Devonian in the Asset Purchase Agreement, but that it was Mid-East, not Devonian, which incurred an indemnification and hold harmless obligation thereby.*

25. *Mid-East nevertheless intentionally and maliciously, and without any probable cause, sought indemnification from Devonian and Hampton by joining them as additional defendants in the Smyers Action.*

26. *The primary purpose of the joinder of Devonian and Hampton was not that of securing the proper adjudication of a claim, but on the contrary, for the abusive purpose of extorting Devonian’s cooperation in Mid-East’s defense of the claims brought by Smyers against Mid-East.*

Thus the Complaint does allege the facts necessary to support a cause of action under the statute on the grounds that Mid-East engaged in the joinder of Devonian “...without probable cause and primarily for a purpose other than that of securing the proper ... joinder of parties....” (see § 8351(a)(1), *supra*). Given Mid-East’s legal obligation to hold Devonian harmless from the Smyers claim, it had no probable cause to join Devonian, and the joinder served no purpose other than as a tactic to extort favorable evidence from Devonian as against Smyers.

As to the second ground proffered for the dismissal of Count II (the failure to allege termination of the prior action in Devonian’s favor), Paragraph 28 of the Complaint avers as follows:

28. *It is believed and therefore averred that all claims of Mid-East against Devonian and Hampton will have been terminated in Devonian’s favor by the time the within claim comes on for trial.*<sup>4</sup>

Assuming, as is required, the truth of this allegation, the Complaint is well pleaded because *proof* of this element of the tort is not required until trial.

Beyond this, the Smyers Action was in fact terminated in Devonian’s favor by Order of this Court dated December 4, 2006, a date *before* the filing of the Complaint here. Further, that Order, having never been timely appealed, is now final, making it a *de jure* fact, cognizable by judicial notice. Pa. R. E., Rule 201.

Should this Court nevertheless require same, Devonian will amend the Complaint to state more definitively that the prior action has terminated in its favor.

For these reasons, Defendant’s demurrer to Count II of the Complaint should be overruled.

---

<sup>4</sup> By way of explanation, the Complaint was drafted after summary judgment was granted to Devonian in the Smyers Action, but prior to the end of the 30 day appeal period.

**(3) Defendant's Demurrer to Count III  
(Common Law Malicious Use of Process)**

Mid-East next demurs to Count III, which is a common law claim of Malicious Use of Process. Mid-East contends that upon its adoption by the General Assembly, the Dragonetti Act eliminated, rather than supplemented, the traditional common law remedy of Malicious Use of Process. For this proposition, Mid-East cites a number of cases, but once again, *none of them* (except a federal district court case having no precedential value) so conclude. The state appellate cases cited merely say that Dragonetti "codified" the common law. Nowhere did either the Legislature or the Courts of this Commonwealth ever expressly abolish the common law cause of action.

It nevertheless appears that the common law claim of Count III requires an allegation that the Dragonetti Act does not (*viz.* that person or property has been seized as a result of the conduct of the defendant). Because Devonian cannot so allege, it concedes for this reason that Count III should be dismissed.

**(4) Defendant's Demurrer to Count IV,  
(Common Law Abuse of Process)**

Mid-East next demurs to Count IV, which is a common law claim of Abuse of Process.<sup>5</sup> At ¶ 50 of its Preliminary Objections, Mid-East grounds its demurrer on the failure of the Complaint to allege some definite ~~act~~ or threat by Mid-East. Expressly relying on *Rosen v. Tesoro Petroleum Corporation*, 582 A.2d 27, 32 (Pa. Super. 1990), that paragraph of the preliminary objections reads:

---

<sup>5</sup> The distinction between common law Malicious Use of Process and Abuse of process has been articulated by the Supreme Court as follows: *Malicious use of civil process has to do with the wrongful initiation of such process, while abuse of civil process is concerned with a perversion of a process after it is issued.* *McGee v. Feege*, 517 Pa. 247; 535 A.2d 1020, 1023 (1987).

50. *A cause of action for abuse of process requires some definite act or threat not authorized by the process, and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion. Rosen v. Tesoro Petroleum Corporation, 582 A.2d 27, 32 (Pa. Super. 1990).*

But what was *actually* said by the Court in *Rosen, supra*, was this:

*In Shaffer v. Stewart, supra 326 Pa.Super. at 139, 473 A.2d at 1019, this Court stated: A cause of action for abuse of process requires "[s]ome definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process . . .*

[counsel's emphasis]

The Complaint affirmatively alleges at ¶ 26 that the conduct complained of was precisely for such an illegitimate purpose. It reads:

26. *The primary purpose of the joinder of Devonian and Hampton was not that of securing the proper adjudication of a claim, but on the contrary, for the abusive purpose of extorting Devonian's cooperation in Mid-East's defense of the claims brought by Smyers against Mid-East.*

[counsel's emphasis]

For these reasons, Defendant's demurrer to Count IV of the Complaint should be overruled.

#### **(5) Defendant's Motion for More Specific Pleading (All Counts)**

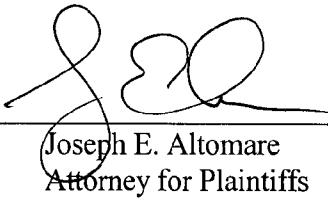
Lastly, Mid-East requests in the alternative for a an order requiring a more specific pleading as to all Counts of the Complaint, saying, at ¶ 58 of its Preliminary Objections that,

58. *Because of the insufficient specificity in the Plaintiffs' Complaint, the Defendant is improperly precluded and impaired from formulating a responsive pleading thereto.*

Mid-East notably however fails utterly to point to any particular deficiency in specificity or give any reason why any such particular deficiency impairs its ability to respond. Without such specificity on Mid-East's part, Devonian (as well as presumably the Court) cannot, except in the broadest of terms, determine the sufficiency of specificity of the Complaint. When so viewed, the Complaint is, for all the reasons discussed hereinabove with respect to the demurrsers, more than adequately specific enough to place Mid-East on notice of all of the facts and theories of law on which Devonian relies, and against which Mid-East must defend.

For these reasons, Defendant's motion for more specific pleading should be overruled.

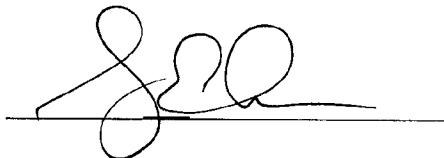
Respectfully submitted,

By   
Joseph E. Altomare  
Attorney for Plaintiffs

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed by United States First Class Mail postage prepaid to the following, at the following addresses:

Wayne A. Kablack, Esq.  
Mathew G. Simon, Esq.  
SIMPSON KABLACK & BELL  
834 Philadelphia Street  
Indiana, PA 15701



Dated March 15, 2007

4/16/07

ORIGINAL

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

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

Plaintiffs,

vs.

MID-EAST OIL COMPANY,

Defendant.

CIVIL ACTION

CASE NUMBER: 06-2042-CD

TYPE OF PLEADING:  
Brief in Support of Preliminary,  
Objections

FILED ON BEHALF OF:  
Mid-East Oil Company,  
Defendant

NAME, ADDRESS AND TELEPHONE  
OF: Counsel of Record

Wayne A. Kablack, Esquire  
Attorney's State ID#: 25818

Mathew G. Simon, Esquire  
Attorney's State ID#: 91976

Simpson, Kablack & Bell  
834 Philadelphia Street  
Indiana, PA 15701  
(724) 465-5559

Attorney's Firm ID#: 25-0918627

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MAR 30 2007

Court Administrator's  
Office

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

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

Plaintiffs

Case No. 06-2042-CD

VS.

MID-EAST OIL COMPANY,

Defendant

Civil Action - Law

**BRIEF IN SUPPORT OF DEFENDANT'S PRELIMINARY OBJECTIONS**

AND NOW, comes the Defendant, Mid-East Oil Company, by and through its attorneys, Mathew G. Simon, Esquire and Wayne A. Kablack, Esquire of Simpson, Kablack & Bell, and files the within Brief in Support of Preliminary Objections.

**I. History of the Case**

The Plaintiffs, Devonian Resources, Inc. (hereinafter "Devonian") and Van Hampton Gas & Oil Co., Inc. (hereinafter "Hampton"), filed a Complaint against the Defendant, Mid-East Oil Company (hereinafter "Mid-East") in the Court of Common Pleas of Clearfield County. In essence, the Plaintiffs have alleged four separate causes of action: (I) Breach of Contract, (II) Wrongful Use of Civil Proceedings (42 Pa.C.S. §8351), (III) Common Law Malicious Use of Process, and (IV) Common Law Malicious Abuse of Process.

On February 20, 2007, the Defendant filed Preliminary Objections to the Plaintiffs' Complaint for legal insufficiency (demurrer) to Counts I, II, III and IV, lack of conformity to law or rule of Court for Count II, and insufficient specificity to all counts. See Pa. R. Civ. Pro. 1028(a)(4), (a)(2) and (a)(3), respectively.

**II. Statement of Questions Involved**

A. Have the Plaintiffs set forth an actionable cause of action against the Defendant with regard to Count I of the Complaint to overcome a demurrer?

B. Have the Plaintiffs set forth an actionable cause of action against the Defendant with regard to Count II of the Complaint to overcome a demurrer?

C. Have the Plaintiffs, in Count II of their complaint, failed to conform to 42 Pa. C. S. A. § 8353?

D. Have the Plaintiffs set forth an actionable cause of action against the Defendant with regard to Count III of the Complaint to overcome a demurrer?

E. Have the Plaintiffs set forth an actionable cause of action against the Defendant with regard to Count IV of the Complaint to overcome a demurrer?

F. In all of the counts of their Complaint, have the Plaintiffs plead with enough specificity to overcome an objection based on Pa. R. Civ. Pro. 1028(a)(3)?

### **III. Proposed Answers**

- A. No
- B. No
- C. Yes
- D. No
- E. No
- F. No

### **IV. Governing Law**

In reviewing preliminary objections filed under Pa.R.C.P. No. 1028(a)(4), the Court is to apply the following legal standard:

Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure [Pa.R.C.P.] allows for preliminary objections based on legal insufficiency of a pleading (demurrer). When reviewing preliminary objections in the form of a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa.Super.2000). Preliminary

objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazara, 746 A.2d 642, 643 (Pa. Super. 2000) (citation omitted). However, the pleaders' conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinions are not considered to be admitted as true. Giordano v. Ridge, 737 A.2d 350, 352 (Pa. Cmwlth. 1999), aff'd. 559 Pa. 283, 739 A.2d 1052 (1999), cert. denied, 121 S.Ct. 307 (U.S. 2000). In addition, "a court is not bound to accept as true any averments in a complaint which are in conflict with exhibits attached to it." Baravordeh v. Borough Council of Prospect Park, 699 A.2d 789, 791 (Pa. Cmwlth. Ct. 1997) (citations omitted).

Middletown Carpentry, Inc. v. C. Arena & Co., Inc., 2001 WL 1807379, (Pa. Com. Pl. 2001).

## **V. Discussion and Analysis**

The Defendant first asserts, pursuant to Pa. R. Civ. Pro. 1028(a)(4), that Count I of the Plaintiffs' Complaint is legally insufficient. In essence, the Defendant believes that the Plaintiff has failed to state a claim against it for which relief can be granted. The overall claim by the Plaintiffs in Count I of the Complaint is premised on the allegation that the Defendant breached its contractual obligation to defend and hold Devonian harmless. See Plaintiff's Complaint, ¶ 20.

In their Complaint, the Plaintiff's raise a "Hold Harmless" clause contained in paragraph 5(b) of an Asset Purchase Agreement between Devonian and Mid-East. See Plaintiffs' Complaint, ¶ 12. In reviewing Plaintiffs' Complaint, there are no averments that a claim was asserted against Devonian which would invoke Mid-East's alleged obligation to defend and hold Devonian harmless. More specifically, in the prior action, Devonian was joined as an additional defendant as it was asserted that Devonian may have been liable in the prior suit dealing with Larry F. Smyers (hereinafter "Smyers action"). Likewise, there is no allegation in the complaint that at any time did Mid-East refused Devonian's request to defend and hold Devonian harmless from any specific claim or allegation.

Based on the Plaintiffs failure to allege the requisite elements necessary to establish a *prima facie* claim for breach of contract, Count I must be dismissed.

The Defendant next asserts that Count II of the Plaintiffs' Complaint is legally insufficient. The overall claim by the Plaintiffs in Count II of the Complaint alleges that Mid-East wrongfully

instituted civil proceedings against Devonian and Hampton in violation of 42 Pa. C. S. A. § 8351. See Plaintiffs' Complaint, ¶s 23-28.

Count II of the Plaintiffs' Complaint alleges a claim under 42 Pa. C. S. A. § 8351. The Dragonetti Act, which is codified at 42 Pa. C. S. A. § 8351, provides that a person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings if he:

- a) acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and
- b) the proceedings have terminated in favor of the person against whom they are brought.

The Courts of this Commonwealth have stated that to bring an action under this statute, a plaintiff must allege and prove "(1) that the underlying proceedings were terminated in their favor; (2) that defendants caused those proceedings to be instituted without probable cause; and (3) that the proceedings were instituted for an improper purpose." Bannar v. Miller, 701 A.2d 232, 238 (Pa. Super. 1997).

First, the Plaintiffs' complaint only alleges that it is "believed that all claims of Mid-East against Devonian and Hampton will be terminated in Devonian's favor by the time the within claim comes on for trial." See Plaintiffs' Complaint, Paragraph 28. The Plaintiffs have not and cannot be able to aver that the underlying proceedings (the Smyers action) are finally terminated in their favor.

The Pennsylvania Rules of Appellate Procedure define a final order. More specifically, Rule 341 (b) defines a final order as any order that:

- (1) disposes of all claims and of all parties; or
- (2) is expressly defined as a final order by statute; or
- (3) is entered as a final order pursuant to subdivision (c) of this rule.

Subsection (c) of the rule states that when more than one claim for relief is presented in an action or when multiple parties are involved, the trial court may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an

immediate appeal would facilitate resolution of the entire case and because of this determination, the order becomes appealable when entered. See Pa. R. Civ. Pro. 341(c). In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claim and parties shall not constitute a final order. Id.

In the case *sub judice*, the Defendant will concede that this Honorable Court granted the Plaintiffs' Motion for Summary Judgment in the Smyers action against Mid-East. See Order of Court, December 4, 2006, No. 03-1598-CD. However, the granting of summary judgment in the Smyers matter did not constitute a final order or finally terminate the proceedings as it did not dispose of all the claims or all of the parties. Furthermore, even if Mid-East wanted to, it could not appeal this Honorable Court's grant of summary judgment in Smyers action with regard to Devonian and Van Hampton as it is not a final order pursuant to Appellate Rule 341. In addition, the December 4, 2006 Order of Court does not specifically provide for an express determination that Mid-East could immediately appeal that Order. As such, the Smyers action has in fact not been finally determined in the Plaintiffs' favor for purposes of the Dragonetti Act and the present action instituted by the Plaintiffs is not ripe and therefore must be dismissed.

As to the second ground contained in the Defendant's Preliminary Objections to Count II of the Plaintiffs' Complaint, it is alleged that the Defendant "intentionally and maliciously, and without probable cause, sought indemnification from Devonian and Hampton by joining them as additional defendants." See Paragraph 25 of Plaintiffs' Complaint.

The Dragonetti Act plainly and clearly states that a person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability if he acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based. See 42 Pa. C. S. A. § 8351.

It is abundantly clear that the action taken by Mid-East in the Smyers action was strictly a joinder of Devonian and Hampton. A plain reading of the Dragonetti Act clearly and unequivocally states that joining parties cannot constitute a cause of action under the statute. The basic tenet of statutory construction requires a court to construe the words of the statute according to their plain meaning. See 1 Pa. C. S. A. § 1903(a); Commonwealth v. Stanley, 446 A.2d 583, 587 (Pa. 1982). When the words of the statute are clear and unambiguous, a court cannot disregard them under the pretext of pursuing the spirit of the statute. See 1 Pa. C. S. A. § 1921(b); Coretsky v. Board of Commissioners of Butler Township, 555 A.2d 72, 74 (Pa. 1989).

Furthermore, the sparse case law interpreting the Dragonetti Act states that defensive acts in a prior suit cannot serve as the basis for a claim of wrongful use of civil proceedings. In Paparo v. United Parcel Service, Inc., a federal district case interpreting Pennsylvania law, the court reasoned that the Dragonetti Act does not create a cause of action for the defense of a prior action as it would "penalize defendants for exercising their legal and statutory rights to put forth a defense." Paparo v. United Parcel Service, Inc., 43 F. Supp.2d 547, 548 (E.D. Pa. 1999). The only known reported Pennsylvania court case to deal with anything similar to the present issue is the Lycoming County of Young v. Sheddy. In that case, the court stated:

Obviously, the legislature intended to curtail the use of civil proceedings in a malicious, abusive or annoying manner. Any other construction of this cause of action, allowing individuals to be sued under this act for defending prior actions, would place a considerable burden on the courts by creating a never ending progression of litigation as well as having a chilling effect upon an individual's ability or willingness to defend a suit for fear that he may thereby become liable in a second suit. We do not believe that such a result was ever envisioned.

Young v. Sheddy, 35 Pa. D & C. 3d 78, 82 (Lycoming Co. 1984). In addition, the Superior Court has stated that a defendant should not be punished for nothing more than defending himself/herself against a claim made by another. Mi-Lor, Inc. v. DiPentino, 654 A.2d 1156, 1158 (Pa. Super. 1995).

In the case *sub judice*, Mid-East did not institute a counterclaim in the Smyers action nor did it file a separate action against Devonian and Hampton. Mid-East merely joined Devonian and Hampton as additional defendants in response to Smyers action. Furthermore, Mid-East was not the Plaintiff in the prior action. As the Superior Court has stated, "[the Dragonetti Act] permits one who is sued without probable cause to sue the original plaintiff in turn." Electronic Laboratory Supply v. Cullen, 712 A.2d 304, 309 (Pa. Super. 1998). As such, Mid-East cannot and should not have any liability under the Dragonetti Act for defending a suit brought by another.

For all the above reasons, the Plaintiffs' Complaint does not allege the statutorily required elements or raise a cause of action under the plain meaning of 42 Pa. C. S. A. § 8351 and as such, Count II of the Plaintiffs' Complaint is legally insufficient.

With regard to the Defendant's third preliminary objection, it is asserted that Count II of the Plaintiff's Complaint fails to conform to a law or rule of Court. See Pa. R. Civ. Pro. 1028(a)(2). More specifically, the Plaintiffs' Complaint alleges that as a direct result of the

Defendant's actions in the Smyers case, Devonian has been injured by having to incur the additional expense of bringing the current action. See Plaintiffs' Complaint, Paragraph 27. It is further alleged that both Devonian and Hampton have sustained harm to their reputation. Id. In essence, the Plaintiffs have pled their damages with regard the Defendant's prior action.

The Dragonetti Act specifically addresses the only damages that can be pursued under the act. See 42 Pa. C. S. A. § 8353(3). Under § 8353(3), the act does not permit the recovery of attorney's fees/expenses that are incurred in pursuing a wrongful use of civil proceedings action. See also Hart v. O'Malley, 781 A.2d 1211, 1217 (Pa. Super. 2001). Moreover, the Dragonetti Act does not permit damages for harm sustained to one's reputation unless such harm is caused by defamatory matter alleged as the basis of the proceedings. See 42 Pa. C. S. A. § 8353(2). In the matter at hand, the Plaintiffs' have not and cannot allege in their Complaint that the prior proceeding was based on a defamatory matter.

For the above reasons, it is impermissible for the Plaintiffs' to allege and recover attorney's fees/expenses for the current action and any harm to their reputation.

Next, the Defendant alleges that Count III of the Plaintiffs' Complaint is legally insufficient. More specifically, Count III provides the foundation for a cause of action based on the common law tort of malicious use of process as a separate and distinct tort from Count II, which relates to the cause of action pursuant to 42 Pa. C. S. A. § 8351.

The common law tort of malicious use of process has been codified by 42 Pa. C. S. A. § 8351-8354. See 2 Summ. Pa. Jur. 2d Torts §19:1 (citing Shaffer v. Stewart, 473 A.2d 1017, 1019 (Pa. Super. 1984)). With the codification of this cause of action by the Dragonetti Act, the common law malicious prosecution is in effect "superseded" for all actions arising after the enactment of the statute.

The legislative history of the Dragonetti Act discloses that the primary purpose of the Act was to abolish the English common law rule requiring seizure or arrest as an element of the malicious prosecution cause of action. Remarks of Representatives Kukovich, Spitz, and Spencer, 70 Pa. Legislative Journal (House) at 2634-2636 (November 19, 1980). A secondary purpose was to replace the common law requirement of malice with a requirement of gross negligence. Id. Furthermore, the Pennsylvania Supreme Court has held that the "Dragonetti Act has replaced the common law malicious prosecution cause of action with the statutory Wrongful Use of Civil Proceedings cause of action." Northwestern Nat. Cas. Co. v. Century III Chevrolet, Inc., 863 F. Supp. 247, 249 (W.D. Pa. 1994) (citing Ludmer v. Nernberg, 553 A.2d 924, 925-926 (Pa. 1989) and Matter of Larsen, 616 A.2d 529, 587 (Pa. 1992)). The federal

court in Northwestern Nat. Cas. Co. stated that the Pennsylvania Supreme Court held that a lawsuit is governed by common law malicious prosecution if the allegedly wrongful lawsuit terminated prior to the effective date of the Dragonetti Act, but if the wrongful suit terminated subsequent to the effective date of the Dragonetti Act, then the Act, not common law, would govern. Northwestern Nat. Cas. Co., 863 F. Supp. at 249 (citing Ludmer, 553 A.2d at 925-26).

Although the prior suit has not been finally terminated, the eventual termination of the Smyers matter will be accomplished well after the 1980 effective date of the Act. As such, the Plaintiffs may not utilize the common law tort for malicious use of process as a separate cause of action. Therefore, Count III of the Plaintiffs' Complaint fails to allege a cause of action upon which relief may be granted.

The next to last preliminary objection filed by the Defendant deals with the legal insufficiency of Count IV of the Plaintiff's Complaint. In this count, the Plaintiffs allege a cause of action based upon the common law tort of malicious abuse of process.

Abuse of process is, in essence, the use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process. McGee v. Feege, 535 A.2d 1020, 1026 (Pa. 1987). The gravamen of this tort is the perversion of legal process to benefit someone in achieving a purpose which is not an authorized goal of the procedure in question. Rosen v. American Bank of Rolla, 627 A.2d 190, 192 (Pa. Super. 1993). A cause of action for abuse of process requires some definite act or threat not authorized by the process, and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. Rosen v. Tesoro Petroleum Corporation, 582 A.2d 27, 32 (Pa. Super. 1990) (citing Shaffer v. Stewart, 473 A.2d 1017, 1019 (Pa. Super. 1984)). In sum, the malicious use of process deals with the wrongful initiation, while the abuse of process is concerned with improper use of process after it is issued.

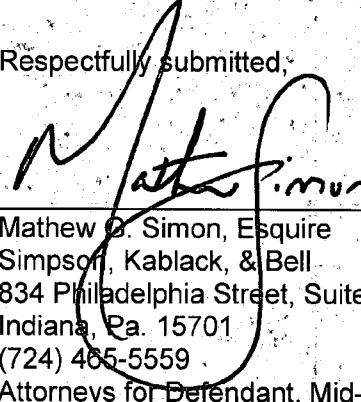
The Plaintiffs' Complaint only alleges that the Defendant joined Devonian and Hampton as additional defendants in the Smyers action without probable cause or for an improper purpose. See Plaintiffs' Complaint, Paragraphs 18, 25. There is absolutely no allegation in the Plaintiff's Complaint, nor can there be, of any definite act or threat by Mid-East during the pendency of the Smyers action which was not authorized. Moreover, the Plaintiffs cannot allege that the Defendant did anything other than carry out the process of joining additional defendants in the Smyers suit to its authorized conclusion. Under well-settled Pennsylvania common law concerning abuse of process, the allegations contained in Count IV of the Plaintiffs' Complaint are legally insufficient.

The last preliminary objection by the Defendant pertains to the insufficient specificity of Counts I, II, III, and IV of the Plaintiffs' Complaint pursuant to Pa. R. Civ. Pro. 1028(a)(3). It is the Defendant's position that the Plaintiffs' Complaint fails to allege, with the requisite specificity, those facts which would provide the factual basis for:

- a. the alleged breach of contractual duty and/or obligation by the Defendant to defend and hold Devonian and Hampton harmless;
- b. the alleged wrongful use of civil proceeding by the Defendant in joining Devonian and Hampton as additional defendants in the prior action; and
- c. the alleged malicious abuse of process by the Defendant during the prior proceeding in which it joined Devonian and Hampton as additional defendants.

Without these facts, the Plaintiffs' Complaint lacks the sufficient specificity to apprise the Defendant of the issues and facts to be litigated and improperly impairs the Defendant from formulating a responsive pleading thereto.

Respectfully submitted,

  
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**ORIGINAL**

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

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

**Plaintiffs** : **Case No. 06-2042-CD**

**vs.**

**MID-EAST OIL COMPANY,**

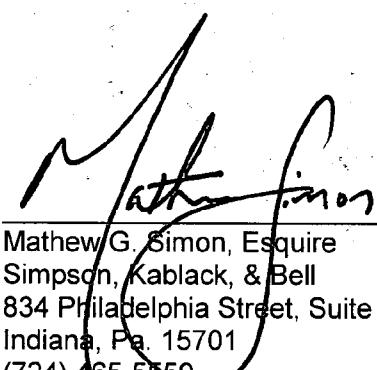
**Defendant**

**Civil Action - Law**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Defendant's Brief in Support of Preliminary Objections pursuant to the March 14, 2007 Order of Court filed at the above term and number was served upon the individual listed below, as counsel of record, by first class United States mail, postage prepaid at Indiana Pennsylvania, this 28<sup>th</sup> day of March, 2007.

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