

2006-01984

NO. GN501113

MOSH HOLDING, L.P.,

Plaintiff,

V.

**PIONEER NATURAL RESOURCES
COMPANY; PIONEER NATURAL
RESOURCES USA, INC.; WOODSIDE
ENERGY (USA) INC.; AND
JPMORGAN CHASE BANK, N.A.,
AS TRUSTEE OF THE
MESA OFFSHORE TRUST,**

Defendants.

IN THE DISTRICT COURT OF
CHARLES BACARISSE
District Clerk

JAN 13 2006

Harris County, Texas

By TRAVIS COUNTY, TEXAS

SECRET

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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

250TH JUDICIAL DISTRICT

ORIGINAL ANSWER AND REQUEST FOR DISCLOSURE OF JPMORGAN CHASE BANK, N.A., AS TRUSTEE OF THE MESA OFFSHORE TRUST

TO THE HONORABLE JUDGE OF SAID COURT:

DEFENDANT JPMORGAN CHASE BANK, N.A., AS TRUSTEE OF THE MESA OFFSHORE TRUST (“Chase”) files this Original Answer and Request for Disclosure in response to Plaintiff MOSH Holding, L.P.’s (“Plaintiff”) First Amended Original Petition, and would respectfully show as follows:

I. General Denial

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Chase denies each and every, all and singular, the allegations contained in Plaintiff's First Amended Original Petition, and respectfully requests that the Court require Plaintiff to prove its charges and allegations by a preponderance of the evidence, as required by the Constitution and laws of the State of Texas.

II. Verified Denials

2. Plaintiff has failed to notice and/or join all of the necessary parties required by Section 115.011(b)(3) of the Texas Trust Act ("Trust Act") as set forth in the Texas Property Code.

3. Chase denies that all conditions precedent were performed or have occurred that would enable Plaintiff to obtain the relief sought. Specifically, Plaintiff has failed to comply with § 6.05 of the Royalty Trust Indenture ("Trust Indenture"), dated December 1, 1982, with regard to any attempt to appoint, name or have named a successor or temporary trustee.

III. Affirmative Defenses

4. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by the defense of limitation of liability via exculpatory clause as found under § 6.01 of the Trust Indenture:

6.01. *Liability of Trustee*

(a) Except as provided in paragraph (b) below, the Trustee, in carrying out its powers and performing its duties, may act in its discretion and shall be personally or individually liable only for fraud or acts or omissions in bad faith or which constitute gross negligence and shall not individually or personally be liable for any act or omission of any agent or employee of the Trustee unless the Trustee has acted in bad faith in the selection and retention of such agent or employee.

(b) If the Trustee incurs any liability of any kind by contract, tort or otherwise, without inserting such provision or taking such action as may be necessary to ensure that such liability shall be satisfiable only out of the Trust Estate and shall not in any event, including the exhaustion of the Trust Estate, be satisfiable out of any amounts at any time distributed to any Certificate Holder or out of any other assets owned by any Certificate Holder, then Trustee, vis-a-vis the Certificate Holders, shall be fully and exclusively liable for such liability, but shall have the right to be indemnified and reimbursed from the Trust Estate to the extent provided in Section 6.02.

5. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by the defense of reliance on experts in good faith as found under § 11.02 of the Trust Indenture:

11.02 *Trustee's Employment of Experts.* The Trustee may, but shall not be required to, consult with counsel, who may be its own counsel, accountants, geologists, engineers and other parties deemed by the Trustee to be qualified as experts on the matters submitted to them, and the opinion of any such parties on any matter submitted to them by the Trustee shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of any such party.

6. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's demand for an accounting is barred by § 113.151 of the Trust Act, which states that a trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every twelve months.

7. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by the applicable statute of limitations.

8. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by laches.

9. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by estoppel and/or quasi-estoppel.

10. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by waiver.

11. Subject to and without waiver of its general denial, Chase alleges that the Plaintiff's claims are barred by ratification.

IV. Attorneys' Fees

12. Chase is entitled to recover its reasonable and necessary attorneys' fees pursuant to § 37.009 of the Texas Declaratory Judgment Act, as contained in the Texas Civil Practice and Remedies Code, and § 114.064(a) of the Texas Trust Act, as contained in the Texas Property Code. Chase is further entitled to recover its attorneys' fees as it is defending itself reasonably and in good faith. *Grey v. First Nat'l Bank in Dallas*, 393 F.2d 371, 387 (5th Cir. 1968) (stating that a trustee may charge its trust for attorneys' fees incurred in the good faith and reasonable defense of litigation charging it with a breach of trust). Chase is further entitled to indemnification for all costs and expenses pursuant to § 6.02 of the Trust Indenture.

V. Settle Final Accounts

13. Pursuant to § 115.001(a)(9) of the Trust Act, Chase requests that this Court exercise its original and exclusive jurisdiction over all proceedings concerning trusts to settle final accounts of the Mesa Offshore Trust.

VI. Exoneration for Tort

14. Pursuant to § 114.062 of the Trust Act, Chase is entitled to exoneration or reimbursement.

VII. Exemplary Damage Cap

15. The Exemplary Damages Act applies to restrict and limit Plaintiff's claim for exemplary damages, and Chase hereby pleads the damage cap contained in TEX. CIV. PRAC. & REM. CODE § 41.008(b).

VIII. Request for Disclosure

16. Under Texas Rule of Civil Procedure 194, Chase requests that Plaintiff disclose, within thirty days of the service of this request, the information or material described in Rule 194.2(a) through (i) and (l), if not previously disclosed.

IX. Prayer

WHEREFORE, Defendant JPMorgan Chase Bank, N.A., as Trustee of the Mesa Offshore Trust, respectfully prays that upon final hearing, judgment be entered that Plaintiff take nothing, and that this Court settle the final accounts of the Mesa Offshore Trust, grant Chase exoneration or reimbursement for alleged tort, and award Chase its request for reasonable and necessary attorneys' fees, and such other relief to which it may show itself justly entitled.

Respectfully submitted,

ANDREWS KURTH LLP

By: *Craig Stahl by*
James H. Stilwell w/permission

Craig L. Stahl

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ATTORNEYS FOR JPMORGAN CHASE BANK,
N.A., AS TRUSTEE OF THE MESA OFFSHORE
TRUST

CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of December 2005, a complete copy of the Original Answer and Request for Disclosure of JPMorgan Chase Bank, N.A., as Trustee of the Mesa Offshore Trust has been served by certified mail, return receipt requested, hand delivery or facsimile, in compliance with the Texas Rules of Civil Procedure on the following parties or counsel:

Robert L. Ketchand
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Craig Stahl by Jacob H. Kilwell
Craig L. Stahl w/permission

VERIFICATION


STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned notary, on this day personally appeared Michael J. Ulrich, who stated to me that he is a Vice-President of JPMorgan Chase Bank, N.A. After I administered an oath to him, upon his oath he said he has read the Original Answer and Request for Disclosure of JPMorgan Chase Bank, N.A., as Trustee of the Mesa Offshore Trust and that the facts stated in the Verified Denial Section of the Original Answer are within his personal knowledge and are true and correct.



MICHAEL J. ULRICH

SUBSCRIBED AND SWORN TO before me on this the 16th day of December, 2005,
to certify which witness my hand and seal of office.



NOTARY PUBLIC, STATE OF TEXAS

