



CAUSE NO. 4222-A / 1086-TS
Consolidated

FILED
COUNTY / DISTRICT COURT

IN THE ESTATE OF
IDA BALDWIN DENISON,
DECEASED

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§

IN THE 39th DISTRICT COURT
OF
STONEWALL COUNTY, TEXAS
CLERK / DEPUTY

BOB DENISON'S MOTION FOR ABATEMENT,
FOR APPOINTMENT OF A SPECIAL MASTER,
AND FOR SANCTIONS FOR DISCOVERY ABUSE

Plaintiff, Bob Denison, (BD) acting in all his capacities, files his *Motion for Abatement and For Sanctions Due to Discovery Abuse* and in support therefore shows the Court as follows:

A. Summary of the History of Abuse

1. In April and October 2003 a *Notice and Amended Notice of Lis Pendens* were filed by Bob Denison (BD), the traditional Plaintiff in this case, in the Records of Stonewall County serving notice on all persons that there was a lawsuit pending concerning title to land transferred under the Will of Ida Baldwin Denison. The lawsuit has been ongoing since 1998.
2. On May 28, 2002 the parties entered into an incomplete and informal *Settlement Agreement* to which BD immediately withdrew his consent and for which he filed amended pleadings alleging fiduciary fraud and other defenses.
3. On February 10, 2004 the Trial Court erroneously entered a Judgment based on the *Settlement Agreement* over BD's numerous objections.
4. On or about February 17, 2004 BD appealed the Trial Court's decision. Not good news if you are JD or the *Hamlin National Bank*.

5. On March 29, 2004, knowing that **BD** had rescinded the *Settlement Agreement*, and while the case was on appeal, **JD**, via an auction advertised as a *bank forced sale*, and assisted by his attorney Isaac Castro (**Castro**) sold 9.5 sections of the Estate's ranch land to T. Boone Pickens (**Pickens**) at approximately \$210 dollars an acre, far less than its fair market value of probably over \$1,000 an acre.

A. The consideration **JD** used to transfer this portion of the Estate from himself, as Executor, to himself, as an individual, then to **Pickens** was by his fraudulent use of the rescinded *Settlement Agreement* to transfer title. Until and unless the litigation was concluded in **JD**'s favor, anyone buying that land was taking an enormous risk.

B. At the time of the sale to **Pickens**, **JD**, individually and as Executor of the Estate was approximately a million dollars in debt to the *Hamlin National Bank* (**Bank**).

C. No matter how much money was available to **JD**, he had a habit of not paying his bills, or those of the Estate, including loans.

D. Although the **Bank**'s records have been requested, in eleven years of litigation the **Bank** has refused to produce all its records showing any valid basis for systematically increasing the amount of the loan to **JD**. That one large loan, on information and belief, was increased in the face of delinquent performances and the rising temperature of the litigation.

E. By year 2007 in the litigation, **Castro** and the **Bank** had been added as defendants. **Castro**, a small town solo-practitioner, has been allowed by the Court to continue to defend himself, as well as the **Bank** and **JD**. This comes as no surprise, as **JD** said in March 2008 deposition, after 11years of litigation, *so far we have been untouchable*.

1) **BD** added **Castro** and the **Bank** to the Estate litigation for their scheme of helping **JD** to fraudulently transfer the 9.5 sections to **Pickens** and for ignoring the Trust and its undivided one-half interests through years of *Byzantine* dealings

2) **BD** hoped he could place the 9.5 sections in a constructive trust for himself and his children to replace many years of stolen revenues from ranching, farming, cattle, hunting, oil revenues, as well as for missing valuable heirlooms dating back generations that included memorabilia from the time Hollywood spotted the ranch's Courthouse as the house to use for the movie *Giant* (starring Liz Taylor, James Dean and a cast of notable others).

F. **JD**, when he took over his mother's Estate in the summer of 1997, quickly fell out of grace with the *First National Bank* of Aspermont, due to delinquent payment conduct, and was unable to find a **Bank** willing to loan him money, as an Executor of the Estate while (upon information and belief) simultaneously ignoring the Estate's Trust's one half undivided interest in everything.

1). **Castro** wrote a title opinion for the **Bank** allowing the Estate to hide the existence of Trust, although the Trust was evident from the face of the Will, of which the **Bank** had a copy.

2). That was the Will **JD** brought to his mother (Ida Baldwin Denison) to execute while she was in critical condition on her deathbed in a hospital and while on medications. The new Will set up the Trust for **BD** with **JD** as trustee where the prior will had divided everything between the brothers equally. Ida died shortly thereafter.

G. With a clear road to raid **BD's** half of everything, now in a trust under **JD's** control, **JD** was also operating free and clear of any fiduciary duty normally imposed by financial institutions when dealing with an executor/ trustee, and as such **JD** was able to use his brother's own monies to pay the increasing Estate loans owed to **Bank**, as well required to finance the stiff-arming of **BD's** litigation efforts to receive the benefits of the convenient deathbed Trust.

1) **JD**, with advice from **Castro**, theorized that as long as the Estate had debt he could refuse to acknowledge the Trust. As a result, pre-Estate debt of \$230,00, secured by only two sections of land, and easily serviced with the Estate's substantial income, grew to almost one million

with disappearing Estate revenues and assets resulting in a fraudulent ploy to get **BD** to settle under threats of not ever seeing any revenue or assets.

2) In 11 years of litigation only several thousand dollars are ever accounted for out of Estate bank accounts for **Castro's** and Stanton's attorney fees creating the appearance that **Castro** was paid directly by the **Bank**, as new loans were made to **JD**, as Executor.

H. If ever discovered, the **Bank's** questionable loan practice and the ultimate use of the proceeds would create a potential financial Texas sized embarrassment for the **Bank** due to **JD's** eccentric ways. So the **Bank** advertised a *bank-forced sale* (public auction by *Kruse International*) to occur on January 21, 2004 to clear the mega-loan off the **Banks** books, and hopefully the **Ranch** into play.

1) **Bank** owners or associates appeared at the auction, on their own behalf, and bid for the Ranch.

2) At the time of the auction, **Castro**, as the attorney for the **Bank** and **JD**, knew of the ongoing lawsuit and notices of *Lis pendens* when he prepared the Deed transferring the land to **Pickens** from **JD**.

3) **Castro** did not disclose to **Pickens**, or to **Pickens'** lender, *Plains Capital Bank* (Dallas) the existence of the *Lis pendens* at the time of preparing the Deed.

4) *Consolidated Abstract, Inc. (Abstract)*, whose office is in the Courthouse at Aspermont, knew of the *Lis pendens* (run sheet) at the time its Escrow Agent and title examiner, Stacey Meador (now Godfrey) received instructions to ignore the *Lis pendens* in issuing a Title Commitment and Title Insurance Policy as agent for *Alamo Title Insurance (Alamo)*.

I. But for the *Lis pendens* being undisclosed, the sale of the Ranch would not likely occur, as any the buyer would have to accept the defect in title, i.e. take title subject to the result in the underlying lawsuit.

1) Also, no financial institution could loan money on the 9.5 sections if the land was subject to a *Lis pendens* notice, although the **Bank** did.

2) Any purchaser choosing to read the lawsuit would discover the problem of the Trust's numerous claims pending in an Estate that had never been closed and never had a set of books.

J. Under TEX. BUS. CODE §27.01- Fraud - the sale of the 9.5 sections should never have occurred, as **Castro, JD**, the **Bank**, **Abstract** and **Alamo** were under a duty to notify anyone they were dealing with that the land was being sold subject to a *Lis pendens* notice, i.e., defective title.

1) When the land was sold at auction, *Kruse International* auctioneers had a duty to announce the *Lis pendens* from the pulpit, if they knew about it, or had conducted any due diligence.

2) **Abstract** had a duty to find and report to **Alamo** the existence of the *Lis pendens*, and

3) As everyone knows but for the combined failures of **Castro, JD**, the **Bank**, **Abstract** and **Alamo**, there would have been no sale of the land, as no title insurance could have issued, under TEXAS DEPARTMENT OF INSURANCE Regulation P-11 (insuring around), such that no financial institution could have under taken the extraordinary risk of loaning monies on impaired collateral, as the purchase-money first lien position would not be possible. Although a *Lis pendens* is not a lien, *per se*, it is a defect in title that such that an adverse result in the lawsuit would result in a judgment and that judgment would be in a superior lien position.

K. The **Bank's** only problem was that the Denison brothers tragic lawsuit was known to all in Stonewall County, which has perhaps 1500 residents. The local residents didn't need to be reminded by any *Lis pendens* to go read the lawsuit pending in their Court records to tell them that the brothers fight was far from over. The **Bank** knew the purchaser would have to be an outsider.

L. The **Abstract** offices are in the Stonewall County courthouse, right where the fight was being broadcast in the Courtroom, and just down the hall is the District and County Clerk's office, which **Abstract** visited on a daily basis to update its title plant.

M. **BD's** 72-page lawsuit asserts the obvious explanation for how so many for so long could ignore the *Lis pendens* leading to the sale of the land to **Pickens**, and that explanation is that cooperation occurred between mutually benefiting interests to pull off the sale, hopefully to remove the Ranch as an available asset to satisfy any large judgment for the Trust.

1) If the **Bank's** owners could capitalize on a business plan to loan up the best part of the Ranch, (while ignoring the Trust's interest) then foreclose the **Bank's** lien, while personally buying the Ranch at an auction at a price that would guaranteed a large profit, the lawsuit, at that stage, would not appear to be a problem.

2) When the lawsuit's appeals became a problem, the conspiracy grew.

3) It is unknown whether Walker, Craddick and Pearson are arm's-length buyers as the sales coincide with appellate activity in the Estate case.

5. On September 29, 2005 the 11th COURT OF APPEALS reversed the Trial Court ordering that **BD** could assert his defenses to any attempted enforcement of the *Settlement Agreement* and the litigation has continued herein unabated. Bad news, so **JD** hired avid Dallas hunter, Vance Stanton, to appeal the decision to the Texas Supreme Court to buy time and hopefully stiff-arm **BD** out of money to fight.

6. On May 19, 2006 the COURT OF APPEALS entered its Mandate returning the Case to the 39th District Court of Stonewall County after **JD's** appeal to the Texas Supreme Court failed when the Supremes denied certiorari on March 3, 2006.

7. **Pickens** intent had been to break the Ranch up to increase its value. Accordingly, **Pickens** sells off portions of the Ranch without incident as to title insurance. After the *Lis pendens* surfaced during the 4848 sale to fellow Dallas Towner, Layne Walker and wife,

Sonia in early 2006, the title insurance problem disappeared in the re-sale of the property from Walker to new owners, i.e., the 4848 Aspermont group (4848).

A. At this point **Abstract** notifies **Pickens** and Walker of the *Lis pendens* and the result of the pending appeals.

1) Whether Walker's lender **First Ag Credit** and Walker agree to take the property and finance it subject to the *Lis pendens* is not clear from **BD's** limited discovery at this time.

2) What is clear is that **Alamo**, knowing about the *Lis pendens*, issued a title policy to Walker and **First Ag Credit** without reference to the *Lis pendens* as an exception!

8. Walker then sells the ranch to two gentlemen who hold title as 4848 Aspermont (4848) and upon information and belief finances their purchase with **Ag Texas, FLCA**.

1) Neither, **JD, Castro, Bank, Abstract, Alamo, Pickens**, or **Walker (First Ag Credit[?])** or any of the people working for them who know the true nature of the situation, disclose to 4848, or its lender the *Lis pendens* giving notice of **BD's** intent to bring the Ranch back into the Estate and its Trust in violation of TEX. BUS. CODE §27.01.

2) On May 22, 2007 **BD** sends formal written notice to **Pickens** and the subsequent purchasers of his intent and encloses a copy of the *Amended Lis pendens Notice*.

3) By May of 2007 the cat is out of bag in that everyone knows they are not *bona fide* purchasers, and could lose the land and any improvements they have made if **BD** wins the lawsuit.

4) The purchasers now file Claims with **Alamo**.

5) *Alamo* provided all the insurance for all the purchases, and is now confronted not only with millions of dollars in losses but exposure to excess damages for fraud.

9. By November 2006 **BD**'s newly amended lawsuit is now 72 pages long and parades into the light the laundry list of horrible fiduciary failures committed by **JD**, as keeper of his brother's Trust.

10. In the name of **Pickens** and all the other subsequent land-owner purchasers for which title insurance was issued by *Alamo*, the Houston law firm of *Andrews-Kurth* (**AK**) is hired to unlawfully intervene in the brothers lawsuit to weigh in helping **JD**, the **Bank** and **Castro** and *Alamo* win against **BD**. Now it is really an unfair fight, and no longer in the family.

11. The long-standing common-law rule in Texas is that a person who a buys land subject to an ongoing lawsuit, takes that land subject to the outcome of the lawsuit.

12. In spite of the long standing legal rule that a lis pendens purchaser takes subject to the result in the underlying litigation and cannot join that litigation, **AK** does just that by intervening filing motions and discovery to attempt to win the lawsuit for **JD**

13. Previously, the Court was duly advised about **AK**'s bushwhacking highbinder tactics through **BD**'s *Motion to Sever and Abate*, *Motion to Strike Intervention*, and *Motion to Show Authority* wherein it was shown that the *Andrews-Kurth* law firm's intervention into 4222-A, was really on behalf of *Alamo*.

A. If successful, **AK** would thereby eliminate *Alamo*'s astronomical liability for unlawfully insuring around a title defect in a manner that created subsequent liability issues between *Alamo* and it's insured's, as well as by and between them all.

B. As confirmation that the conflicts are real, **4848**, filed suit against its seller, Walker, **Alamo**, **Castro** and the **Bank** for multimillion-dollar fraud when **4848** had a sale to a purchaser (in contract) stopped when **Alamo** finally disclosed the *Lis pendens* at the Title Commitment stage (due to **BD**'s May 22, 2007 letter).

C. The actual conflicts of interest in representing multiple parties is no problem for **AK**, as, upon information and belief, **AK** warned their insured's that they could lose what title insurance coverage they have if they "interfere" in the defense of the case. A defense tailored to stop a title failure, which defense appears to advance **Alamo's** interests over the other insured's interests.

14. In response to **BD**'s various motions of complaint about **AK**'s outrageous and aggressive interferences, the Trial Court, on May 8, 2008, enters an Order, on the record only, bifurcating but not separating **AK**'s separate lawsuit to enforce the *Settlement Agreement*. The Transcript of the May 8, 2008 hearing is attached hereto and incorporated herein by reference for the purpose of establishing what the Court ordered on May 8, 2008 to determine whether the Court should consider sanctioning **AK**.

15. Subsequently, **AK**'s interpretation of the Court's on the record Order is that **AK** can and will continue to unlawfully interfere in the underlying litigation.

16. **BD** has previously complained to the Trial Court about **AK**'s interfering in the underlying litigation, and once again presents his complaints, as he asserts that justice is being subverted by the following abusive practices.

A. **AK**'s interpretation of the Court's May 8, 2008 Order is that *Andrews-Kurth* is not precluded from *vicariously* participating in the underlying main case depositions by attending them, coaching **Castro**, as well as by providing him with what appears to be research and document preparation.

1) **Castro** has recently filed notices to take the depositions of four individuals, including two lawyers, Ware and Shay, which tactic **BD** attributes to **AK**'s coaching.

2) Counsel for **BD** has noticed what appears to be identical files in use by **Castro** and **AK** during the Self deposition suggesting that **AK** is preparing and presenting materials for **Castro's** use.

B. On June 13, 2008 **AK**, using a pincers type attack, served written discovery on **BD**, *as if* **AK's** clients were still parties in the main case, in a direct and continuing effort to enforce the *Settlement Agreement*.

C. **AK's** written discovery is essentially a redirect of its previous motion for summary judgment in the underlying litigation to enforce the *Settlement Agreement* for the purpose of limiting *Alamo's* exposure for its fraudulent conduct to *Alamo's* insured's.

D. It appears that **AK** is using attorney **Castro**, as a surrogate, in order to evade the Letter and the Spirit of Court's May 8, 2008 Order to not interfere in the underlying litigation.

E. Based upon **BD's** lead trial counsel's 32-years of experience in taking depositions, said trial counsel has not seen a person of less education and technical knowledge, giving calculated answers to questions that show a strong indication of coaching to avoid fraud and to introduce negligence, than what occurred at the deposition of Escrow Office, Stacy Meador Godfrey.

F. Since **4848** has sued **Abstract**, a long time occupant of the Courthouse, the atmosphere in the Courthouse for **BD** is definitely very chilly, and posters announcing **Castro's** campaign for State Representative are proudly displayed in the County and District Court offices where by law they perhaps should not be.

B. Motion for Appointment of a Master in Chancery

17. Plaintiff requests the appointment of a Master in Chancery (**Master**) because this case is 1) *exceptional*, and 2) there is *good cause*¹ to appoint a **Master** to aid the Court in handling the following problems:

A. To hear pending motions to compel discovery, particularly as to the **Bank** and **Castro**;

B. To determine discovery issues, particularly as that discovery relates to probate, trust and other special procedures in equity for complex fiduciary type litigation;

C. To compel production of witnesses or documents necessary for the **Master's** recommendations to the Court about the status of the Estate or its Trust(s);

D. To attend all future depositions and to rule therein on any discovery disputes and to assure that no interferences of any nature are occurring by **AK**, **Alamo** or the other Intervenors;

E. To secure prepare a report of legal rights and duties, and of applicable equitable remedies of the parties arising under various legal doctrines involving complex fiduciary litigation.

18. That good cause exists, and such cause includes taking all steps necessary and as recommend by the **Master** to prevent waste, to promote judicial economy and to reduce litigation, unjust enrichment, and obstruction of the discovery process and justice through economic coercions, or any other methods in violation of equitable doctrines.

19. Due to the remote nature of the District Court, and its limited budget and judicial resourced, it is requested that a Professor Beyer of Texas Tech Law School or some other

¹ *Simpson v. Canales*, 806 S.W.2d 802, 811 (Tex. 1991)

jurist of expertise in Trusts, Probate and fiduciary litigation be appointed **Master** with the following powers to aid this Honorable Court.

20. **POWERS TO BE GRANTED TO THE MASTER:** The **Master** is requested to have the following powers.

A. To hold hearings and to issues subpoenas for such hearings, as required for the production of documents for her or his inspection, including financial and bank account records.

B To determine what constitutes a full, fair and accurate accounting of the Estate and its Trust necessary to arrive at a reconciliation of accounts, as deemed by the master to be necessary for the Master to advise the Court on the factual, legal and equitable issues involved for the Court's consideration and orders.

C. To determine whether fiduciary duties were breached, as a matter of law;

D. To determine all other facts that would aid and educate this Court on the complete dealings and condition of the Estate of Ida Baldwin Denison and to otherwise expedite the disposition of this case to the advantage and interest of all parties.

E. That the **Master's** duties shall commence at a certain date and location certain location such that:

1) The **Master** shall file a report of the evidence with findings of fact and conclusions of law for this Court on or a certain date, unless an extension is necessary.

2) The **Master** shall receive reasonable compensation for his services, as master, and the expense shall be taxed to the Defendants under principles of equity, or unless otherwise ordered by the Court to be paid

equally by all parties until such time as determination reallocates such costs of the case.

F. That the **Master** have the powers of subpoena and of arrest for contempt.

21. **Request for evidentiary hearing:** Movant, **BD**, requests that an evidentiary hearing be held on this motion.

22. **Conclusion:** Unless a **Master** is appointed, Defendants and Intervenors will continue to engage in bad faith conduct and to use their economic superiority, knowledge and control over documents to delay and otherwise obstruct full and accurate discovery of facts necessary to adjudicate this matter.

23. **Prayer:** For these reasons, **BD** respectfully requests this Court to appoint a qualified **Master** to perform all acts necessary to conduct discovery with the specific powers needed to compel discovery in order to determine the factual or legal issues required by the Court to be brought before it.

C. Argument

24. Probably not all of **AK's** activities of interference are known, as they are inherently not within **BD's** capability to discover. **BD** can only extrapolate and conclude from **AK's** current activities, economic superiority, political connections, and desire to limit its clients exposure to liability, that unless the Court totally abates **AK** from participation in this case **AK** will continue to pursue its objective of mucking up **BD's** case for trial by using any means, manner, or method of influence or participation by or through **Castro, JD**, or the **Bank**, or others to do so.

25. **AK** needs to be under a cease and desist order with clear sanctions imposed for interfering, as well as being sanctioned for its past interferences, if such are found by the Court to have been in violation of its Order of May 8, 2008 or other orders.

26. **AK's** intervention and continuing activities of abusing process for reasons other than for which interventions are proper is an abuse of process.

27. **AK's** intervention has to date, irreparably damaged **BD's** ability and right to prosecute his case without undue interference and economic harm.

28. It is clear to **BD** that one prong of **AK's** strategy of interference to cause the very result that is happening here, i.e., force **BD** to delay the trial by being unable to answer **AK's** discovery while simultaneously preparing for trial under economic constraints to do both. Such tactic is an abuse of process, including by the following process.

A. **BD** is irreparably damaged by having to fight parties who can interject endless controversy into the main case, such as they have done by interjecting their own discovery, that unlawfully impacts, delays and thwart's **BD's** legal counsel in preparing for trial, additionally causing **BD** economic damages to address such unlawful issues.

B. **AK** has irreparably damaged **BD** by being allowed to participate the **JD** and Dickerson depositions, and is continuing to irreparably damage **BD** by attending current depositions, as the questions asked or inserted by **AK's** coaching of **Castro**, and the atmosphere created for the other participants by **AK's** presence, was different than it would have been if **AK** was not there to assert its interests.

29. As a result of **AK** and their insured's abuse of process interferences, **BD** and his wife have suffered and will continue to suffer mental anguish.

30. The Court is hereby advised of the abuse of process.

31. **BD** respectfully requests the Court to abate **AK's** further participation in this case, as a mitigation of his and his wife's ongoing damages, as that is only within the control of the Court.

D. Conclusion

32. Due to **AK's** interferences and abuses of process, **BD** has cancelled all scheduled depositions, other than the one for June 23, as there was no time to notify the participants for that deposition.

33. **BD** requests the Court to schedule and hear all of his Motions to Compel, without interference from **AK**.

34. That a **Master** be appointed to act herein, and the current scheduling order be vacated until the Master's Report is filed and accepted by the Court.

35. **BD** requests that the Court *proceed in equity* to be able to fashion a remedy for the incredible fiduciary fraud that has occurred in this case, for which **BD** has marshaled substantial evidence, but has not had an opportunity to complete his discovery as to material witnesses, not the least of whom are **Castro** and the **Bank**, and those others who have knowledge of their actions.

36. The failure of the Court to address **AK's** interferences will result in a gross miscarriage of justice that will lead the public to likely hold the legal system in contempt and ridicule.

D. Prayer

37. **BD** respectfully requests this Court to proceed in equity to address the issues placed before it, to address wrongs, and to assure a fair forum for all concerned.

38. **BD** requests that he be reimbursed the costs of **JD's** deposition and all other depositions in which **AK** has appeared to partially right the economic harm visited on him by **AK's** presence, as an appropriate sanction authorized under the plenary power of the Court to redress wrongs.

39. **BD** requests that **AK** be ordered, as a sanction, to reimburse him for all his attorney fees and costs expended to date for **AK's** attendance and therefore interference in **JD's** deposition, for which **BD** objected and has not waived such objection.

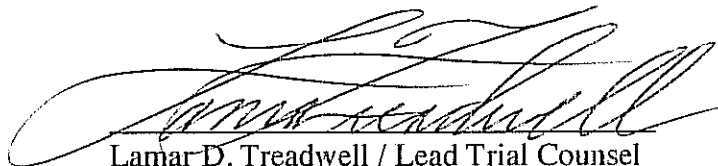
40. That this Court proceeding in equity, and thereby appoints a **Master**, with powers of subpoena and arrest, as is appropriate for a special master in chancery.

41. That the **Master** be ordered to sort through pending motions and discovery issues, to file a report, designed to recommend equitable solutions so that justice is not subverted by the powerful or the rich, or those who respect not the rule of law, such is their desire for greed, or a desire to abuse their power.

42. That the current scheduling order be vacated until issues framed by a **Master** are tried as found to be necessary by the Court sitting inequity, or by a jury for the purpose of fact finding to inform the discretion of the **Master** and to advise the Court thereof for the proper application of probate, trust and fiduciary law.

43. Failing any of the above, this case will continue to result in multiplicity of litigation, failure of judicial economy, and loss of public trust in the integrity of the judicial system to conform to the ideals that created an American system of justice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent to all counsel of record for the Plaintiff in accordance with Tex. R. Civ. P. 21 and 21(a) on this the 24th day of June 2008 as follows:

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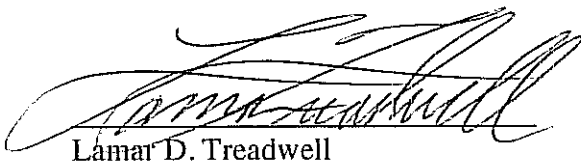
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P R O C E E D I N G S

(9:24 A.M.)

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2
3 THE COURT: Based on the pleadings on file,
4 the Court is ready to make rulings on certain matters.
5 The Defendant's Motion to Show Authority is overruled and
6 denied, Defendant Bob Denison's motion. Defendant Bob
7 Denison's Motion to Strike a Plea and Intervention is
8 denied. The Intervenor's did not have consent of the Court
9 to file a plea and intervention. The Intervenor's plea
10 will be separated and tried separately from the -- from
11 the other matters. The Plaintiff's Motion for Summary
12 Judgment is denied. The Defendant's Motion for Summary
13 Judgment is denied.

14 Do I have further pending motions?

15 MR. RADICH: Your Honor, the only pending
16 issues that we have would be the scheduling order, which
17 it sounds like we'll need two at this point.

18 THE COURT: I will recess and get together
19 with the plaintiff and defendant, Bob Denison, and enter a
20 scheduling order. I think we've already got a trial date
21 stated in the past picked. We'll review that and we'll
22 enter a separate scheduling order for the intervenors and
23 set a trial date somewhere 45 to 60 days from entry of
24 judgment. And the practical thing to do there, I think,
25 is to -- for -- for you attorneys to get together and

1 propose a scheduling order based on --

2 MR. RADICH: We can do that.

3 THE COURT: -- a specific trial date when we
4 get it selected. Some reason or another, I show a
5 September trial date. Did we, in fact, set a September
6 trial date?

7 MR. CASTRO: No, Your Honor, I don't recall
8 setting a trial date at all.

9 MR. RADICH: Your Honor, I think it's the
10 pesky attorneys for the Intervenors that filed the
11 scheduling order. We had proposed a September trial
12 setting --

13 THE COURT: Okay.

14 MR. RADICH: -- and we never made it that
15 far.

16 THE COURT: All right.

17 MR. RADICH: So I don't believe there is one.

18 THE COURT: I would hope that we could get a
19 July or August trial date, but I'll get together with
20 counsel in chambers when we recess. If you want to,
21 remain until we get this hashed out on the scheduling
22 order on this and then we'll look at your scheduling order
23 or you may be excused and you can get together and see if
24 we can come up with a proposed scheduling order.

25 MR. RADICH: I'll be happy to wait, Your

1 Honor. And could I just ask just to make sure I
2 understand the Court's ruling, is the --

3 THE COURT: You are intervenes, although you
4 didn't have the right to, I think.

5 MR. RADICH: Okay.

6 THE COURT: You are intervenes, you have
7 leave of court, but your issues will be tried separately.

8 MR. RADICH: But they will still be docketed
9 in this case, it sounds like?

10 THE COURT: They'll be docketed in this case,
11 I guess, in a supplemental number or something like that.

12 MR. RADICH: And I take it, we can still
13 proceed with discovery and those kinds of things?

14 THE COURT: Yes, sir.

15 MR. RADICH: Okay. Thank you, Judge. I just
16 wanted to be clear. That's all we have.

17 THE COURT: All right.

18 MR. TREADWELL: But they'll proceed with the
19 discovery separately in their case. I don't want them in
20 my case.

21 THE COURT: Yes. Yes.

22 MR. TREADWELL: Okay. And just for the
23 record, Bob Denison is generally the plaintiff, although I
24 think Mr. Castro, on occasion, has designated him as a
25 defendant, but he should really be, I guess, "in the

1 estate of" the plaintiff, and I think maybe that is a
2 little bit confusing, but I think we had -- on the Motions
3 for Summary Judgment, we're saying on the motion that had
4 been filed back in August that we had on the will -- I
5 want to make sure I'm up to speed on which Motion for
6 Summary Judgment we're talking about.

7 THE COURT: Do you have more than one?

8 MR. TREADWELL: Well, I have -- I have one.

9 MR. CASTRO: No, just one.

10 THE COURT: Let's see. I can't think of more
11 than that.

12 MR. TREADWELL: All right. We have some
13 other pending matters, but I don't think we've asked for
14 those to be set. So I think we'll -- as soon as we get
15 the scheduling order in, then we'll move forward to some
16 motions to clean up --

17 THE COURT: Okay. And I'll discuss with you
18 and Mr. Castro your designation of parties.

19 MR. RADICH: Your Honor, one more thing in
20 response to an issue Mr. Treadwell has just raised, I can
21 see the point of separate written discovery, and that's
22 totally fine, but to the extent depositions are going to
23 take place, that kind of thing, it seems duplicative to me
24 to say we can't attend those depositions because then I'm
25 just going to have to notice the same --

1 THE COURT: The reason I'm separating it for
2 trial is to try to preserve as much discovery as possible.

3 MR. RADICH: Okay. Would we -- am I to
4 understand then that we are able to attend depositions
5 in -- in -- as I understand it, we're still -- because
6 what happens is, they take a deposition, then I'm going to
7 have to take the same deposition if we can't come to it.

8 THE COURT: If it's in the same trial.

9 MR. RADICH: Yeah. To the extent the issues
10 relate, Your Honor, if they need to take it in their -- in
11 the -- let's say, the underlying case, and then those same
12 issues from that same witness would be in our case related
13 to enforcement of the Settlement Agreement, then I -- it
14 seems to me that it wouldn't be in the interest of
15 judicial economy to have to re-depose everybody, bring
16 everyone, you know, up to Stonewall two times for
17 everything. And so I would simply request that those
18 instances where depositions and things like that are going
19 to take place, it ought to just be joint between the two
20 cases.

21 THE COURT: Well, maybe I just better abate
22 the whole thing then. And I'm going to try to preserve
23 the discovery that's already been made for use in your
24 case if I can.

25 MR. RADICH: Okay. Well, as long as we're

1 provided an opportunity to do what we need to then
2 we'll --

3 THE COURT: We'll consider that in a
4 scheduling order.

5 MR. RADICH: Okay. Thank you, Judge. I
6 appreciate that.

7 THE COURT: Okay.

8 MR. TREADWELL: I have nothing further, Your
9 Honor.

10 THE COURT: All right. Let's take a recess
11 and see if we can get a scheduling order on the main
12 docket.

13 (COURT ADJOURNED AT 9:32 A.M.)
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1 STATE OF TEXAS)

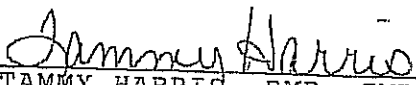
2 COUNTY OF TAYLOR)

3 I, Tammy Harris, Certified Shorthand Reporter in
4 and for the State of Texas, do hereby certify that the
5 above and foregoing pages contain a true and correct
6 transcription of all portions of evidence and other
7 proceedings requested in writing by counsel for the
8 parties to be included in this volume of the Reporter's
9 Record, in the above-styled and numbered cause, all of
10 which occurred in open court or in chambers and were
11 reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits,
14 if any, admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ 85.00 and will
17 be paid by Mr. Lamar Treadwell.

18 WITNESS MY OFFICIAL HAND this the 15th day of
19 May, 2008.

20
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