

## ROBINS, KAPLAN, MILLER &amp; CIRESI L.L.P.

SUITE 3700  
2049 CENTURY PARK EAST  
LOS ANGELES, CA 90067-3211  
TEL: 310-552-0130 FAX: 310-229-5800  
www.rkmc.com

ATTORNEYS AT LAW

DAVID C. VEIS  
(310) 229-5828  
dcveis@rkmc.com

February 28, 2005

**VIA FACSIMILE ONLY**

(505) 476-3462

David Brooks, Asst. General Counsel  
State of New Mexico  
Oil Conservation Division  
Energy, Minerals and Natural Resources Dept.  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

Re:	Surety	:	Fidelity and Deposit Company of Maryland
	Principal	:	Greka AM, Inc.
	Claim No.	:	638 0041624 KA
	Bond No.	:	04128203
	Our File No.	:	240127.0283

Dear Mr. Brooks:

Thank you for your February 22, 2005 correspondence. We appreciate that no claim will be made until the fiscal year 2006. While we appreciate no present claim is being asserted against Fidelity and Deposit Company of Maryland, we do not believe that the Oil Conservation Division is entitled to seek recovery against both bonds. As between the Oil Conservation Division and Greka, the latter may have responsibility if it was in fact operating the wells. Nonetheless, as between the Oil Conservation Division and Fidelity and Deposit Company of Maryland, the bond submitted by Fidelity and Deposit Company of Maryland was presented to replace the bond naming Saba as the operator of record. There is no indication in the record that the bond was presented as an additional or supplement bond to the previously delivered bond from Saba. In fact, the bond issued by Fidelity and Deposit Company of Maryland and delivered to Greka was rejected and the Oil Conservation Division apparently refused to change the operator of record from Saba to Greka. Thus, not only was the bond issued by Fidelity and Deposit Company of Maryland to Greka not accepted as a replacement bond by the Oil Conservation Division, the Saba bond was not cancelled. There is absolutely no indication in the record that the parties intended to provide two bonds for the same activities. In reviewing your February 22, 2005 correspondence there is recognition that the Oil Conservation Division is not entitled to double or multiple recovery and that the surety is not liable for penalties assessed against the principal.

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WASHINGTON, D.C.

David Brooks  
State of New Mexico  
February 28, 2005  
Page 2

If the Oil Conservation Division elects to proceed against both bonds under the circumstances outlined, it appears that notwithstanding its statement that it is not entitled to double or multiple recovery, this is exactly what it is asking for.

Please provide us with any information you have relative to claims made against Saba and its surety. We will take you up on your offer to communicate with the surety for Saba to determine which surety has primary or sole liability.

Thank you in advance for your continued courtesy and assistance in this matter.

Very truly yours,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



David C. Veis

DCV/tdn

cc: Kathy Alves (via facsimile)



# NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

**BILL RICHARDSON**

Governor

**Joanna Prukop**

Cabinet Secretary

**Mark E. Fesmire, P.E.**

Director

**Oil Conservation Division**

February 22, 2005

Mr. David C. Veis  
Robins, Kaplan, Miller & Ciresi, LLP  
2049 Century Park East, Suite 3700  
Los Angeles, CA 90067-3211

**Re: Greka AM, Inc and Saba of Texas, Inc.**

Dear Mr. Veis:

I am in receipt of your correspondence of December 29, 2004 and February 21, 2005.

My understanding of the situation with regard to the referenced operators is that Saba was the operator of the wells ordered plugged, according to our records. However, evidence was presented to the hearing examiner that Greka AM, Inc. was, in fact, operating these wells, and the examiner so found. We accordingly believe that each of these entities is liable for costs we may incur if we plug these wells. We also believe that each surety is liable for such costs to the extent of its bond, and that we could proceed against either surety. We recognize that we are not entitled to a double or multiple recovery, that no surety is liable beyond the amount of its bond, and that the sureties are not liable for civil penalties assessed against the principals.

When operators fail to plug wells pursuant to our orders, we place those wells on a list to be plugged using funds from the Oil and Gas Reclamation Fund, and we proceed with the work as funds become available. We do not now anticipate that we will be able to plug these wells till some time in Fiscal Year 2006 (July 1, 2005 to June 30, 2006). When funds are available, we will contract with a service company to plug these wells and remediate the sites in accordance with our rules. At that time, we will present the claim to the sureties. Of course, if the sureties could agree between themselves as to which of them is primarily liable, that would make our task simpler. We will be happy to furnish any information that we have to assist the sureties in evaluating our claim.

In the meantime, we consider this bond forfeited pursuant to NMSA 1978 Section 70-2-14. Though we are not, at this time, making any claim on the bond since our damages are not yet determined, we consider this bond unavailable as security for any future operations the principal may desire to conduct in New Mexico.

Should you have questions, please feel free to call the undersigned at (505)-476-3450.

Very truly yours,

David K. Brooks,  
Assistant General Counsel

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

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ATTORNEYS AT LAW

**FROM: David C. Veis**

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**TO: David Brooks**  
State of New Mexico  
Oil Conservation Division  
Energy, Minerals and Natural Resources Dept.

**DATE:** February 21, 2005

**FILE NO.:** 240127.Pending

**FACSIMILE NO.:** (505) 476-3462

**TELEPHONE NO.:** (505) 476-3450

**NUMBER OF PAGES INCLUDING COVER SHEET:** 3

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TEL: 310-552-0130 FAX: 310-229-5800  
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ATTORNEYS AT LAW

DAVID C. VEIS  
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February 21, 2005

**VIA FACSIMILE ONLY**  
**(505) 476-3462**

David Brooks  
State of New Mexico  
Oil Conservation Division  
Energy, Minerals and Natural Resources Dept.  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

Re: Surety : Fidelity and Deposit Company of Maryland  
Principal : Greka AM, Inc.  
Claim No. : 638 0041624 KA  
Bond No. : 04128203  
Our File No. : 240127.0283

Dear Mr. Brooks:

Following up on our brief telephone conference and our December 29, 2004 correspondence to Ms. MacQuesten which was forwarded to you on January 10, 2005, would you please give us an update on this matter. In particular, as noted in the letter, we want to make sure that there is no attempt to receive double recovery in this matter. Further, we sought information regarding the efforts of the Division to recover against Saba and the bond written for that entity. If you could please provide us with an update on this matter so that we can work together to minimize exposure to loss, it would be appreciated.

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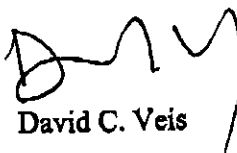
WASHINGTON, D.C.

David Brooks  
State of New Mexico  
February 21, 2005  
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Nothing in this letter or our prior letter shall be construed as an admission of liability or a waiver of any right or defense.

Very truly yours,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

  
David C. Veis

DCV/ymm

cc: Kathy Alves (via facsimile)

RECEIVED

ATTORNEYS AT LAW

JAN 03 2005

OIL CONSERVATION  
DIVISION

DAVID C. VEIS  
(310) 229-5828  
daveis@rkmc.com

December 29, 2004

Gail MacQuesten  
State of New Mexico  
Oil Conservation Division  
Energy, Minerals and Natural Resources Dept.  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

Re: Surety : Fidelity and Deposit Company of Maryland  
Principal : Greka AM, Inc.  
Claim No. : 638 0041624 KA  
Bond No. : 04128203  
Our File No. : 240127.pending


Dear Ms. MacQuesten:

This office is outside counsel for Fidelity and Deposit Company of Maryland relative to the \$50,000 Blanket Plugging Bond No. 04128203 identifying Greka AM, Inc. as principal (the Bond). A copy of the Application for an Order Against Greka has been forwarded to us for review. We have also reviewed a copy of the Reporter's Transcript of Proceeding dated November 18, 2004. While the exhibits identified in the transcript were not attached, we believe we have a general understanding as to what was included. The following will outline our thoughts of the proceeding and request your assistance in bringing this matter to a conclusion.

Based upon the information provided, it does appear that Fidelity and Deposit Company of Maryland provided the bond to Greka. The bond was presented to the Oil Conservation Division to replace the bond naming Saba as the operator of record. There is

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Gail MacQuesten.  
December 29, 2004  
Page 2

no indication in the record that the bond was presented to the Oil Conservation Division as an additional or supplemental bond to the previously delivered bond from Saba. In fact, it appears that the bond delivered by Greka was rejected and the Oil Conservation Division apparently refused to change the operator of record from Saba to Greka. Not only was the bond provided by Greka not accepted as a replacement bond, the Saba bond was not cancelled. There is no indication in the record that the parties intended to provide two bonds for the same activities.

While we appreciate that two bonds were apparently issued, under the circumstances, it is fundamentally unfair and in excess of the Division's authority to implicate two bonds where only one was statutorily mandated.

In addition to the foregoing, based upon the testimony of the witnesses with no cross examination, the costs to be incurred to plug the wells should be in the \$50,000 range or limited to one bond penalty. The witnesses clearly stated that there was substantial salvage opportunities and at least as to two of the wells a realistic possibility that the wells would be assumed by a third party. Thus, in addition to the reasons outlined above for not implicating two bonds, the recoverable claims of the Division should be close to one bond penalty.

We understand and appreciate the argument that is made that Greka was an operator in fact and may fall within the broad definition of operator identified by the code. This fact alone does not allow the Oil Conservation Division to implicate two bonds.

Nowhere in the bond or frankly in the arguments made is there any indication that the Oil Conservation Division is seeking to recover from the surety penalties assessed. These would not be proper recoverable items against the bond.

Presumably the Oil Conservation Division has made demand on the bond written for Saba. Has the Oil Conservation Division recovered on the bond? What is the status of the recovery efforts? It is the position of Fidelity and Deposit Company of Maryland that if the Oil Conservation Division receives recovery on the Saba bond, it is inappropriate for it to also seek recovery against the bond written for Greka.

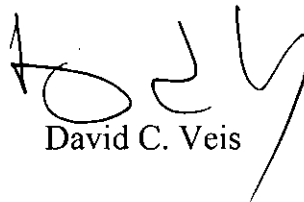
We bring these issues and arguments to your attention as it is the desire of the surety to resolve this matter without undue complications and expenses. We ask that you review

Gail MacQuesten.  
December 29, 2004  
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this matter and contact the undersigned to facilitate a proper resolution of the issues between the parties. Thank you in advance for your courtesy in reviewing this matter and your consideration of our thoughts and comments.

Very truly yours,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



David C. Veis

DCV/tdn  
cc: Kathy Alves