

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION DIVISION FOR THE )  
PURPOSE OF CONSIDERING: )  
APPLICATION OF JTD RESOURCES, LLC, )  
FOR COMPULSORY POOLING, LEA COUNTY, )  
NEW MEXICO )

CASE NO. 14,010

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Technical Examiner  
DAVID K. BROOKS, Jr., Legal Examiner

October 18th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Technical Examiner, DAVID K. BROOKS, Jr., Legal Examiner, on Thursday, October 18th, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

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October 18th, 2007  
Examiner Hearing  
CASE NO. 14,010

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\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

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## FOR THE APPLICANT:

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## FOR CHESAPEAKE EXPLORATION, LLC:

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.  
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P.O. Box 2168  
Albuquerque, New Mexico 87103-2168  
By: EARL E. DEBRINE, JR.

\* \* \*

## ALSO PRESENT:

Elizabeth Leonard

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:42 a.m.:

3           EXAMINER EZEANYIM: We can go back onto the  
4   record, and at this point I'm going to call the next case.  
5   This is on page 4, Case Number 14,010, Application of JTD  
6   Resources, LLC, for compulsory pooling, Lea County, New  
7   Mexico.

8           Call for appearances.

9           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
10   representing the Applicant.

11           And appearing in association with me is Elizabeth  
12   Leonard, who is an attorney in good standing with the State  
13   Bar of Texas.

14           EXAMINER EZEANYIM: You don't have any witness?

15           MR. BRUCE: I have one witness.

16           EXAMINER EZEANYIM: Okay, any other appearances?

17           MR. DEBRINE: Yes, Mr. Examiner, Earl DeBrine  
18   with the Modrall Sperling firm for Chesapeake Exploration,  
19   LLC, which will be opposing the Application.

20           EXAMINER EZEANYIM: Do you have any witnesses?

21           MR. DEBRINE: Excuse me?

22           EXAMINER EZEANYIM: Do you have any witnesses?

23           MR. DEBRINE: No, we don't, your Honor.

24           EXAMINER EZEANYIM: Okay. Now may the witness  
25   stand to be sworn, please?

1 (Thereupon, the witness was sworn.)

2 EXAMINER EZEANYIM: Mr. Bruce?

3 DAN M. LEONARD,

4 the witness herein, after having been first duly sworn upon  
5 his oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. Would you please state your name for the record?

9 A. My name is Dan Leonard.

10 Q. Where do you reside?

11 A. Midland, Texas.

12 Q. And who do you work for?

13 A. I work for JTD Resources, which is a Texas  
14 limited liability company. I am a partner in that firm and  
15 manager of it.

16 Q. By profession are you a petroleum landman?

17 A. I am.

18 Q. Have you previously testified before the Division  
19 as a landman?

20 A. I have.

21 Q. And were your credentials as an expert accepted  
22 as a matter of record?

23 A. They were.

24 Q. And are you familiar with the land matters  
25 involved in this case?

1 A. I am.

2 MR. BRUCE: Mr. Examiner, I'd tender Mr. Leonard  
3 as an expert petroleum landman.

4 MR. DEBRINE: No objection.

5 EXAMINER EZEANYIM: No objection, okay, Mr.  
6 Leonard is so qualified.

7 Q. (By Mr. Bruce) Mr. Leonard, could you identify  
8 Exhibit 1 and describe briefly for the Examiner what you  
9 seek in this case?

10 A. Yes, Exhibit 1 is a land plat from Midland Map  
11 Company reflecting the southeast -- or highlighting the  
12 southeast southwest quarter of Section 4, 20 South, 38  
13 East. We are seeking to pool the southeast southwest  
14 quarter from the surface to the base of the Wolfcamp  
15 formation. The unit will be dedicated to the Vinson Number  
16 1 well, which is the dryhole symbol situated on that 40  
17 acres.

18 Q. Okay. What is the well's footage location?

19 A. The location is 330 feet from the south line and  
20 2310 feet from the west line of Section 4.

21 EXAMINER EZEANYIM: 2131? 330?

22 THE WITNESS: 330 from the south and 2310 from  
23 the west, sir.

24 Q. (By Mr. Bruce) When was this well drilled?

25 A. This well was drilled by Amerada Hess in 1996 as

1 an Ellenburger test and was dry and abandoned.

2 Q. And JTD is proposing to re-enter this well?

3 A. Yes.

4 Q. Let's move on to Exhibits 2A, 2B, 3A and 3B.

5 First of all, what type of land is this? State, federal,  
6 fee?

7 A. This is a fee tract. There are two family trusts  
8 that own 50 percent of the minerals each, and we have them  
9 under lease.

10 Q. What is Exhibit 2A?

11 A. Exhibit 2A is an oil and gas lease that we took  
12 from the Keach Family Trust in 19- -- I mean in 2001.

13 Q. And what is Exhibit 2B?

14 A. 2B is an amendment and extension to that lease  
15 that we negotiated with the Keach Family Trust in 2004, and  
16 that extension is -- shall run through November 10, 2007.

17 Q. What is Exhibit 3A?

18 A. 3A is the oil and gas lease that we negotiated  
19 with the MPM Family Trust back in 2001 covering their 50-  
20 percent interest in the same 40-acre tract.

21 Q. Okay, and what is Exhibit 3B?

22 A. 3B is an amendment and extension of that oil and  
23 gas lease that we negotiated in 2004, and it is due to  
24 expire on November 13, 2004.

25 Q. Okay, so we're about three or four weeks away

1 from both leases expiring; is that correct?

2 A. Yes, sir.

3 Q. And these -- these leases collectively cover 100  
4 percent of the mineral interest in the well unit?

5 A. They do.

6 Q. In whose name is record ownership of those two  
7 leases?

8 A. JTD Resources.

9 Q. A hundred percent?

10 A. Yes.

11 Q. Who do you seek to pool?

12 A. We seek to pool Chesapeake Exploration Limited  
13 Partnership.

14 Q. If JTD owns the leases, what is Chesapeake's  
15 ownership interest?

16 A. Well, JTD is the record title owner to these  
17 leases. We have -- we have a number of partners in them.  
18 We -- our -- JTD and its -- and its partners own 75  
19 percent, Chesapeake owns a 25-percent working interest in  
20 these leases.

21 Q. What if -- but it's -- how does Chesapeake own  
22 that interest, or under what do you attribute Chesapeake's  
23 interest?

24 A. Some years ago, nine years ago, we entered into a  
25 farmout agreement with Cross Timbers Oil Company in Fort

1 Worth, originally intending to re-enter this Vinson well.  
2 That farmout agreement has got an area of mutual interest  
3 provision in it. Chesapeake has been successor-in-interest  
4 to Sapiant and Falcon Creek, who were both successors in  
5 interest to Cross Timbers, so Sapiant now owns that  
6 interest.

7 And Leonard Resource Investment Corporation,  
8 which was a company that I previously had and have been up  
9 here before you for, is now merged into JTD Resources, and  
10 so we were the two parties to that farmout agreement. And  
11 there's an area of mutual interest provision as a part of  
12 that farmout agreement that has kept the equity position of  
13 Chesapeake's 25 percent in force and effect all of these  
14 years.

15 Q. Okay. Let's discuss your efforts to obtain the  
16 voluntary joinder of Chesapeake in this re-entry. What is  
17 Exhibit 4?

18 A. Exhibit 4 is a well proposal that we sent to  
19 Chesapeake dated August 15th, 2007. We proposed the  
20 formation of a 40-acre unit here to re-enter that Vinson  
21 Number 1 well and attempt completion in the Pennsylvanian,  
22 Abo, Tubb and Blinebry formations.

23 Q. And was there subsequent correspondence between  
24 you and Ches- -- from you to Chesapeake and from Chesapeake  
25 to you, and phone calls?

1           A.    We made some follow-up phone calls to make sure  
2           that this proposal was received, and the first response  
3           that we got from Chesapeake was the letter, I believe,  
4           dated October -- or September 25th. We received a letter  
5           from a land assistant that works with Lynda Townsend  
6           advising us that Chesapeake would elect to participate in  
7           the well and that the would execute the AFE and send it to  
8           me at a later date.

9           Q.    Okay. Did they subsequently send you an executed  
10          AFE?

11          A.    Yeah, we got it Monday or Tuesday of this week.

12          Q.    Okay. And you had follow-up letters and faxes to  
13          -- Well, let's go through it. These letters might be a  
14          little out of date -- or not out of date, out of order.

15                    There is a letter in this package, Exhibit 4,  
16          from Chesapeake dated September 25th; is that correct?

17          A.    Oh, it's -- they're all stapled together, I'm  
18          sorry.

19          Q.    Yeah, they're all stapled together, I --

20          A.    Yeah. Yes. That's the one that -- that's the  
21          letter that they advised us that they -- that Chesapeake  
22          would elect to participate and that an executed AFE would  
23          follow, and they requested that we send them a copy of the  
24          drilling title opinion and a joint operating agreement  
25          covering the well.

1 Q. Okay. Have you had -- Tell us a little bit about  
2 your subsequent phone conversations with either Sara  
3 Caldwell or Lynda Townsend, the land people at Chesapeake.

4 A. Okay. Well, pursuant to the September 25 letter  
5 that they sent us, we prepared a joint operating agreement,  
6 which we are charged to do under that farmout agreement.  
7 We prepared a joint operating agreement for their signature  
8 and Fed-Ex'd it to them on October 9th. So they received  
9 it -- I called Sara Caldwell on the 10th day of October and  
10 confirmed that they had received the joint operating  
11 agreement.

12 In the letter, I -- the cover letter to that, I  
13 reminded them of this hearing and reminded them that we've  
14 got a short time frame here to get their joinder, and that  
15 in order to accomplish this before the hearing we would  
16 need an executed copy of the AFE and the joint operating  
17 agreement. I think I gave her a date of Tuesday, the 16th  
18 of October, that we would need that by.

19 On -- I called to make sure she got it, and we  
20 talked again about the dates, and she was -- she was  
21 curious about why we were -- we had scheduled this at the  
22 time that we did, and I reminded her that in July of this  
23 year Chesapeake, who was owner of a 25-percent interest in  
24 the two leases that we own, topleased one of the leases and  
25 attempted to toplease the other one, which pretty much put

1 a gun at our head to get this done on or before the 10th  
2 day of November.

3 So we scheduled the hearing, had the hearing  
4 scheduled and needed to proceed with the hearing and needed  
5 for them to take a quick look at that operating agreement.  
6 It's an operating agreement that is similar in form to the  
7 one that's attached as Exhibit B to the farmout agreement.  
8 It's almost identical to it.

9 It's been tailored for this well, which is a re-  
10 entry rather than a drilling well. The operator has  
11 changed, the parties have changed, Cross Timbers is now  
12 Chesapeake, Leonard Resources now JTD Resources. We simply  
13 prepared this similar form operating agreement with --  
14 updated it as to the re-entry and the new parties involved.

15 Q. And what was Chesapeake's response to the  
16 proposed JOA?

17 A. Well, I got a -- I got a -- I received a call  
18 from Lynda Townsend, who I think is the landlady handling  
19 this, on Monday, the 15th, late in the day, and she had --

20 MR. DEBRINE: I'll object to any statement by  
21 Lynda Townsend as hearsay.

22 EXAMINER BROOKS: I would overrule that -- You're  
23 representing Chesapeake, right?

24 MR. DEBRINE: Yes.

25 EXAMINER BROOKS: I'll -- I would advise the

1 Examiner to overrule that objection, because it would be a  
2 statement by a party, by a party opponent.

3 EXAMINER EZEANYIM: Objection is overruled.

4 THE WITNESS: Well, she called to tell me that  
5 she'd gotten the operating agreement, had not had an  
6 opportunity to look at it but would do that. She said that  
7 the operating -- there's a farmout agreement that they  
8 don't have a copy of, that she didn't have a copy of, which  
9 kind of surprised me, because it was -- it was -- I presume  
10 they had all of the records from this, but...

11 I faxed her a copy of the farmout agreement. I  
12 heard from her on Tuesday morning. We had unintentionally  
13 left out Exhibit B to that agreement, which is a form of  
14 joint operating agreement that we agreed to use in the  
15 event a well was drilled. There's a -- the provision in  
16 the farmout agreement that refers to it and says that the  
17 farmee will prepare a joint operating agreement identical  
18 in form to the operating agreement attached hereto as  
19 Exhibit B and presented to the parties for signature.

20 So she needed to see a copy of that operating  
21 agreement, so I faxed that to her on Tuesday.

22 I got a call from her Tuesday after she got that  
23 fax, and she asked me why we were unwilling to accept the  
24 executed AFE and the letter that they had written us  
25 stating that they were going to join in the well. She

1 asked me why we were not willing to accept that as evidence  
2 that they were going to join in the well.

3 And I told her that I'm advised by counsel and  
4 advised by the law that the executed AFE and a letter  
5 committing to participate in the well were not binding.  
6 And we -- because of our previous experience with  
7 Chesapeake -- we've had two experiences with them where we  
8 never got a joint operating agreement from them. We  
9 appeared before you guys, and we succeeded in pooling a  
10 couple of wells that are about half a mile to a mile east  
11 of this well that we're going to re-enter.

12 And it's been three years since we did one of the  
13 force pooling and two since we did the other one. We  
14 haven't gotten a signed operating agreement yet.

15 So I'm -- I said we need this -- we need an  
16 executed operating agreement in order for us to know that  
17 you're bound. And the reason that that's important is  
18 because of the timing of the toplease. The toplease is  
19 going to vest on November 10th. We've pretty much got a  
20 gun at our heads to get this thing done.

21 And we are a -- we're a small independent  
22 company. We've got some other -- part of this involved in  
23 this. Chesapeake owns a relatively large interest, a  
24 quarter interest, and we simply would like to know for  
25 sure, before the rig gets on the location, whether they

1 intend to participate or not. And the only thing that's  
2 going to bind them to that participation, if I understand  
3 the law correctly, is an executed joint operating  
4 agreement. That's all we're asking for.

5 Q. (By Mr. Bruce) And we'll get into this farmout  
6 agreement in a few minutes, Mr. Leonard, but you did -- and  
7 this is also in Exhibit 4 -- I mean, you did fax your  
8 letter of October 9th so that the proposed JOA is included.  
9 And then late on the night of October 16th you faxed  
10 additional material to Ms. Townsend, did you not?

11 A. Yeah, we did, we -- we have a -- Well, in the  
12 telephone conversation I had with her Tuesday afternoon she  
13 said, You know we already have an operating agreement  
14 covering this well.

15 And I said, No, ma'am, we don't.

16 And she said, Yeah, we do. We signed -- Cross  
17 Timbers signed the farmout agreement, which has an Exhibit  
18 B attached to it that is the farmout agreement that binds  
19 us.

20 And I said, Well, it binds us as to the form of  
21 agreement we're going to use, but it wasn't prepared for  
22 this well, and it doesn't bind the parties to the re-entry  
23 of the Vinson well, and that's why we need to do a  
24 subsequent operating agreement, which she disagrees with  
25 that.

1           She doesn't think that they need to execute a new  
2 operating agreement, which I'm having a little bit of  
3 difficulty understanding. It's the same form of agreement,  
4 it's been updated to take care of this re-entry that we're  
5 doing rather than the drilling of a well. It -- the  
6 parties have changed, the operator has changed. We've made  
7 some changes in it that we would certainly discuss with  
8 Chesapeake if we have a problem with it, but it's basically  
9 the same form of agreement.

10           The other operating agreement that she says is in  
11 force and effect was attached to that farmout agreement.  
12 We prepared that operating agreement for the drilling of a  
13 well in the southwest of the southeast quarter of Section 4  
14 called the Keach. Capataz Operating was the operator of  
15 that well, and we drilled that well back in 1999 subsequent  
16 to this farmout agreement.

17           That well was noncommercial in the deep zones.  
18 We plugged it back in the San Andres, it made -- it's  
19 noncommercial in the San Andres. I think we completed it  
20 for three or four barrels of oil a day and subsequently  
21 determined it was not commercial.

22           And that well -- the surface owner approached us  
23 about that well, when we were going to plug it, and said,  
24 Will you allow me to take that over and convert it to a  
25 saltwater disposal well, and I'll relieve you of the

1 plugging liability.

2 So we agreed to do that. We entered into an  
3 agreement with him, subsequently made an assignment of that  
4 well back in 2003.

5 That operating agreement that's attached to the  
6 farmout agreement that Chesapeake contends is still in  
7 force and effect terminated under its own terms. It  
8 terminated 90 days from the date that the production from  
9 that well ceased and there were no additional wells  
10 drilled, no additional operations performed on that well.

11 MR. DEBRINE: I'll object as calling for a legal  
12 conclusion with respect to the effectiveness and validity  
13 of that agreement.

14 EXAMINER BROOKS: Well --

15 MR. DEBRINE: And the document speaks for itself,  
16 the witness isn't qualified to --

17 EXAMINER BROOKS: -- we're not going to be making  
18 a decision on the validity of the agreement anyway, so I  
19 would advise that we overrule the objection and let the  
20 testimony stand as a statement for the record.

21 EXAMINER EZEANYIM: Objection overruled.

22 Q. (By Mr. Bruce) And we'll get into that just a  
23 little bit more later, Mr. Leonard.

24 You said you're willing to continue negotiating  
25 with Chesapeake after this hearing?

1 A. Absolutely.

2 Q. You would prefer that they sign a JOA?

3 A. Absolutely.

4 Q. And if they do sign a JOA will you notify the  
5 Division of that fact and dismiss this Application?

6 A. We certainly will.

7 Q. In your opinion, have you made a good faith  
8 effort to obtain the voluntary joinder of Chesapeake in the  
9 well?

10 A. Yes, I think we have, with all that we've done  
11 with the -- with the notices and the AFEs and the operating  
12 agreement and the well proposal, yes, I think we've done  
13 everything that we can do.

14 Q. Could you identify Exhibit 5 for the Examiner?

15 A. Exhibit 5 is an AFE that has been prepared for  
16 this re-entry. It reflects a dryhole total cost of  
17 \$125,000, a completion cost of about \$672,000 and a total  
18 completed well cost of \$775,560.

19 EXAMINER EZEANYIM: What Exhibit is that? I'm  
20 looking --

21 MR. BRUCE: Exhibit 4 --

22 THE WITNESS: Exhibit 5 -- uh --

23 MR. BRUCE: Exhibit 5, Mr. Examiner --

24 THE WITNESS: -- It's Exhibit 5?

25 MR. BRUCE: -- I'm sorry.

1 EXAMINER EZEANYIM: Okay. I'm trying to look at  
2 it and see your figures. This one is short. It used to be  
3 a legal paper, so they can easily see it among these lease.  
4 It's not here.

5 THE WITNESS: Do you want me to give this to --

6 EXAMINER EZEANYIM: Okay, here we go.

7 What is your dryhole cost?

8 THE WITNESS: It's -- Total dryhole cost in that  
9 first column is \$125,000.

10 EXAMINER EZEANYIM: Okay.

11 THE WITNESS: And then the completion cost in the  
12 second column is \$671,660.

13 EXAMINER EZEANYIM: Okay.

14 THE WITNESS: Then the total is \$775,560.

15 EXAMINER EZEANYIM: Go ahead.

16 Q. (By Mr. Bruce) And are there several objectives  
17 for this well?

18 A. There are. We're going to take a look at the  
19 Wolfcamp so -- the Wolfcamp, the Abo, the Tubb and the  
20 Blinbry formations.

21 Q. Are these proposed re-entry costs in line with  
22 the costs of other wells re-entered to this depth in this  
23 area of Lea County?

24 A. Yes, I believe they are. We've -- we drilled 20-  
25 some-odd of these wells over to the east of here. And of

1 course when those were drilled and completed, and they were  
2 -- this is about half the cost of those wells. I think  
3 it's well in line with a re-entry.

4 Q. Who do you request be designated operator of the  
5 well?

6 A. We've got an operator, Pierce Production Company,  
7 LLC, that we would like to designate as the operator for  
8 this well.

9 Q. And do you have a recommendation as to the  
10 amounts which the operator should be paid for supervision  
11 and administrative expenses?

12 A. We do, \$4500 for drilling overhead and \$450 a  
13 month for producing overhead.

14 Q. And are these amounts equivalent to those charged  
15 by JTD or other operators in this area for wells of this  
16 depth?

17 A. Yes, they are.

18 Q. Do you request that this rate be adjusted  
19 periodically as provided by the COPAS accounting procedure?

20 A. We do.

21 Q. And do you request the maximum cost-plus-200-  
22 percent risk charge be assessed against Chesapeake if it  
23 nonconsents the re-entry?

24 A. Yes, we do.

25 Q. And was Chesapeake notified of this hearing?

1 A. They were notified.

2 Q. And is that reflected in Exhibit 6?

3 A. Yes, it is.

4 Q. Since Chesapeake will raise these issues, Mr.  
5 Leonard, I have handed the Examiners Exhibit 7, which is  
6 the farmout, and let's -- I don't think I want to go into  
7 great detail, but this was --

8 EXAMINER EZEANYIM: Mr. Bruce, I need to make a  
9 comment before you continue.

10 MR. BRUCE: Sure.

11 EXAMINER EZEANYIM: As you all know, there is no  
12 jurisdiction to determine ownership here. So I would like  
13 the parties to limit discussions on the technical merits of  
14 this compulsory pooling Application.

15 I will not entertain discussion of some other  
16 agreement, joint operating agreement, because I have no  
17 jurisdiction to make those determinations. So it's a waste  
18 of time for people to be arguing on those. If you argue, I  
19 will just -- unless you are arguing on technical issues,  
20 then I can listen.

21 So I want you to limit your arguments on  
22 something that is pertinent to the compulsory pooling  
23 Application, than telling me what the joint operating  
24 agreement entails, you know --

25 MR. BRUCE: Yeah.

1 EXAMINER EZEANYIM: -- because I'm --

2 MR. BRUCE: Right.

3 EXAMINER EZEANYIM: -- not interested, because we  
4 don't have jurisdiction to do that.

5 MR. BRUCE: And Mr. Examiner, I recognize that.  
6 You were the Hearing Examiner in the OXY-EOG fight -- what,  
7 six weeks ago. And I'm fully aware of that.

8 I'm going to be very brief on this. It's a large  
9 document. I'm only going to point out a couple of matters,  
10 simply because I think the pooling statute says, If there  
11 is no voluntary agreement among the parties the Division  
12 shall pool a well unit.

13 And I would just like to point out -- have my  
14 witness point out -- two provisions which would reinforce  
15 the fact that there is no voluntary agreement among the  
16 parties, if I could.

17 EXAMINER EZEANYIM: Okay, let me --

18 MR. BRUCE: Yeah.

19 EXAMINER EZEANYIM: -- one of the argument --

20 MR. BRUCE: Yeah.

21 EXAMINER EZEANYIM: -- percentage, because I'm  
22 not going to listen to try to, you know, divide the charge,  
23 as Solomon did, you know, because I don't have jurisdiction  
24 to do that, simply.

25 MR. BRUCE: Certainly, Mr. Examiner. And really,

1 Mr. Examiner, if -- well, let me question the witness, and  
2 this will be very brief.

3 EXAMINER EZEANYIM: Okay.

4 Q. (By Mr. Bruce) I've handed the Examiner as  
5 Exhibit 7 the farmout contract. That is the farmout  
6 contract that you had referred to, correct?

7 A. Yes.

8 Q. And Exhibit B to that farmout is a -- the form  
9 joint operating agreement, which is referred to in the body  
10 of the farmout?

11 A. It is.

12 Q. And a well was drilled -- that required the  
13 drilling of a well within a certain time period, correct?

14 A. Yes.

15 Q. Was that the Keach Well Number 1 in the southwest  
16 quarter, southeast quarter of Section 4?

17 A. Yes, it was.

18 MR. BRUCE: Mr. Examiner, this is simply the  
19 completion report filed with the District marked as Exhibit  
20 8 --

21 EXAMINER EZEANYIM: Okay.

22 MR. BRUCE: -- which showed that the Keach -- the  
23 initial well was drilled.

24 Q. (By Mr. Bruce) And as a result of that well  
25 being drilled, you earned interest in the acreage under the

1 farmout, correct, Mr. --

2 A. We were assigned an undivided 75-percent interest  
3 in all the acreage that was covered by the farmout  
4 agreement.

5 MR. BRUCE: Okay. And again, Mr. Examiner, I'm  
6 handing you Exhibit 9, which is just simply an assignment  
7 of acreage earned under the farmout agreement by Leonard  
8 Resource Investment Corporation, which is now JTD.

9 Q. (By Mr. Bruce) That Keach well, as you said, was  
10 not a successful well?

11 A. No.

12 Q. And what is the current status of that well, to  
13 the best of your knowledge?

14 A. That well has been sold -- or assigned to the  
15 surface owner, and he is in the process of converting it to  
16 a saltwater disposal well.

17 MR. BRUCE: Mr. Examiner, I hand you Exhibit 10,  
18 which is simply a filing by an entity showing that it was  
19 being converted as a saltwater disposal well.

20 EXAMINER EZEANYIM: This well we are talking  
21 about?

22 MR. BRUCE: The Keach Number 1, the initial well  
23 drilled under the farmout agreement.

24 EXAMINER EZEANYIM: Okay --

25 MR. BRUCE: And --

1 EXAMINER EZEANYIM: -- but not the --

2 MR. BRUCE: -- I'm just showing that to you for  
3 the purpose of showing you that that well no longer  
4 produces.

5 EXAMINER EZEANYIM: Okay.

6 Q. (By Mr. Bruce) And Mr. Leonard, were any other  
7 wells drilled under the farmout agreement?

8 A. No.

9 MR. BRUCE: And if you could refer, Mr. Examiner,  
10 to Exhibit B to the farmout, which is a JOA, and if you'd  
11 go to page 13 -- Mr. Examiner, if I may --

12 EXAMINER EZEANYIM: Yeah.

13 MR. BRUCE: -- just so --

14 EXAMINER EZEANYIM: Okay.

15 Q. (By Mr. Bruce) Mr. Leonard, I direct your  
16 attention to Article XII [*sic*], the term of the agreement.  
17 What does that provide, if you could summarize that?

18 A. Option Number 2 is -- was elected, and that  
19 simply says that if the well drilled -- the initial test  
20 well drilled under this operating agreement described in  
21 Article VI.A was -- if you establish production from that  
22 well and it subsequently ceased to produce, this operating  
23 agreement would terminate unless additional drilling were  
24 commenced under lands covered by this operating agreement.  
25 The operating agreement would terminate within 90 days of

1 the cessation of those operations.

2 MR. DEBRINE: And I'll object to testimony by the  
3 witness with respect to the characterization of this  
4 language, that the agreement speaks for itself. And as the  
5 Examiner has indicated, the Commission -- the Division  
6 lacks jurisdiction to determine the legal effect of this  
7 agreement.

8 EXAMINER BROOKS: Yeah, I would say the same  
9 thing -- give the same advice I gave, since the Division is  
10 not going to be making a determination of the legal effect,  
11 it's not really a relevant objection, and I think we can  
12 proceed. The characterization as a statement does -- we're  
13 not making a ruling on the legal effect and therefore  
14 whether or not the statement conflicts with what the  
15 agreement may otherwise be construed as providing is not of  
16 material significance. So I would advise we overrule the  
17 objection.

18 EXAMINER EZEANYIM: As you all know -- before I  
19 make my recommendation here -- as you all know, that if my  
20 attorney, Mr. Brooks is not here, every objection is  
21 overruled, because I want to hear everything. Some of them  
22 may be relevant, so I won't even consider them, so that --  
23 The fact that it's overruled doesn't mean we are  
24 considering anything there.

25 But the fact that I want to -- at least I want to

1 hear what the witness -- even if it's a hearsay. Then it's  
2 up to me to decide whether that's a hearsay in doing the  
3 compulsory pooling order that I'm going to write, and I  
4 know the statutes very well, to see what I'm going to  
5 include and what I'm not going to include.

6 Like I'm not going to include the fact that he --  
7 therefore I'm going to -- ruling for you. That's not what  
8 the statute says I should do. For you to deal with it, go  
9 to district court.

10 So based on that fact, every objection -- most  
11 objections -- so you may proceed.

12 Q. (By Mr. Bruce) Okay. And my only question on  
13 this, Mr. Leonard, is, under that Article XIII, after the  
14 Keach well ceased producing, was another well drilled or  
15 commenced within 90 days after cessation of production?

16 A. No.

17 Q. Is there any -- In your opinion, is there any  
18 current joint operating agreement in effect?

19 A. No, this operating agreement is terminated, and  
20 we do not have an operating agreement to propose or drill  
21 this well under, and that's why we submitted the well  
22 proposal and the operating agreement to Texaco -- to  
23 Chesapeake for consideration.

24 Q. Finally, I refer you to Exhibit 12, Mr. Leonard.  
25 You mentioned this previously. This -- matter previously

1 in your testimony. What is Exhibit 12?

2 A. Exhibit 12 is a toplease of 50 percent interest  
3 in our drill site that was taken by Chalfant Properties in  
4 Midland, 24 July 2007. And our understanding is that that  
5 was done on behalf of Chesapeake.

6 That -- Under the terms of this oil and gas  
7 lease, upon the expiration of the current leases that are  
8 in effect, this lease will become effective.

9 Q. Okay. Now, you had previously -- regarding the  
10 area of mutual interest, which -- under which you  
11 acknowledge Chesapeake owns a 25-percent interest in your  
12 leases?

13 A. Yes, they have the opportunity to participate,  
14 and the lease renewal is there for 25 percent.

15 Q. And have they done so?

16 A. Yes.

17 Q. When did they participate in those lease  
18 renewals?

19 A. Well, these leases that are Exhibits --

20 Q. -- 2A and --

21 A. -- 2A and -- yeah, 2A and 2B too, those leases  
22 were last renewed in 2004. We invoiced -- we circulated a  
23 recommendation to our partners to renew those leases.  
24 Chesapeake agreed to participate in that acquisition, and  
25 we were -- we succeeded in renewing the leases. We

1     invoiced the parties -- I think the invoice to Chesapeake  
2     was dated in 2005.

3             Ironically, they paid that invoice in July of  
4     2007, two years later, the same month that they acquired  
5     this toplease. So they bought the old leases the same that  
6     they acquired the toplease.

7             Q.     And as a result of those topleases and your  
8     expiring leases, are you under a time deadline to commence  
9     operations on the re-entry?

10            A.     Yes, we are. If we don't commence those  
11     operations by -- on or before September -- or October --  
12     November, I'm sorry, on or before November 10th, then this  
13     toplease that Chesapeake took will take effect, and they  
14     will own instead of a 25-percent interest in our drill  
15     site, they'll own 50 percent.

16            Q.     Has Chesapeake yet offered you an opportunity to  
17     participate in that toplease?

18            A.     Lynda on Tuesday said that she didn't think that  
19     they would have an objection for us to participate with the  
20     75-percent interest that we represent in this.

21                    We haven't accomplished that yet, but I suggested  
22     to her in the October 9 letter that I sent when I sent the  
23     operating agreement, I discussed this toplease business.  
24     They topleased this and were attempting to toplease the  
25     other half when we found out about. We succeeded at

1 topleasing ourselves on the other 50-percent interest, so  
2 at the very worst, on November 10th and 13th, we'll be 50-  
3 50 partners in this venture instead of 75-25.

4           And I suggested to Chesapeake that that was not  
5 in line with the area of mutual interest provision that we  
6 had and that we would certainly be receptive to a cross  
7 assignment where -- of these topleases, we would assign to  
8 them 25 percent of the one we took, they could assign to us  
9 75 percent of the one they took, and we would maintain the  
10 75/25-percent ownership in the drill site.

11           Q.    That has not yet been accomplished?

12           A.    No.

13           Q.    And again, do you believe you've made a good  
14 faith effort to obtain Chesapeake's joinder in this well?

15           A.    Yes, I do.

16           Q.    Were Exhibits 1 through 10 and Exhibit 12  
17 prepared by you or under your supervision or compiled from  
18 company business records?

19           A.    They were.

20           Q.    And in your opinion is the granting of this  
21 Application in the interests of conservation and the  
22 prevention of waste?

23           A.    Yes, sir.

24           MR. BRUCE:  Mr. Examiner, I'd move the admission  
25 of JTD's Exhibits 1 through 10 and 12.

1 EXAMINER EZEANYIM: Any objection?

2 MR. DEBRINE: Yes, Mr. Examiner, Chesapeake  
3 objects to the admission of Exhibit Number 5, which was the  
4 AFE, on the ground that it's not complete and it does not  
5 contain the reciprocal election by Chesapeake to sign that  
6 AFE, and also objects to Exhibit 12 which is the -- which  
7 is a lease between Mary Compton and Chalfant and is hearsay  
8 and does not reflect that Chesapeake owns any interest  
9 under that lease, and the witness has mischaracterized the  
10 language and effect of that document.

11 MR. BRUCE: Mr. Examiner, as to the AFE Mr.  
12 Leonard has admitted that Chesapeake has signed the AFE.  
13 Our position is simply that a mere signature on an AFE is  
14 not effective to commit Chesapeake's interest. But in his  
15 exhibit package I believe Mr. DeBrine has a signed copy of  
16 that AFE. I don't see any problem in admitting it.

17 As to the toplease, if you so desire I do have a  
18 certified copy from the county clerks, and under New Mexico  
19 Statutes a certified copy of an instrument of record is  
20 admissible in the record.

21 EXAMINER BROOKS: Well, I believe you indicated,  
22 Mr. Examiner, that your inclination is to overrule  
23 objections, which I think --

24 EXAMINER EZEANYIM: Yeah.

25 EXAMINER BROOKS: -- given the fact that any

1 review of this proceeding will be *de novo*, seems a very  
2 wise position to me. So I would again advise that you  
3 overrule the objections and consider the documents for what  
4 they're worth.

5 EXAMINER EZEANYIM: Yeah, objection overruled.  
6 And so Exhibits 1 through 10 and 12 will be  
7 admitted.

8 Mr. DeBrine?

9 MR. BRUCE: Just one thing, Mr. Examiner, I  
10 forgot to give the court reporter a copy of Exhibit 12.  
11 I'm sorry.

12 I pass the witness.

13 EXAMINER EZEANYIM: Mr. DeBrine, any questions  
14 for the witness?

15 MR. DEBRINE: Yes, Mr. Examiner.

16 CROSS-EXAMINATION

17 BY MR. DEBRINE:

18 Q. Mr. Leonard, turning to Exhibit Number 7, which  
19 is the farmout agreement --

20 A. Yes, sir.

21 Q. -- what date did you first send this agreement to  
22 Chesapeake?

23 A. The farmout agreement?

24 Q. Yes.

25 A. Well, I presume Chesapeake had this in their

1 files and didn't need me to present it to them. I faxed it  
2 to Lynda on Monday when she asked me for it. She said she  
3 couldn't find a copy of it. But they succeeded to the  
4 interest of Cross Timbers, and I presume that they had full  
5 and complete files on all of this. When I found out that I  
6 didn't was -- that she didn't have it was Monday, and we  
7 faxed it to her.

8 Q. And it's your position that this farmout  
9 agreement is in full force and effect today?

10 A. I know the area of mutual interest provision is.  
11 It's severable from the farmout agreement, and I think it  
12 is in force and effect, and we've always acted that way --

13 Q. And --

14 A. -- and so has Chesapeake.

15 Q. -- are the rest of the provisions of the farmout  
16 in full force and effect?

17 A. We're treating it that way, yes.

18 Q. And if you turn to the first page of Exhibit 7,  
19 it -- paragraph 1 reflects a statement concerning exhibits?

20 A. I'm sorry, you're -- the Exhibit 7 you're  
21 referring to is --

22 Q. Which is the farmout agreement.

23 A. -- it's your --

24 Q. No, it's the one that you just admitted into  
25 evidence.

1 A. Okay, I'm sorry. Now tell me where we are.

2 Q. On page 1 of Exhibit 7.

3 A. Okay.

4 Q. Now could you read for me the first paragraph  
5 under Exhibit 1?

6 A. The beginning of this farmout agreement?

7 Q. No, paragraph 1, Exhibits --

8 A. Oh.

9 Q. -- do you see that there in the middle of the --

10 A. The following --

11 Q. -- page in --

12 A. The following exhibits, if --

13 Q. -- the recitals?

14 A. -- checked, are attached hereto and shall be  
15 considered a part of this farmout agreement. Exhibit --

16 Q. And does -- does it have Exhibit B, Operating  
17 Agreement, checked?

18 A. Yes, it does.

19 Q. And the farmout agreement itself has attached to  
20 it an Exhibit B that you referred to in your earlier  
21 testimony?

22 A. It does.

23 Q. And could you read what it states at the top of  
24 it?

25 A. At the top of that --

1 Q. -- of the exhibit?

2 A. -- the top of page is an operating agreement?

3 Q. Yes, the model form operating --

4 A. It says --

5 Q. -- agreement.

6 A. -- Attached to and made a part of farmout  
7 agreement dated September 1, 1998, by and between Leonard  
8 Resource Investment Corporation, H. Scott Davis, farmee,  
9 and Cross Timbers Oil Company, farmor.

10 Q. Could you turn to page 6 of the farmout  
11 agreement --

12 A. Yes, sir.

13 Q. -- paragraph 7.1? Could you read that paragraph?

14 A. Yes, paragraph 7.1 says, Upon complete execution  
15 of this farmout agreement, the farmee shall prepare an  
16 operating agreement identical to Exhibit B which is a  
17 completed AAPL Form 610 1982 operating agreement, with  
18 among other attachments the 1984 COPAS accounting procedure  
19 for execution by farmor and farmee.

20 Q. And under paragraph 71 [sic] was that form of  
21 operating agreement to cover all operations conducted  
22 pursuant to the farmout agreement?

23 A. The form of operating agreement, yes, sir.

24 Q. And so the Exhibit B attached to the operating  
25 agreement is to cover all subsequent operations conducted

1 under the farmout agreement?

2 A. The form is to, yes.

3 Q. Yes. And it -- under 7.1 the operator is  
4 required to prepare an identical Exhibit B; is that  
5 correct?

6 A. Yes.

7 Q. And you testified earlier in -- with -- in your  
8 direct exam that you prepared a similar operating agreement  
9 and sent it to Chesapeake; is that correct?

10 A. That's correct.

11 Q. And the operating agreement you sent to  
12 Chesapeake is not identical to Exhibit B; isn't that  
13 correct?

14 A. It is not.

15 Q. And it contains material differences between  
16 Exhibit B?

17 A. Yes, it pertains -- it has a different initial  
18 test well, it's a re-entry instead of a drilling well.  
19 That's caused some changes in the agreement that we made.  
20 We changed the operator, we changed the names of the  
21 participants from Cross Timbers to Chesapeake, from Leonard  
22 Resource to JTD Resources, the operator from Capataz to  
23 Pierce Production, and there are a number of other changes  
24 that were made in that that were -- I wouldn't call them  
25 material.

1           The only significant, material change, I think,  
2           that we made in this is on Article XV, paragraph relating  
3           to nonparticipation in proposed wells. The operating  
4           agreement attached as Exhibit B provides for an in or out  
5           provision to participate or you give up your interest,  
6           relinquish your interest, in a 40-acre unit. The one that  
7           we sent them is different than that. It provides for  
8           nonconsent parties to be out of the 40 acres that the test  
9           well is proposed on, plus the direct offsets to that.

10           That, I think, is the only material difference.  
11           And if that's a -- if the differences that we've made in an  
12           attempt to update this and tailor-make it for re-entry are  
13           a problem with Chesapeake, we would be happy to discuss it  
14           with them. We're not trying to cram an operating agreement  
15           down their throats.

16           EXAMINER EZEANYIM: Excuse me, Mr. DeBrine, what  
17           are you trying to get at? Because I'm not following. I  
18           mean, tell me exactly what your clients want. What is your  
19           objection to the Application, so that I can follow?  
20           Because the way you are going through this, I want to get  
21           the gist of what you are trying to reach. What are you  
22           trying to -- what really do you -- What is your objection?

23           MR. DEBRINE: Yes, Mr. Examiner. We didn't  
24           present opening statements, but Chesapeake's position --  
25           and I think it was reflected in the testimony by Mr.

1 Leonard -- is that the statutory prerequisite for pooling  
2 does not exist in this case, because there is a voluntary  
3 agreement.

4 The parties are parties to this farmout  
5 agreement. The farmout agreement has a joint operating  
6 agreement form attached to it. The operator -- That's  
7 either in effect, or the operator is required to prepare an  
8 identical form of operating agreement that's going to  
9 govern the reimbursement of costs and the like.

10 Chesapeake was sent an election letter which was  
11 executed -- it executed the AFE. It has agreed to  
12 participate in the well on the terms of the AFE that were  
13 submitted by JTD Resources, and so there is no reason for  
14 the pooling Application to go forward under those  
15 circumstances. And the Division should not -- should not  
16 exercise its extraordinary equitable powers to force pool  
17 Chesapeake when it has already voluntarily agreed to  
18 participate in the drilling of this well under the terms of  
19 the agreement between the parties.

20 There may be a contractual dispute between the  
21 parties, but the Commission doesn't have jurisdiction to  
22 decide that dispute or who is right or wrong in connection  
23 with that dispute, but there is an agreement with respect  
24 to this well as reflected by the farmout agreement and the  
25 testimony of Mr. Leonard.

1 EXAMINER EZEANYIM: So what you're saying, we  
2 should not be here in the first place?

3 MR. DEBRINE: Yes, and we ask that the proceeding  
4 be vacated based on the fact that Chesapeake had executed  
5 the AFE and had pointed out that the operating agreement  
6 was in effect or an identical operating agreement should be  
7 tendered for it to sign.

8 EXAMINER EZEANYIM: But have you agreed to the  
9 drilling of the well -- if you have agreed to the drilling  
10 of the well to participate, then there should be no  
11 compulsory pooling application in the first place, if you  
12 agree to do that. Has Chesapeake agreed to do that?

13 MR. DEBRINE: Yes, your honor, as reflected by  
14 the exhibits that have been admitted so far, and the one --  
15 Mr. Bruce indicated he wouldn't object, but I was going to  
16 tender the response letter where Chesapeake executed the  
17 AFE for the well.

18 EXAMINER EZEANYIM: So why are we here?

19 EXAMINER BROOKS: Did Chesapeake also execute an  
20 election letter as well as the AFE? I didn't --

21 MR. DEBRINE: Yes, and that was -- that's already  
22 been --

23 EXAMINER BROOKS: Yeah.

24 MR. DEBRINE: -- admitted as -- Let's see. I  
25 think it was part of Exhibit 4, Mr. Brooks.

1 EXAMINER BROOKS: Okay. I thought you said that,  
2 and I wasn't sure I picked up on it in testimony.

3 I gather we're here because there's a legal  
4 difference of opinion between counsel for the respective  
5 parties as to what the effect of those documents is.

6 MR. BRUCE: That is correct, Mr. Examiner --

7 EXAMINER EZEANYIM: And there --

8 MR. BRUCE: -- and our position is that there is  
9 no JOA. As Mr. Leonard testified under its own terms, that  
10 -- first of all, under the farmout agreement there's no --  
11 nothing regarding subsequent wells. That old JOA is  
12 terminated due to lack of production.

13 And you know, simply citing an AFE, even with an  
14 accompanying election letter is not sufficient to bind a  
15 party to a well. And Mr. Leonard is in the -- his company  
16 is in the process of maybe spending three-quarters of a  
17 million dollars, and it needs -- I've handed you a list  
18 of -- a summary of two cases regarding this issue. And  
19 with getting ready to spend three-quarters of a million  
20 dollars, we need to know who is completely bound. And I  
21 think that's a substantial matter.

22 MR. DEBRINE: And Mr. Examiner, if I could  
23 respond. I haven't had a chance to review these cases, but  
24 my understanding of the law in this area, having dealt with  
25 this before, I think these cases pertain just to the legal

1 effect of the AFE, is that that is the binding amount and  
2 you can't go beyond it.

3 And the positions asserted in those cases were  
4 that that set the upper limits of authorized expenses, and  
5 where the operator exceeded those expenses it wasn't  
6 entitled to reimbursement beyond that.

7 That's not the case here. An AFE, under the  
8 custom and practice in the industry, under the terms of the  
9 operating agreement attached as Exhibit B to the farmout  
10 agreement, it's clear that is the authority being granted  
11 to the operator by Chesapeake to go forward with the  
12 proposed re-entry and its commitment to pay its share of  
13 its cost. That is what the letter and the AFE states under  
14 its plain language, and that is the effect.

15 MR. BRUCE: I disagree with his characterization.  
16 An authorization for expenditure is merely an estimate, as  
17 the Division has often recognized, but -- and I suppose --  
18 I'd have to ask Mr. DeBrine if he is legally authorized to  
19 commit Chesapeake Exploration to reimbursing JTD for the --  
20 it's proportionate share of well costs.

21 EXAMINER BROOKS: Well, I guess this -- since  
22 we're just discussing this in general terms, the Examiner  
23 has, I guess, asked my advice on this, but it seems to me  
24 it's somewhat like the -- what Judge Joe Mims, Midland,  
25 Texas, told me when I was a first-year lawyer and I was

1 having a divorce case, taking the position that the Texas  
2 no-fault divorce statute nevertheless left the court with  
3 the discretion to deny the divorce on the grounds that it  
4 hadn't been shown the parties were incompatible. Judge  
5 Mims said, Well, one of them wants a divorce and the other  
6 one doesn't; that kind of shows they're incompatible.

7 And it seems to me that the fact that these two  
8 parties have a difference of opinion as to the effect of  
9 these documents seems to me to show that there is a  
10 controversy between them about whether or not there's a  
11 commitment to this well.

12 That's -- Certainly to the extent that there's a  
13 controversy, we don't have jurisdiction to make binding  
14 determination, so I guess all we can do is recognize that  
15 there is a controversy or hold that there's not a  
16 controversy.

17 MR. BRUCE: And Mr. Examiner, my contention would  
18 be that JTD is an interest owner, it has obtained an APD as  
19 it was entitled to do from the Division, it's made a *prima*  
20 *facie* showing that there is no voluntary agreement among  
21 the parties, and that it has certain time deadlines and it  
22 is entitled to a force pooling order.

23 If -- We don't think there's a contractual  
24 dispute, and so it's kind of foolish for us to go to court  
25 if we don't think there's a contractual dispute. If

1 Chesapeake thinks there is then, you know, that avenue is  
2 open to them.

3 EXAMINER BROOKS: Well, I would advise, Mr.  
4 Examiner, that we take the testimony and then we can make a  
5 ruling after we have received the testimony. I don't know  
6 how long the parties intend to go, but if it's not  
7 overpoweringly long I don't see any reason why we shouldn't  
8 receive the testimony.

9 EXAMINER EZEANYIM: Okay, based on that advice  
10 let me ask you, Mr. DeBrine, how much time do you need?  
11 Because I don't want us to -- you know, we have very  
12 limited resources here, and if this case -- we waste three  
13 hours and we come to know that, I don't want to do that. I  
14 don't -- at all. But whatever you want to do.

15 How many -- how much time do you want to -- Thank  
16 you very much for letting me know why you're here, because  
17 when you were going through I have no clue what are they  
18 trying to get at. But when you told me that you are not  
19 even supposed to be here in the first place, I was kind of  
20 glad to hear that.

21 But unfortunately, the -- both of you can reach  
22 an agreement -- if you have reached an agreement, this case  
23 would have been dismissed a long time ago because it was --  
24 there are no compulsory pooling orders.

25 So how much time do you need to present this?

1 And again, whatever I'm saying here, I will not even --  
2 because I -- I understand that. That's -- I can't make a  
3 determination or a decision based on this, because I have  
4 no jurisdiction, simply don't have the jurisdiction to  
5 determine who is going to do what, farmout agreement or  
6 whatever is contractual between both of you. No  
7 jurisdiction.

8 Even -- I don't think I have jurisdiction to do  
9 that. You have to resolve it between yourselves or in  
10 district court. So you know, depending on the -- but I  
11 want you guys to limit the discussion to the technical  
12 aspects of this instead of the legal, because I'm not a  
13 lawyer, so I don't understand all the legal ramifications.  
14 So really I appreciate it if you could -- you know, so we  
15 can continue.

16 MR. DEBRINE: Thank you, Mr. Examiner. I just  
17 plan to cross-examine Mr. Leonard, and I don't think that  
18 will take more than another half hour. The issues, I  
19 think, that are in dispute are legal in nature, and I  
20 appreciate and agree with the Examiner's position with  
21 regard to the lack of jurisdiction.

22 But the dilemma for the parties and the Division  
23 is that in order to exercise its statutory jurisdiction to  
24 force pool a party, it has to determine that there is no  
25 voluntary agreement. Otherwise, there is no reason to act.

1           And it's Chesapeake's position that that is the  
2 case here, that it would be an abuse of discretion for the  
3 Commission to order compulsory pooling, which would in  
4 effect give Leonard or JTG [sic] the upper hand in any  
5 future negotiations, because it will then have that order  
6 and will have no incentive to modify the joint operating  
7 agreement that it's tendered to Chesapeake, or adhere to  
8 the terms of the agreement and execute an identical joint  
9 operating agreement if one is necessary.

10           EXAMINER EZEANYIM: If you have -- if you have an  
11 agreement, then we shouldn't be here in the first place.  
12 You know, I say you have -- that we have no jurisdiction to  
13 do it because you have a voluntary agreement. Then why are  
14 we here?

15           MR. DEBRINE: That is the question that  
16 Chesapeake has asked JTG [sic], and it -- as indicated in  
17 the direct exam, Ms. Lynda Townsend told that position to  
18 Mr. Leonard, that its position is that -- operating  
19 agreement is attached to the agreement that the parties  
20 entered into, the farmout agreement, saying this operating  
21 agreement governs the rights and duties and  
22 responsibilities of the parties with respect to any future  
23 operations.

24           That's the standard form of agreement that the  
25 parties have entered into over the past 25 years in the oil

1 and gas industry, and if they want to propose a new  
2 agreement to govern the circumstances of this, Chesapeake  
3 is willing and has indicated that -- to discuss the terms  
4 of that agreement. But it has already elected to  
5 participate in this well and has signed and is bound by the  
6 terms of the AFE and the election letter.

7 MR. BRUCE: And Mr. Examiner, you know, it's our  
8 position that that joint operating agreement is terminated.  
9 And if -- Mr. Leonard has testified he will continue to  
10 negotiate, he's perfectly willing. And if they want  
11 something more or less identical to Exhibit B, that would  
12 be fine, other than changing names, et cetera.

13 One thing Mr. Leonard didn't point out is that  
14 the old JOA doesn't apply to re-entries, it only applies to  
15 drilling wells. So there are other issues. And certainly,  
16 you know, the Division never rules on the day of -- well,  
17 very rarely on the day of a hearing.

18 And Mr. Leonard has indicated his willingness to  
19 continue negotiating on this matter. The problem is, and I  
20 didn't -- Mr. Leonard went into it briefly, is that -- and  
21 I think Mr. Leonard has the case and order numbers -- just  
22 within a mile of this proposed well Leonard Resource  
23 Investment Corporation or JTD Resources has had to force  
24 pool Chesapeake twice. And despite years-long assurances  
25 that they would sign a JOA, they never have for either

1 well. And so that's why we're leery of this situation  
2 right now.

3 THE WITNESS: Well, that plus the -- if I may say  
4 so, that plus the toplease. I mean, I've got a gun at my  
5 head. They're partners of ours in an AMI, they just paid  
6 me for the base leases that we're going to drill under if  
7 we can get this well drilled by November 10th or re-entry  
8 done by November 10th. Why did they toplease the drill  
9 site, and why are they not willing to just simply cross-  
10 assign the interests and execute a satisfactory joint  
11 operating agreement and proceed?

12 I'm not trying to shove anything, all I want to  
13 do is get the well drilled. And I don't want to lose  
14 another 25-percent interest in my drill site, because they  
15 can hold me up from doing that by not signing the JOA. And  
16 the only recourse I think JTD has is a pooling, because  
17 that will enable me to proceed knowing that without an  
18 operating agreement -- and they have refused to sign the  
19 two previous operating agreements that you guys have force  
20 pooled. And it wasn't because of objections to the  
21 operating agreement; they've never addressed them, they  
22 just won't sign them.

23 So we have -- so we're operating properties that  
24 have no joint operating agreements save and except your  
25 pooling order. And I'm asking you to consider doing the

1 same thing for us here, because I don't think, based on  
2 previous experience that I've had with Chesapeake, that  
3 they will execute an operating agreement, regardless of  
4 what I do.

5 And without an operating agreement and without  
6 their being banned to drill this well, and with the  
7 toplease that they have, which is a gun at my head, we're  
8 not in a position, as I said earlier, to get to the  
9 November 10th point and find out that we don't have a  
10 partner for a quarter interest. They're not force pooled,  
11 and if I go ahead and proceed, then I'm simply going to  
12 carry them in the cost of the well with no pooling, without  
13 the 200-percent penalty that I can get under a pooling  
14 order. All I do is get my money back for carrying them for  
15 that interest, and I think that's unfair.

16 And I think that we've -- we've been before you  
17 before for virtually the same circumstances, and you've  
18 enabled us to proceed by granting the pooling request, and  
19 we have a recourse in the event that they don't  
20 participate.

21 They did participate in both of those wells.  
22 They did, they sent -- when I gave them the 30-day notice  
23 provision right at the last of the 30-day period,  
24 Chesapeake paid me all costs for drilling and completing  
25 the wells. That's not a problem.

1           We just simply need to have your help here,  
2 because -- the gun that they have at our heads with the  
3 toplease. And I don't think it's fair to allow that to  
4 happen. I think we ought to have the right to proceed.  
5 We've done everything that we could do to proceed in  
6 accordance with the agreements that they have and to obtain  
7 their voluntary joinder, and we would still do that.

8           I have absolutely no problems with talking with  
9 Lynda about the terms and provisions of these agreements.  
10 I don't think it's going to matter. I don't think it's  
11 going to matter. I don't have any reason to believe from  
12 past history that she's going to sign them anyway. I'd be  
13 happy to try.

14           But if the -- but the pooling order would grant  
15 us the right to proceed and to proceed under an equitable  
16 basis, and that's why we're here.

17           EXAMINER EZEANYIM: Okay. Tell me again what  
18 happens on November 10 if you don't have another -- don't  
19 reach an agreement, because my -- that's in November. I  
20 know -- I have other engagements in November, and I want to  
21 make sure --

22           THE WITNESS: Okay --

23           EXAMINER EZEANYIM: -- this case is -- Can you  
24 tell me what happens on November 10th --

25           THE WITNESS: Yes, sir.

1 EXAMINER EZEANYIM: -- if you don't have this  
2 case settled by then?

3 THE WITNESS: Yes, sir.

4 MR. DEBRINE: And I will object as calling for a  
5 legal conclusion and irrelevant.

6 EXAMINER EZEANYIM: No, I'm asking --

7 MR. DEBRINE: You're asking him to testify  
8 concerning any toplease entered into by JTG [sic] or  
9 Chesapeake.

10 MR. BRUCE: Yeah, if -- I think the Examiner is  
11 merely asking with respect to JTD's current leases, and I  
12 think --

13 EXAMINER EZEANYIM: Yes, I'm asking you that.  
14 What happens on November 10 if you don't have a compulsory  
15 pooling order and -- from Chesapeake? I'm not asking a  
16 legal question, I'm just -- what's going to happen on that  
17 date?

18 THE WITNESS: If we don't commence operations for  
19 the re-entry on or before November 10th, then the toplease  
20 that they took --

21 EXAMINER EZEANYIM: That who took?

22 THE WITNESS: Chesapeake.

23 EXAMINER EZEANYIM: Okay.

24 THE WITNESS: Chesapeake took a toplease covering  
25 50-percent interest of the drill site. They own a 25-

1 percent interest in the two base leases that are currently  
2 in existence that are going to expire November 10th and  
3 November 13th.

4 EXAMINER EZEANYIM: Uh-huh.

5 THE WITNESS: By taking the toplease what's going  
6 to happen if we don't get operations commenced on or before  
7 November 10th, instead of owning 25 percent of the drill  
8 site location, Chesapeake's toplease will vest, will become  
9 effective, my leases will expire, and they will own 50  
10 percent of the drill site instead of a quarter.

11 EXAMINER EZEANYIM: Okay, I didn't understand  
12 that. Okay, good.

13 THE WITNESS: And that's a -- that's a harm that  
14 I would ask that you not allow to happen by granting this  
15 pooling Application and allow us to proceed.

16 EXAMINER BROOKS: Of course, you would contend  
17 that they have a right to participate, you -- have a duty  
18 to participate in that -- under the joint -- area of mutual  
19 interest agreement, would you not?

20 THE WITNESS: They have the opportunity to, yes,  
21 and that's why I presented the well proposal. They're not  
22 obligated to participate, nobody is.

23 EXAMINER BROOKS: No, I mean, wouldn't you  
24 contend that they have the obligation under the area of  
25 mutual interest agreement to give you a participation in

1 their toplease?

2 THE WITNESS: Absolutely.

3 EXAMINER BROOKS: Okay.

4 EXAMINER EZEANYIM: Okay, now I think that answer  
5 -- that answer -- that answer gave me a lot of insight into  
6 what is happening. Like I told you guys, I'm not a lawyer  
7 like you, but when you answered that question I understood  
8 what is at stake here now.

9 So let's limit this to the fact that -- Mr.  
10 DeBrine said, Well, there will be no compulsory pooling,  
11 there must be a compulsory pooling, you know, because I  
12 understood what's going -- I've understood what's going on  
13 now, from that answer you gave.

14 THE WITNESS: Good.

15 EXAMINER EZEANYIM: If you didn't give that  
16 answer, I wouldn't know what you really -- what you are  
17 really asking for.

18 So I want us to limit the arguments here, why the  
19 -- to be based on why the compulsory order should be issued  
20 or approved or denied, and why it shouldn't as you --  
21 that's your contention, why it should not. And I want us  
22 to limit it to those arguments.

23 And I don't know where it's going to entail your  
24 JOA or some other agreement or something. But as I say, I  
25 want you to limit the presentation to why should -- why

1 this order should not be approved or why it should -- or if  
2 you even come to hearing for force pooling, because -- So  
3 let's look at those facts for now.

4 Is that -- I don't know, because that's really  
5 what I think. One party say, We need a compulsory pooling  
6 order, the other party say, No, there's no need for that  
7 because they have reached an agreement. Yet there's no  
8 agreement to reach. So I was confused.

9 EXAMINER BROOKS: Well, I think that the parties'  
10 contentions are legal, and they probably can't explain it  
11 without going into the legal issues to some extent. I  
12 think if both parties -- neither party disagrees with the  
13 proposition that we don't have authority to make rulings on  
14 the legal issues.

15 I would suggest we go ahead and allow them to  
16 develop the evidence, if it doesn't get unbearably long.  
17 Then we can take the case under advisement and make  
18 appropriate ruling on the issues that are of importance to  
19 us.

20 EXAMINER EZEANYIM: Yeah, that's what I -- yeah,  
21 okay. Okay, please, give me the time frames. I didn't --  
22 This is a surprise to me, I thought -- compulsory pooling  
23 order.

24 Okay, go ahead.

25 Q. (By Mr. DeBrine) Thank you, Mr. Examiner.

1           Just to clarify, Mr. Leonard, you were talking  
2 about two topleases, one that you said was taken by  
3 Chesapeake and one that's been taken by JTG [sic]?

4           A.    JTD, yes, sir.

5           Q.    And is it your position that under the operating  
6 agreement, that JTG's [sic] position will be diminished if  
7 those topleases become effective?

8           A.    Absolutely.

9           Q.    So --

10          A.    The interest presently is 75-25. Chesapeake's  
11 toplease covered a 50-percent interest. Chesapeake was  
12 after the other 50 percent from the Keaches. We found out  
13 about it, we went to the Keaches and explained this whole  
14 situation to them. They're familiar with the well that we  
15 drilled, it was named after them. They know that we've  
16 been out there and been in this area and active, and they  
17 chose to allow us to toplease that.

18                   And that was a self-defense move. I didn't have  
19 any desire to toplease that interest, but I knew Chesapeake  
20 would if I didn't. Then they would own 100 percent of my  
21 drill site, which is definitely different than the 75-25  
22 that it is under the area of mutual interest that we own  
23 under.

24          Q.    Is it your position that under the AMI clause of  
25 the farmout agreement that you wouldn't then be entitled to

1 a 75-percent assignment of any --

2 A. No.

3 Q. -- interest Chesapeake acquired in those  
4 topleases?

5 A. I have volunteered -- I have volunteered to  
6 cross-assign these. I did it a month ago. I would be  
7 happy for us to cross-assign interest in the topleases  
8 we've taken so that the 75-25-percent of the unit would be  
9 perpetuated, it would be maintained. And I've gotten  
10 absolutely no response that they would be willing to do  
11 that.

12 I don't understand why. If this is not a  
13 problem, and if we have an agreement, why not take the gun  
14 away from my head? I don't understand why we're doing  
15 this.

16 Q. Well --

17 A. If it's not -- if it's not an effort an effort on  
18 their part to increase -- to double their interest in this  
19 unit -- and really, they were trying to drive us completely  
20 out of the unit by topleasing the entire interest.

21 That's -- under the AMI provision, I don't think  
22 that's allowed. I have absolutely no desire to go to court  
23 and argue about it. That's why I'm trying to -- up here  
24 trying to get, if not voluntary participation, get an order  
25 so that we can proceed and proceed on the basis of the

1 75-25 ownership that we have.

2 Q. But that's what I'm trying to understand. If  
3 it's your position that under the AMI clause you're  
4 entitled to 75 percent of any interest Chesapeake acquired  
5 under the toplease, and Chesapeake's entitled to 25 percent  
6 of any interest you acquired under your toplease, then your  
7 position in these leases is not going to change, regardless  
8 of the effectiveness of those topleases or not. Isn't that  
9 your position?

10 A. If we cross-assign those interests, that's  
11 exactly my position. I've asked them to do so, and they  
12 have indicated no willingness to do that. As I said, I  
13 don't understand that.

14 Q. Have they refused to do that?

15 A. They've not done it. I don't know that you'd  
16 call that a refusal, but they won't address it.

17 Q. Have you cross-assigned your 25-percent interest  
18 in the toplease you acquired, to Chesapeake?

19 A. Cross-assignments happen simultaneously.

20 Q. Well, have you taken an assign- -- have you  
21 prepared an assignment or cross-assignment for Chesapeake  
22 to execute with respect to your toplease?

23 A. If I got one whisp of encouragement from Lynda  
24 that they would do this, I would do it in a heartbeat. I  
25 could have her one very quickly --

1 Q. Now I guess --

2 A. -- be happy to.

3 Q. -- I'm confused. You talked about her testimon-  
4 -- her statement earlier where she indicated to you that  
5 the 75-percent interest would be effective under the AMI  
6 clause; isn't that right? In your conversation with her on  
7 Tuesday?

8 A. Well, her statement was -- I don't know the exact  
9 wording of what she said but yes, I think she -- think what  
10 she did was, she acknowledged that we should own 75 percent  
11 of that and they would own a quarter of it.

12 Her acknowledging that in a telephone call and  
13 actually doing a cross-assignment are two different things,  
14 and I don't have that in my hand. If I did, I wouldn't be  
15 here. If I did and had that operat- -- had an operating  
16 agreement executed, I wouldn't be here at all. I don't --  
17 this doesn't need to be contentious. All we're simply  
18 trying to do is perform a re-entry of an oil and gas well  
19 and see if we can find a gas field, an oilfield, out there.

20 And we're being stalled from doing that by this  
21 whole procedure of not -- not being willing to talk to --  
22 either release or cross-assign those topleases or sign a  
23 joint operating agreement that would cover this re-entry,  
24 which we do not have in place.

25 Q. But you haven't presented any assignments that

1 have been refused; isn't that correct?

2 A. A cross-assignment, as I said, is a simultaneous  
3 thing. I've done them several times, and you can do them  
4 in the same instrument. And I would prepare that if I got  
5 any indication from Lynda that they would be receptive to  
6 it, be happy to. But I've gotten no such indication.

7 Q. And just to clarify, you haven't prepared any  
8 assignments or tendered any assignments to Chesapeake  
9 concerning your toplease?

10 A. No.

11 Q. And it's your position that irrespective of the  
12 -- whether the base lease expires, that JTG [sic] will  
13 still own a 75-percent interest in the leases covered by  
14 this Application? Your position is going to be unchanged  
15 under your interpretation of the farmout agreement?

16 A. In the area of mutual interest provision, yes,  
17 sir. If they -- if Chesapeake continues to honor that  
18 farmout and the area of mutual interest provision and  
19 cross-assign those interests, then we'd still be 75-25,  
20 which would be our intent.

21 Q. Is that contingent on -- is your 75-percent  
22 interest contingent on Chesapeake honoring it, or do you  
23 have that 75-percent interest as a matter of right under  
24 the terms of those documents?

25 A. Since they have a 50-percent toplease in hand, I

1 would say that I have the -- I have the right to it, but if  
2 they're not in agreement with it, then it would be  
3 something that we would have to go to court to enforce,  
4 which I would really rather not do. And a pooling order  
5 will enable me to proceed, and that's what we're here for.

6 Q. And a pooling order will also obviate the need  
7 for you to enter into an operating agreement with  
8 Chesapeake under the terms of the farmout agreement as  
9 well; isn't that correct?

10 A. Not from my standpoint. It's always in my best  
11 interest to have a signed operating agreement with other  
12 parties I'm dealing with, and we've attempted with  
13 Chesapeake every time we've dealt with them to achieve that  
14 and we've had no success with it. I have no idea why.  
15 There's never been any contention with the operating  
16 agreement forms I've presented to them, they just won't  
17 sign them.

18 And so we're out there operating properties with  
19 no rules, which I don't think is wise for either party.  
20 It's a double-edged sword. So I don't do business without  
21 operating agreements.

22 And I'm not intending to ask for this pooling so  
23 that I can obviate the need for a joint operating  
24 agreement, not in any way, shape or form or fashion. I  
25 will continue to work with Lynda if she'll work with me to

1 get a satisfactory form agreement executed. I'll be happy  
2 to do that.

3 As Jim has said, if we can achieve that we can so  
4 notify the Commission and do away with the order. I'm not  
5 going to not continue to proceed to do that.

6 Q. Maybe you didn't understand my question, Mr.  
7 Leonard. The pooling order that -- You're asking the  
8 Commission to issue a pooling order that will bind  
9 Chesapeake to the terms of that order and make an election  
10 whether to participate under the terms of the order; isn't  
11 that correct?

12 A. Yes, sir.

13 Q. And that order is going to obviate any need to  
14 enter into an operating agreement. You don't need an  
15 operating agreement if you've got a pooling order. It's --  
16 you indicated you've got two other properties where you own  
17 joint interest with Chesapeake, and there is no operating  
18 agreement in effect concerning those properties?

19 A. I don't agree with that. I do need an operating  
20 agreement, and -- I just don't think Chesapeake thinks they  
21 do. But I do, and I will continue to work to get one, even  
22 if an order is issued here.

23 Q. So is it your testimony that in the absence of an  
24 operating agreement the terms of any compulsory pooling  
25 order will be ineffective?

1 EXAMINER EZEANYIM: Let me -- let me -- I wanted  
2 to say something here. Even if we issue a compulsory  
3 pooling order, it doesn't negate the fact that you can  
4 still continue to talk or go into a joint operating  
5 agreement, because I think we have a provision that says if  
6 you reach an agreement this order becomes -- you know, I  
7 mean, null and void, because that's really the intent.

8 You didn't reach an agreement before the order is  
9 issued but when the order is issued, if you guys continue  
10 to talk and reach an agreement, then the order becomes null  
11 and void. Is that -- That's one way of looking --

12 MR. BRUCE: That's correct, Mr. Examiner, and --

13 THE WITNESS: That's my understanding.

14 MR. BRUCE: -- that's what Mr. Leonard is saying.  
15 Mr. DeBrine is trying to put words in his mouth that after  
16 a force pooling order is issued JTD won't do anything, and  
17 that's totally contrary to the last three or four years of  
18 history. JTD wants a voluntary agreement. It's Chesapeake  
19 that has in the past refused to sign reasonable JOAs.

20 And of course, obviously the force pooling order  
21 would remain in effect if they don't sign a JOA, but Mr.  
22 Leonard would do anything to get a JOA in place.

23 EXAMINER EZEANYIM: Okay, the point I'm making is  
24 that the fact that we issue a compulsory pooling order  
25 doesn't mean you stop -- That's the point I was trying to

1 make.

2 MR. BRUCE: That's correct.

3 THE WITNESS: I agree with that.

4 MR. DEBRINE: Yes, Mr. Examiner, and I understand  
5 that that's the standard terms of a pooling order. But the  
6 problem is that once the pooling order is entered, then JTG  
7 [sic] has no incentive to enter into a form of agreement  
8 other than the one it has proposed.

9 The testimony has been that a new JOA was sent to  
10 Chesapeake that was not, as required, the identical form of  
11 agreement under the farmout agreement. And it's our  
12 position that they're trying to use the Commission's power  
13 to force them into an agreement on a take-it-or-leave-it  
14 basis, because once a pooling order is issued then they've  
15 got a Hobson's choice: They either have to accept the JOA  
16 that's been tendered or elect to proceed under the terms of  
17 the Division's compulsory pooling order.

18 EXAMINER EZEANYIM: This is interesting. I hope  
19 that's not what has happened here. Correct me if I'm  
20 wrong. Is that supposed to be happening out there, if we  
21 issue a compulsory pooling order, then they take it -- I  
22 don't think -- I mean, I -- I might be wrong, but it's  
23 really interesting the way you guys argue about this.

24 Please correct me if I'm wrong. When we issue a  
25 compulsory pooling order, that negates the fact that people

1 still continue to talk, because that -- they have to talk.

2 EXAMINER BROOKS: As we have said, as Mr. Bruce  
3 said, and I believe you said, Mr. Ezeanyim, the compulsory  
4 pooling orders that we enter -- compulsory pooling orders  
5 that we issue do require that the -- if the parties enter  
6 into an agreement that the compulsory pooling order is then  
7 of no further force and effect as to those parties.

8 I think your question is actually somewhat  
9 rhetorical, and I would suggest we continue to develop the  
10 evidence here so that we can conclude this proceeding and  
11 make a ruling.

12 THE WITNESS: Okay.

13 Q. (By Mr. DeBrine) Yes, Mr. Leonard, Mr. Bruce  
14 made a statement in response to a question by the Examiner  
15 that the form of JOA attached to the farmout agreement  
16 doesn't cover the re-entry of a well. That's not correct,  
17 is it?

18 A. It doesn't cover the re-entry of this well, no.  
19 We don't have an operating agreement. That operating  
20 agreement that's attached as Exhibit B to the farmout  
21 agreement is simply an agreement of the form that we're  
22 going to use.

23 And we've done that in -- almost across the board  
24 in that agreement. We've tailor-made it for the new  
25 operator, for the new participants and for the re-entry of

1 this well. We've defined the well, its location, we've  
2 added a provision to the Article XV that says that there  
3 will be no casingpoint election in this initial test well  
4 because it's a re-entry, and there are no casingpoint  
5 elections in it.

6 That's standard with a re-entry. That's why this  
7 agreement that was attached to this farmout was changed in  
8 form as to -- to encompass a re-entry proposal. I don't  
9 think there's anything obnoxious about it, it's a fact.  
10 There is no casingpoint election.

11 Q. Mr. Leonard, maybe you misunderstood my question.  
12 It was a simple one. Does the form of the operating  
13 agreement attached to the farmout agreement cover re-entry  
14 operations? Does it have provisions in it that govern re-  
15 entry operations by the operator?

16 A. As a form, it probably does, yes.

17 Q. And could you --

18 A. I couldn't tell you the -- take you to the  
19 paragraph that it does, but I think it probably does.

20 Q. So if -- so Mr. Bruce's statement is incorrect in  
21 that he indicated that the form of agreement attached to  
22 the farmout agreement doesn't cover re-entry, and in fact  
23 it does?

24 A. It doesn't cover this re-entry. I don't know --  
25 don't remember how he said it. You're asking me to --

1 about something he said. I don't remember exactly what he  
2 said. Maybe we can get the court reporter to read it back  
3 to us. But it doesn't cover the re-entry of the Vinson  
4 Number 1, and that's what we're up to.

5 Q. And that's your legal position in that a specific  
6 operating agreement has not been executed covering the  
7 proposal that you made to Chesapeake? That's your legal  
8 position?

9 A. Our position is -- and I think it's well founded  
10 -- there is no operating agreement covering this operation.  
11 The operating agreement that Chesapeake is saying was  
12 executed by Cross Timbers and is still in force and effect  
13 is not still in force and effect. It died on its own terms  
14 when the Keach Number 1 well didn't make a well and we  
15 turned it over to the surface owner to be converted to a  
16 saltwater disposal.

17 So we're without an operating agreement. JTD  
18 would like to have one. JTD's position is that it's not  
19 only in our best interest but it's in Chesapeake's best  
20 interest to have an operating agreement that is updated to  
21 10 years down the road as to the parties, as to the well  
22 that we're going to re-enter and to the re-entry proposal.  
23 It's not very complicated.

24 Now I'm not even sure that Chesapeake objects to  
25 it, they just won't respond.

1 Q. Turning to page 13 of the operating agreement  
2 attached to the farmout agreement, Mr. Bruce asked you  
3 questions about Article VIII [sic] --

4 A. Yes.

5 Q. -- option number 2, concerning the term of the  
6 agreement. Could you read that first sentence for me?

7 A. In the event the well described in Article VI.A,  
8 or any subsequent well drilled under any provision of this  
9 agreement results in production of oil and gas in paying  
10 quantities, this agreement shall continue in force so long  
11 as any such well or wells produce or are capable of  
12 production for an additional 90 days from cessation of all  
13 such production.

14 Q. Okay, I'd like to stop you there. The meaning of  
15 that sentence, isn't it, is that if the initial test well  
16 or any subsequent well is capable of producing oil and gas  
17 in paying quantities; isn't that correct?

18 A. Within --

19 Q. Isn't that what it says, in the event that the  
20 well described in Article IV.A [sic] or any subsequent well  
21 drilled under --

22 A. Yes, and the --

23 Q. -- any provision --

24 A. -- and the --

25 Q. -- of this --

1 A. -- and the --

2 Q. -- agreement --

3 A. -- and the well described -- the well described  
4 in Article VI.A was the Keach well, which is not  
5 productive, and no additional well has been drilled --

6 Q. But --

7 A. -- so this agreement terminated 90 days from the  
8 cessation of production from that Keach well. That's what  
9 it says.

10 Q. So it wouldn't -- this agreement wouldn't cover  
11 any subsequent well or any re-entry into the -- into a  
12 well?

13 A. Not at this point in time. It would have, had we  
14 done it within that 90-day period, but we didn't. That was  
15 10 years ago --

16 Q. And where in --

17 A. -- nine years ago.

18 Q. -- where in Article VIII [sic] does it require  
19 that you re-enter a well within 90 days?

20 A. Well, I don't think it says that we have to re-  
21 enter it within 90 days. It just simply says that when  
22 there is a cessation of production for more than 90 days  
23 and no subsequent wells have been drilled, then this  
24 operating agreement terminates. And that's the position  
25 we're in.

1           No subsequent well was drilled. The production  
2           ceased from that well, and 90 days from the cessation of  
3           that production, shy of another well being drilled or other  
4           production being obtained hereunder, this operating  
5           agreement terminated. Hence the reason we sent Chesapeake  
6           a new operating agreement.

7           Q.    And why would this operating agreement not cover  
8           any other well drilled or re-entered under the terms of the  
9           farmout agreement?

10          A.    It would have, had we -- this operating agreement  
11          is -- as an exhibit to the farmout agreement, is the form  
12          of agreement that we've agreed to use. It wasn't -- it  
13          wasn't intended to be a -- look at -- Let me refer you back  
14          to that Article 7.1 that you asked me to read.

15                7.1 says that, Upon complete execution of this  
16          farmout agreement -- that includes Exhibit B -- Upon  
17          complete execution of this farmout agreement the farmee  
18          shall prepare an operating agreement...

19                It's anticipated in this paragraph that when we  
20          agree to drill a well, that a farmout -- that an operating  
21          agreement would be prepared for that well, and it will be  
22          substantially the same or identical to the one that's  
23          attached hereto as Exhibit B.

24          Q.    It doesn't say substantially the same. It  
25          requires that it be identical; isn't that correct?

1 A. Well, it does, it does --

2 Q. And --

3 A. -- and we've got -- and --

4 Q. And the agreement that you tendered to Chesapeake  
5 was not identical to Exhibit B?

6 A. Why should I put Cross Timbers on it? Cross  
7 Timbers doesn't even own an interest in this any longer.  
8 Why should I put Leonard Resource on it? Leonard Resource  
9 is merged into JTD and doesn't exist anymore. Why --

10 Q. But that was --

11 A. -- should we use the same one? The operator is  
12 different. The changes we've made, sir, are  
13 commonsensical.

14 Q. That wasn't --

15 A. There's absolutely no reason for your client not  
16 to respond to that operating agreement.

17 Q. That wasn't the --

18 A. If they're --

19 Q. -- intent of --

20 A. If they're --

21 Q. -- paragraph --

22 A. If they're --

23 Q. -- 7.1.

24 A. If they're honorable and they're not just  
25 intending to vest their toplease and take another 25

1 percent interest in my well, then they ought to look at it  
2 and tell me what's the matter with it, and I'll be happy to  
3 work with them to correct what it makes sense to correct.

4 I didn't send this to them and say, Sign this or  
5 nothing. I said, Send it to it, look at it, and if it  
6 meets with your approval, sign it and send it back. That's  
7 not saying, Sign it and send it back or nothing, that --

8 EXAMINER BROOKS: I believe we're getting into a  
9 situation where the witness is arguing with counsel and  
10 vice-versa. We need to do this by question and answer.

11 THE WITNESS: Yes, sir, I apologize.

12 EXAMINER BROOKS: You state a question, and you  
13 answer it and --

14 THE WITNESS: Yeah, I apologize.

15 EXAMINER BROOKS: -- then you move to the next  
16 question.

17 Q. (By Mr. DeBrine) You indicated in your direct  
18 exam that you inadvertently didn't send the operating  
19 agreement that's attached to the farmout agreement to  
20 Chesapeake --

21 A. Yes, sir.

22 Q. -- is that correct?

23 A. Yes, sir.

24 Q. When did you first propose the work on the Vinson  
25 Number 1?

1           A.    The proposal was dated August 15th that I sent to  
2 Chesapeake.

3           Q.    And what was the date that you first sent a copy  
4 of the Exhibit B that was attached to the farmout agreement  
5 to Chesapeake?

6           A.    When they requested it. They have a copy of it.  
7 I didn't -- I didn't have any reason they didn't own it.  
8 They've got it in their files. The fact that Lynda doesn't  
9 know --

10           MR. DEBRINE: I'll object --

11           THE WITNESS: -- that they have it is --

12           MR. DEBRINE: -- and move --

13           THE WITNESS: -- hardly my fault.

14           MR. DEBRINE: -- to strike as nonresponsive.

15           EXAMINER BROOKS: I would think we should sustain  
16 that objection. We need to get somewhat shorter answers so  
17 we can --

18           THE WITNESS: Okay.

19           EXAMINER BROOKS: -- get through this  
20 examination.

21           Q.    (By Mr. DeBrine) What was the date you sent the  
22 Exhibit B to the farmout agreement and operating agreement  
23 to Chesapeake, Mr. Leonard?

24           A.    Tuesday, I believe.

25           Q.    And at what time on Tuesday?

1           A.    She called in the -- she called in the morning.  
2           I sent the farmout agreement to her Monday afternoon.  
3           Tuesday morning she called and called my attention to the  
4           fact that we had not sent Exhibit B.

5                    And so when I got off the phone with her we did  
6           that.  And I don't remember whether it was late morning or  
7           early afternoon.

8           Q.    If you look at Exhibit 4, I believe there is a  
9           fax transmittal form within that exhibit dated October  
10          16th, 2007.  Do you have that in front of you, Mr. Leonard?

11          A.    I do.

12          Q.    And it reflects that the fax transmission --

13          A.    Wait a -- wait a minute, I'm sorry.  Exhibit 4?

14          Q.    Yes, Exhibit 4.

15          A.    Within Exhibit 4?

16          Q.    Yes, within Exhibit 4.  It's a fax transmittal  
17          form, JTD Resources, dated 10-16-07.

18          A.    Yes.

19          Q.    Could you read the statement in the Comments  
20          section?

21          A.    The -- the handwritten statement that I made.

22          Q.    Yeah.  Let me go back.  This is your handwritten  
23          statement on Exhibit 4, the transmittal, dated October 16,  
24          2007?

25          A.    Yes, it is.

1 Q. And could you read that?

2 A. I can.

3

4 Lynda, Attached is a copy of Exhibit B to the  
5 Cross Timbers farmout, together with copies of the  
6 conditional letter of acceptance and amendment to the  
7 farmout you requested. Paragraph 7.1, page 6 of the  
8 farmout, refers to Exhibit B as the form of JOA we  
9 agreed to use and provides that farmee shall prepare a  
10 JOA identical in form to Exhibit B for execution by  
11 the parties. Due to cessation of production from the  
12 initial test well provided for in the original  
13 agreement, that original JOA is terminated. It is our  
14 understanding that Cross Timbers' execution of the  
15 farmout and its Exhibit B does bind the parties as to  
16 the form of JOA we use, but does not bind Chesapeake  
17 to participate in our proposed re-entry. Neither does  
18 the letter Chesapeake sent us or the executed AFE.  
19 Chesapeake's execution of a new JOA will. By separate  
20 fax we are providing you with a marked-up copy of  
21 Exhibit B identifying the changes we propose with the  
22 new joint operating agreement. Please give them your  
23 thoughtful consideration and let us hear from you.

24 Thanks, Dan.

25

1 Q. So you were sending the Exhibit B to Chesapeake  
2 at 8:50 p.m. on Tuesday of this week for the first time; is  
3 that right?

4 A. Yes, sir.

5 Q. And you've had that document in your possession  
6 since you first proposed the re-entry on the Vinson Number  
7 1?

8 A. Yes, sir.

9 Q. And you state in here that it's your  
10 understanding that Cross Timbers' execution of the farmout  
11 and its Exhibit B does bind the parties as to the form of  
12 JOA we use?

13 A. Yes, sir.

14 Q. And so the parties, under your understanding, by  
15 the express terms of the farmout agreement once it was  
16 executed, are bound to the form of JOA covering the  
17 operations on the Vinson Number 1?

18 A. Yes, sir.

19 Q. And that's the form of agreement that was  
20 attached?

21 A. The Exhibit B, yes, sir.

22 Q. And the farmout agreement requires you to prepare  
23 an identical Exhibit B; is that correct?

24 A. Yes, sir.

25 Q. And that's never been presented to Chesapeake up

1 through today's hearing?

2 A. No, sir.

3 EXAMINER BROOKS: I believe we're becoming  
4 repetitious. I think those last two points had already  
5 been established in the examination, so I would ask counsel  
6 to confine examination to things that haven't been covered  
7 already. Go ahead.

8 MR. DEBRINE: May I approach the witness?

9 EXAMINER BROOKS: You may.

10 Q. (By Mr. DeBrine) Mr. Leonard, I've just handed  
11 you what's been marked as Chesapeake Rebuttal Exhibit  
12 Number 4. Could you describe that document?

13 A. It's an AFE, an executed AFE, with a cover letter  
14 from Sara Caldwell transmitting the AFE to us.

15 Q. And you have received Exhibit 4 that was sent to  
16 you and addressed to you on October 16th, 2007?

17 A. Yes, sir.

18 Q. And so you have in your possession a fully  
19 executed JTD Resources, LLC, authority for expenditure with  
20 respect to the work that's been proposed for the Vinson  
21 Number 1?

22 A. We do.

23 MR. DEBRINE: I'll move the admission of Rebuttal  
24 Exhibit Number 4.

25 MR. BRUCE: I have no objection.

1 EXAMINER EZEANYIM: No objection? Okay, Exhibit  
2 Number 4 will be admitted.

3 Mr. Debrine, what are you trying to show with  
4 this Exhibit 4?

5 MR. DEBRINE: To show that they're -- that  
6 Chesapeake has executed the tendered AFE for the Vinson  
7 Number 1 well and indicated its agreement to participate.

8 EXAMINER EZEANYIM: To participate in the well?

9 MR. DEBRINE: Yes.

10 Q. (By Mr. DeBrine) Mr. Leonard, I've just handed  
11 you a copy of what's been marked as Chesapeake Rebuttal  
12 Exhibit Number 3.

13 A. Yes, sir.

14 Q. That contains the -- not just the transmittal  
15 form that was part of Applicant's Exhibit Number 4 but also  
16 the attachment that you sent to Lynda Townsend at 8:50 p.m.  
17 on October 16th; is that correct?

18 A. Yes, sir, that appears to be correct.

19 MR. DEBRINE: Move the admission of Chesapeake  
20 Rebuttal Exhibit Number 3.

21 EXAMINER EZEANYIM: What did you say?

22 MR. DEBRINE: I'd move the admission of  
23 Chesapeake Rebuttal Exhibit Number 3.

24 EXAMINER EZEANYIM: Any objection?

25 MR. BRUCE: No objection.

1 EXAMINER EZEANYIM: Chesapeake Number 3 will be  
2 admitted.

3 And again, Mr. DeBrine, what you are trying to  
4 show with this exhibit is what?

5 MR. DEBRINE: This is the -- just to show that  
6 for the first time and to explain why the parties have been  
7 unable to reach agreement concerning the new JOA tendered  
8 by JTG [*sic*] was only recently received, and that is the  
9 reason why Chesapeake has not reached agreement with JTG  
10 [*sic*]. We just recently received the original form of JOA  
11 on Tuesday of this week.

12 EXAMINER EZEANYIM: Go ahead.

13 Q. (By Mr. DeBrine) If you look on page 2 of  
14 Chesapeake Rebuttal Exhibit Number 3, what is that letter  
15 agreement?

16 A. Well, it's a letter agreement that I presented to  
17 Cross Timbers' Ed -- or Win Ryan. After considerable  
18 discussions, there was a little fuzzy language in the  
19 farmout agreement about whether this was a drill-to-earn or  
20 a produce-to-earn farmout.

21 And they agreed with me that it would be a drill-  
22 to-earn, that we did not -- that in the event that the  
23 Keach well that we drilled did not succeed in obtaining  
24 production, that we would be considered to have satisfied  
25 the terms and provisions of that farmout agreement with the

1 Keach well and would be entitled to the assignment of our  
2 undivided 75-percent interest in what they called in this  
3 operating -- or farmout agreement, that not only the  
4 drilling unit acreage but the outside acreage.

5 And that -- in the next to the last paragraph on  
6 the second page it says, In order to clarify our respective  
7 ownership positions relative to mineral acquisitions and  
8 renewal extensions of oil and gas leases and assignments  
9 within the established AMI, and to relieve us of the  
10 obligation to drill another earning well in the event the  
11 Keach Number 1 is plugged as a dry hole, we hereby request  
12 that provisions 3.5 and 3.6 of the farmout agreement be  
13 amended to reflect that the farmee will earn an assignment  
14 of the undivided 75 percent interest in the drilling unit  
15 acreage and outside acreage whether the test well, the  
16 Keach Number 1, is completed as a producer or as a dry  
17 hole.

18 And they agreed to that and signed it and sent it  
19 back to me.

20 Q. So the parties knew early on that the test well,  
21 the Keach Number 1, was not a producer?

22 A. Yes.

23 Q. And there was no effort made to amend the farmout  
24 agreement to delete the Exhibit B that referenced the  
25 operations that would be conducted concerning the Keach

1 well?

2 A. I'm not sure I'm following. Why -- why would  
3 that -- I'm not sure what you're saying.

4 Q. The parties knew within a year of executing the  
5 farmout agreement that the Keach well was a dry hole; is  
6 that right?

7 A. I can't -- I can't be that specific about the  
8 date. We tried to complete it in the deep, and we plugged  
9 back to the shallow and we completed in the San Andres, and  
10 I can't tell you how long it took. It was a year or two --  
11 within a year or two.

12 Q. What was the effective date of the operating  
13 agreement? If you turn to Exhibit 7.

14 A. September 1, '98.

15 Q. And so the letter agreement was executed on what  
16 date, Mr. Leonard?

17 A. June 24th, '99.

18 Q. So less than a year after the farmout agreement  
19 was entered into, it was modified as you indicated in your  
20 testimony?

21 A. Yes.

22 Q. But it was not modified to delete the Exhibit B  
23 that was attached to the farmout agreement?

24 A. No.

25 Q. And the amendment that was entered into at that

1 time did not mention the Exhibit B attached to the farmout  
2 agreement?

3 A. This letter?

4 Q. Yes.

5 A. You've read it more carefully than I have, I just  
6 went through. But no, I guess it doesn't.

7 Q. And as far as your understanding, there's been no  
8 amendment of the farmout agreement that mentions or refers  
9 to the deletion of the Exhibit B that was attached to the  
10 original agreement?

11 A. No.

12 MR. DEBRINE: No further questions.

13 EXAMINER EZEANYIM: Anything further?

14 MR. BRUCE: Just a couple, Mr. Examiner.

15 REDIRECT EXAMINATION

16 BY MR. BRUCE.

17 Q. Just generally on the question -- and I just want  
18 brief answers, Mr. Leonard, just -- you know, Mr. DeBrine  
19 questioned you about the submission of an identical JOA.  
20 Obviously because of the names of the changes -- the names  
21 changes, the interest owner changes, the operator  
22 changes --

23 A. No.

24 COURT REPORTER: Excuse me, Mr. Bruce, could you  
25 please repeat the last part of your question?

1 MR. BRUCE: I think it was, It wouldn't make  
2 sense to submit an identical form of JOA?

3 THE WITNESS: No.

4 Q. (By Mr. Bruce) And if you'd look at Article VI  
5 of the JOA, Mr. Leonard --

6 A. Yes, sir.

7 Q. Okay, in the very first line it talks about  
8 commencing the drilling of the well, and this was the  
9 initial test well, correct?

10 A. Yes.

11 Q. And that well was drilled, it wasn't a re-entry?

12 A. Yes, that was a well drilled to 8100 feet, it was  
13 not a re-entry, it was drilled from surface to 8100 feet.

14 Q. And then if you go to the top of the very next  
15 page where Article VI is continued, under item B,  
16 Subsequent Operations, does -- anywhere in the proposed  
17 operations does it reference re-entering a well?

18 A. No, sir, it looks like it pertains to drilling,  
19 reworking, deepening or plugging back, but no re-entry is  
20 anticipated with that language.

21 Q. And a -- in this particular re-entry you're not  
22 deepening the well?

23 A. No, sir.

24 Q. You're not plugging it back?

25 A. No, sir.

1 Q. You're not drilling the well, because it's  
2 already there?

3 A. Yes, sir.

4 Q. And insofar as reworking it, doesn't -- in the  
5 normal -- in the oil and gas business, doesn't reworking  
6 pertain to work on an existing unplugged wellbore?

7 A. No, it can be a plugged wellbore.

8 Q. Okay.

9 A. This is a plugged wellbore, this well was plugged  
10 and abandoned by Amerada Hess back in '96, and we're -- so  
11 we're -- in the process of the re-entry we're going to have  
12 to drill the plugs out. We simply think that there's some  
13 pay zones in there that should have been evaluated and  
14 weren't evaluated by Amerada.

15 Q. And this Exhibit B, this old JOA, you certainly  
16 had it in your files?

17 A. Yes, I did.

18 Q. And since Chesapeake was the successor-in-  
19 interest to Cross Timbers, did you presume that Chesapeake  
20 had this Exhibit B in their files?

21 A. Oh, absolutely.

22 Q. Obviously --

23 A. I never had reason to believe that they didn't.  
24 That's why I didn't provide it to them earlier, I didn't --  
25 I anticipated they had it.

1 Q. Certainly they were aware of the farmout and the  
2 AMI provision because they paid for their proportionate  
3 share of your leases?

4 MR. DEBRINE: Objection, calls for speculation.

5 MR. BRUCE: And I'll rephrase the question.

6 Q. (By Mr. Bruce) They did, several months ago, pay  
7 for their proportionate share of your leases within the  
8 AMI?

9 A. Yes, sir.

10 Q. And Mr. DeBrine was questioning you on whether or  
11 not you had assigned any interest to Chesapeake, a 25-  
12 percent interest in Chesapeake -- to Chesapeake, in your  
13 leases. You have stated here under oath on the record that  
14 Chesapeake owns that interest?

15 A. Yes, sir.

16 Q. And you have no problem in assigning a 25-percent  
17 interest to Chesapeake?

18 A. No, sir.

19 Q. Chesapeake has never confirmed that they will  
20 assign to you an interest in their leases?

21 A. No, sir.

22 Q. And then I just wanted to verify, when Mr.  
23 Debrine was questioning you about the amendment to the  
24 farmout contract, that was merely to confirm that all of  
25 that acreage in the area of mutual interest would be

1 acquired 75 percent by Leonard Resource, now JTD,  
2 regardless of the drilling of any other wells or regardless  
3 of completing this as a commercial producer?

4 A. Yes, sir.

5 Q. Looking at Mr. DeBrine's Exhibit 4, Chesapeake  
6 Exhibit 4 --

7 A. Okay.

8 Q. -- and do you know -- is it your understanding --  
9 What is your understanding of Ms. Caldwell's position at  
10 Chesapeake?

11 A. Assistant landlady, assistant land tech. She is  
12 an assistant to Lynda Townsend.

13 Q. Do you know if she has the authority to buy into  
14 Chesapeake to -- commitment to a well?

15 A. No.

16 Q. Is it your understanding that she has authority  
17 to bind Chesapeake to a well?

18 MR. DEBRINE: Objection, calls for speculation.

19 EXAMINER EZEANYIM: Objection overruled.

20 Q. (By Mr. Bruce) Did she ever tell you that she  
21 had authority to bind Chesapeake to a well?

22 A. No. She told me that -- she did tell me that --  
23 when I sent the joint operating agreement to her, that she  
24 would -- that was not in her regime, she would pass that  
25 along to Lynda Townsend for review and execution.

1 Q. And so it's your understanding she does not have  
2 the authority to sign a JOA and bind Chesapeake to a well?

3 A. Yes, sir.

4 Q. And again, you have spoken with counsel in  
5 Midland, and it's your understanding that an AFE is  
6 insufficient -- an executed AFE is insufficient to bind  
7 Chesapeake --

8 A. That is --

9 MR. DEBRINE: I'll object to --

10 THE WITNESS: -- what I've advised.

11 MR. DEBRINE: -- to hearsay. And if there's  
12 going to be a waiver of the attorney-client privilege, then  
13 we'd like a continuance and like to examine the attorney  
14 with respect to the statements that are being offered.

15 EXAMINER EZEANYIM: May the counsel rephrase the  
16 question?

17 MR. BRUCE: Mr. Examiner, I think I've submitted  
18 legal authority to you on that issue.

19 Q. (By Mr. Bruce) And one final issue I'd like to  
20 address is, if you don't have a signed JOA -- Step back.

21 If you have a signed JOA -- if Chesapeake elects  
22 under a JOA -- or excuse me, does not -- elects not to join  
23 a well under a JOA, there's a penalty provision in the JOA?

24 A. Yes.

25 Q. And under a force pooling order, if Chesapeake

1 did not elect and pay its share, there's also a risk charge  
2 under the force pooling order?

3 A. There has been, yes.

4 Q. And is that necessary for you to adequately  
5 determine your risk in re-entry of the well?

6 A. Absolutely.

7 Q. And you have other working interest partners, and  
8 it's hard to come to terms with those working interest  
9 partners if they don't know who's paying what with respect  
10 to the well?

11 A. Absolutely.

12 Q. And if there is no force pooling order or no JOA  
13 in place, then you would be required -- if Chesapeake did  
14 not voluntarily pay its interests, you would be required to  
15 carry them in the well without penalty?

16 A. That's my understanding, yes. That's what we're  
17 trying to avoid here.

18 MR. BRUCE: That's all, Mr. Examiner. Thank you.

19 EXAMINER EZEANYIM: Mr. DeBrine?

20 RE-CROSS-EXAMINATION

21 BY MR. DEBRINE:

22 Q. Yes, Mr. Leonard, if you look at Exhibit 4, it's  
23 just a transmittal letter attaching the AFE; is that  
24 correct?

25 A. Yes, sir.

1 Q. And the actual AFE was signed by Aubrey  
2 McClendon?

3 A. It was.

4 Q. Do you know who Aubrey McClendon is?

5 A. I do.

6 Q. Who is he?

7 A. He's the chief executive officer of Chesapeake.

8 Q. And it's your understanding that he certainly has  
9 the authority to bind Chesapeake; isn't that correct?

10 A. If that AFE were binding, yes. But he certainly  
11 has the authority to sign the AFE, yes, sir.

12 MR. DEBRINE: No further questions.

13 THE WITNESS: I would think he does.

14 EXAMINER EZEANYIM: Okay. Anything more?

15 MR. BRUCE: Nothing further, Mr. Examiner.

16 EXAMINER EZEANYIM: Do you have any questions?

17 EXAMINER BROOKS: I have a couple of questions.

18 I didn't know if you wanted to go first or wanted me to go  
19 first.

20 EXAMINATION

21 BY EXAMINER BROOKS:

22 Q. The joint operating agreement that you tendered  
23 to Chesapeake is not in evidence, is it?

24 There's a summary of it in evidence, I believe,  
25 but it's --

1 MR. BRUCE: We could submit it, I do have some  
2 copies, Mr. Examiner.

3 EXAMINER BROOKS: Well, I think to make the  
4 record complete it would be good if you did. I'm not -- I  
5 don't anticipate any extensive examination.

6 Q. (By Examiner Brooks) Basically what I was going  
7 to ask you -- Well, I have a specific and a general  
8 question.

9 The specific one has to do with the -- There was  
10 a mention of the casingpoint election, and of course I  
11 picked up on that because I know the casingpoint election  
12 -- that's the big difference, as I see it, between  
13 operating under a force pooling order and operating under a  
14 joint operating agreement, because I never saw a joint  
15 operating agreement that didn't have a casingpoint  
16 election, and force pooling orders don't.

17 How did you contemplate -- When you drew this  
18 joint operating agreement for a re-entry, which is a little  
19 different from drilling a well, did you -- does -- under  
20 the agreement as tendered -- as you prepared the joint  
21 operating agreement you prepared, would Chesapeake have a  
22 casingpoint election in the -- in this re-entry?

23 A. No, sir.

24 Q. Okay.

25 A. I added a provision to it, which we typically do

1 for re-entries, because --

2 Q. Right.

3 A. -- casingpoint elections are not -- they're  
4 typically not pertinent to a re-entry.

5 This well has been drilled, tested, logged  
6 extensively and mudlogged. Casing is set to -- I think  
7 it's got, oh, say 3500 feet of casing.

8 Q. Yeah, I -- well, I just -- I didn't ask you  
9 why --

10 A. Okay, I'm sorry.

11 Q. -- I'm trying to get this --

12 A. Sorry.

13 Q. -- move this proceeding along. I just asked you,  
14 There isn't one?

15 A. There is not.

16 Q. Okay, and --

17 A. Just for this test well --

18 Q. Yeah --

19 A. -- that's what --

20 Q. -- right.

21 A. -- that paragraph says.

22 Q. And if you were going under the other form of  
23 JOA, then perhaps there would be an argument about whether  
24 this was drilling a well, in which case the casingpoint  
25 election provision would apply, or whether it was working

1 over a well, in which case the casingpoint election would  
2 not apply?

3 A. Yes, sir, that's possible.

4 EXAMINER BROOKS: That's all my questions.

5 MR. BRUCE: Mr. Examiner, there's -- if I could,  
6 I don't have sufficient copies. I will make additional  
7 copies and submit a copy to Mr. DeBrine and to the court  
8 reporter.

9 EXAMINER EZEANYIM: We'll give ours to the court  
10 reporter.

11 MR. BRUCE: Submitted as --

12 EXAMINER BROOKS: Yeah.

13 MR. BRUCE: -- Exhibit 11 is a copy, and if Mr.  
14 Leonard could verify that this is a copy -- Exhibit 11 is a  
15 copy of the proposed JOA submitted to Chesapeake this past  
16 week.

17 EXAMINER EZEANYIM: Okay.

18 EXAMINER BROOKS: Okay.

19 THE WITNESS: It is.

20 MR. BRUCE: I would move the admission of Exhibit  
21 11.

22 EXAMINER EZEANYIM: Any objection?

23 MR. DEBRINE: No.

24 EXAMINER EZEANYIM: Okay. Exhibit 11 will be  
25 admitted.

## EXAMINATION

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BY EXAMINER EZEANYIM:

Q. This well -- Let's go back this well first. I have a few opening statements. It's plugged and abandoned, right? The well is plugged and abandoned?

A. The one we're going to re-enter?

Q. Yeah.

A. Yes, sir.

Q. Okay. So you intend to drill through the plugs to go -- Are you going to deepen or plug back?

A. No, that well was an Ellenburger test. I think it went below 10,000 -- down to 10,000 feet. We're going to knock the plugs out and clean the well out to a depth of 8000 feet, or the base of the Wolfcamp formation --

Q. Yeah.

A. -- and complete uphole from there.

Q. Did the well ever produce anything when it was drilled?

A. No, sir, it did not.

Q. Then how did --

A. They got water in the Ellenburger and water in the Devonian, and they quit.

Q. What happened now? All of a sudden there is oil or gas. What are you doing now?

A. Well, we've looked at the logs and the mudlogs in

1 that well. We've had considerable experience in the area  
2 with the lower Leonard formation, the Blinebry-Tubb, the  
3 Abo and Wolfcamp. We think that they're prospective here.  
4 We think that Amerada got -- they prematurely plugged and  
5 abandoned the well. They weren't interested in those  
6 zones, and we are. We think they may be productive.

7 Q. You've studied those zones very well?

8 A. Oh, yes, sir. We drilled -- The well that we  
9 drilled out there, the Keach well that is the subject of  
10 this original farmout agreement, was -- we were originally  
11 going to do this re-entry. We got persuaded by some  
12 scientific information to move one location to the east and  
13 drill a new well, which turned out to be not very good  
14 advice, because we drilled a dry hole there. Now we're  
15 going back up and doing what we originally intended to do,  
16 which was re-enter the Vinson well that Amerada abandoned.

17 Q. And you want the operatorship to go to Pierce  
18 Production Company. Why is that?

19 A. The operator that we had, Capataz Operating,  
20 Inc., resigned --

21 Q. Okay.

22 A. -- elected not to participate in this.

23 Q. Okay. So what -- What are the zones of interest  
24 when you go in there? What are the zones --

25 A. What are the zones of interest?

1 Q. -- the zones of interest?

2 A. The --

3 Q. You mentioned Pennsylvania, Abo, Blinebry or even  
4 the Wolfcamp.

5 A. Yes, sir.

6 Q. You're going to test all those, and you're  
7 confident you're going to find something?

8 A. We are.

9 Q. Okay. Okay, you know, this -- four weeks, I  
10 wrote here, it says the leases will be expiring in four  
11 weeks. So is it the fact that if this case is taken under  
12 advisement, you want a decision on this case very -- very,  
13 very soon?

14 A. We could sure use it.

15 Q. I don't know what I'm going to do, but I'm just  
16 asking you.

17 A. Yes, sir. I think in the -- I think our past  
18 experience has been three or four weeks, and if we could do  
19 something quicker than that to help us out with that  
20 November 10 and that November 13 expirations, we'd be very  
21 pleased.

22 Q. You know the total depth of that well right now?  
23 Total depth, what -- The well was drilled to what total  
24 depth?

25 A. The Amerada well?

1 Q. No, this one, this well you are going to re-  
2 enter.

3 A. The one we're going to re-enter?

4 Q. Yeah, do you know the total depth?

5 A. I believe it was drilled to about 10,000 feet.

6 EXAMINER EZEANYIM: Okay. Okay, before I have  
7 you guys -- you know, maybe you have some closing  
8 statements. I need to make some comments here about this  
9 case.

10 Mr. DeBrine, I know -- I got your -- yesterday,  
11 actually, but you didn't appear yesterday. If you look at  
12 our procedures here, if you want to appear, you need to  
13 have a prehearing statement on the Thursday before Thursday  
14 today. That will make the Examiner and everybody to know  
15 what you're going to have.

16 You know, during the proceedings here I said,  
17 What exactly do you want? But if you are giving me a  
18 prehearing statement I will know exactly what you want,  
19 because there you will state exactly what your clients want  
20 and then what the Applicant might want, so that we can then  
21 have a forum to discuss it.

22 That's why I stopped you at one point. I said,  
23 What does your client want? And you told me, I understood.  
24 But if you had submitted a timely prehearing statement,  
25 those could be stated there. So I wanted to make a point

1 to you. It's not -- you know, to make sure -- any future  
2 occasions you want to handle, that's how we deal with that.  
3 Prehearing statement on the Thursday before the Thursday of  
4 the hearing.

5 And it's also stated in the docket that you are  
6 to send your -- that Thursday, a week ago, so that you know  
7 the Examiner and everybody to look at it, you know, look  
8 and see what the issues are, instead of coming in here  
9 without knowing what the issues are.

10 So this case is like taken on by a surprise,  
11 although I got your -- you say you are going to enter an  
12 appearance, and I didn't know what you wanted to do.  
13 Sometimes they enter an appearance in support of the  
14 application, and when I didn't get any prehearing statement  
15 I thought you are coming as, Oh, we support the  
16 Application, but you still put it in the application. So  
17 in that case we put that -- prehearing statement. I wanted  
18 to make that point.

19 MR. DEBRINE: The point is well taken, Mr.  
20 Examiner, and I think the reason why we didn't file a  
21 prehearing statement is, the parties, as reflected by the  
22 evidence, have been -- negotiated, and it was Chesapeake's  
23 position that the need for this hearing didn't need to take  
24 place.

25 I entered my appearance. I -- under my

1 interpretation of the Commission's Rules, a party has to  
2 file a prehearing statement if it intends to present  
3 exhibits and witnesses, and that was not our intent. I  
4 presented some exhibits here today by rebuttal, but just  
5 intended to participate.

6 And I believe the Commission's Rule, once you  
7 enter an appearance, they do entitle you to make a  
8 statement and oppose or support the application. And that  
9 was our intent here today.

10 EXAMINER EZEANYIM: Okay, well taken.

11 Do you guys have any closing statements?

12 MR. BRUCE: Very briefly, Mr. Examiner. I think  
13 the testimony is sufficient to show that there is no  
14 voluntary in agreement -- voluntary agreement in place  
15 between the two parties, and therefore the signed AFE is  
16 legally insufficient to commit Chesapeake to the proposed  
17 re-entry.

18 We believe we're entitled to a pooling order,  
19 although JTD is more than willing to continue negotiating  
20 with Chesapeake, even after the entry of a pooling order.  
21 I think Mr. Leonard has made clear that by far and away he  
22 would rather have a joint operating agreement in place than  
23 have to rely on, shall we say, the sketchy terms of a  
24 pooling order for the operation of the well. And therefore  
25 JTD would consider any comments from Chesapeake in an

1 attempt to hammer out an agreement between the parties.

2 And as Mr. Leonard said, there are time  
3 deadlines. And I know we're all busy, but any expedited  
4 decision would be welcome. Thank you.

5 EXAMINER EZEANYIM: Mr. DeBrine?

6 MR. DEBRINE: Yes, Mr. Hearing Examiner. As  
7 indicated earlier, it's Chesapeake's position that the  
8 Commission doesn't have jurisdiction to decide the issues  
9 that are really presented by the Application of JTG [sic].  
10 The evidence reflects that there is a farmout agreement in  
11 place between the parties which commits Chesapeake's  
12 interest to the proposed re-entry of the Vinson Number 1.

13 Chesapeake signed an election letter, it signed  
14 an AFE for the work that was proposed by JTG [sic]. And if  
15 you look at Exhibit 4, I think it's clear -- Mr. Leonard  
16 even acknowledged it in that statement where he sent that  
17 transmittal of the Exhibit B JOA to Chesapeake in which he  
18 stated, It is our understanding that Cross Timbers'  
19 execution of the farmout and the Exhibit B does bind the  
20 parties as to the form of the JOA we use.

21 That's an admission by him that the farmout  
22 agreement does bind the parties to the form of JOA. The  
23 JOA is in place, we don't think it -- Mr. Leonard and JTG  
24 [sic] is trying to get a new agreement, trying to gain  
25 advantage.

1           If you look at the Exhibit 4, it contains -- and  
 2 there wasn't a lot of testimony of it, but it's clear in  
 3 looking at that, JTG [sic] has proposed numerous material  
 4 modifications to the JOA that was attached to the farmout  
 5 agreement in violation of its obligation to prepare an  
 6 identical JOA, but wants a specific JOA to cover the work  
 7 or the well that's at issue.

8           And we don't think that's appropriate. It's  
 9 trying to invoke the Commission's extraordinary equitable  
 10 powers to force pool a party who has agreed to participate  
 11 in the work, and the Commission lacks -- or the Division  
 12 lacks the authority to force pool a party under those  
 13 circumstances.

14           EXAMINER EZEANYIM: Okay, anything further?

15           EXAMINER BROOKS: Nothing further.

16           EXAMINER EZEANYIM: Anything further from  
 17 anybody?

18           MR. BRUCE: (Shakes head)

19           MR. DEBRINE: No, Mr. Examiner.

20           EXAMINER EZEANYIM: Okay, that's good. At this  
 21 point, Case Number 14,010 will be taken under advisement.

22           And this concludes the proceedings today.

23           (Thereupon, these proceedings were concluded at  
 24 11:30 a.m.)

25           I do hereby certify that the foregoing is  
 \* \* \* a complete record of the proceedings in  
 the Examiner hearing of Case No. 14,010  
 heard by me on 10/18/07.

STEVEN T. BRENNER, CGR  
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 Oil Conservation Division

