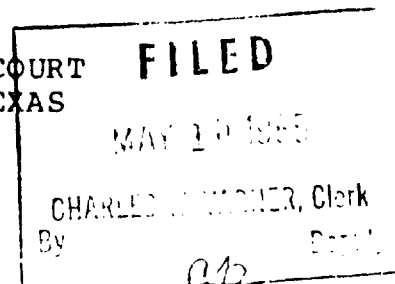


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION



DOYLE HARTMAN, JAMES A.)
DAVIDSON, MICHAEL L. KLEIN)
AND JOHN H. HENDRIX)
CORPORATION, a Texas)
Corporation,)
Plaintiffs)

v.)
SUN EXPLORATION & PRODUCTION)
COMPANY)

NO. CA

MO 85 01 105

PLAINTIFFS' ORIGINAL COMPLAINT

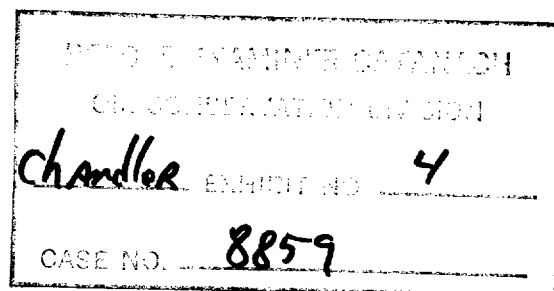
TO THE HONORABLE JUDGE OF SAID COURT:

Doyle Hartman, James A. Davidson, Michael L. Klein and John H. Hendrix Corporation, a Texas Corporation, hereinafter called "Plaintiffs", complaining of Sun Exploration & Production Company, hereinafter called "Defendant", for cause of action would respectfully show the Court and the jury the following:

1.

Plaintiff, Doyle Hartman, is a resident of the State of Texas with his residence in Midland, Texas. James A. Davidson is a resident of the State of Texas, with his residence in Midland, Texas. Michael L. Klein is a citizen of the State of Texas with his residence in Houston, Texas. John H. Hendrix Corporation organized under the laws of the State of Texas, and its principal

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place of business is located in Midland, Texas. Sun Exploration & Production Company is a corporation duly organized under the laws of the State of Delaware and its principal place of business is in a state other than Texas but is doing business in the State of Texas and may be served by serving its president at its address of Four North Park East, 5656 Blackwell in Dallas, Texas 75221.

2.

The causes of action herein alleged arise pursuant to 28 U.S.C. Section 1332, in that there is diversity between the Plaintiffs herein and the Defendants and the amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. Further, under 28 U.S.C., Section 1331, this Court has original jurisdiction in that this is a civil action wherein the matter in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs and also arises under the laws of the United States, including the Securities Act of 1933 and the Securities Exchange Act of 1934 and amendments thereto as found in 15 U.S.C., Sections 77(b)(1) 78(a) et.seq., respectively. Further, under 28 U.S.C., Section 1337 this is a civil action arising under the acts of Congress regulating commerce or protecting trade in commerce against restraints and monopolies, namely the Securities Act of 1933, 15 U.S.C., Section 77(b)(1), et.seq., and the Securities Exchange Act of 1934 and

amendments thereto, 15 U.S.C., Section 78(a), et.seq. This Court also has jurisdiction by reason of Defendants' violations of 18 U.S.C., Section 1961 et.seq. commonly called the Racketeering & Corrupt Organization Act.

3.

Venue is proper in this district pursuant to the provisions of 28 U.S.C., Section 1391(b) and because the claims which are the subject of this complaint arose in this judicial district. Further, venue is proper in this judicial district pursuant to the provisions of 28 U.S.C., Section 1391(a) in that the Plaintiffs reside in this district, the claims arose in whole or in part in this district, and the acts and transactions constituting violations of the Plaintiffs' rights occurred in this district. Finally, venue is proper in this judicial district pursuant to the provisions of Section 27 of the Securities Exchange Act of 1934, in that the acts constituting the violation of Federal Securities Laws occurred in the forum state and the Defendants herein transact business in the state.

4.

The Parties and Background

Plaintiffs do business in Texas and New Mexico, among other states. Plaintiffs jointly, in the summer of 1984, entered into negotiations with representatives of The Prudential Insurance Company of America, to purchase certain security

interests in numerous undivided oil and gas mineral interests which security interests covering approximately 500 wells located in the States of Colorado, Oklahoma, Texas and New Mexico. In September 1984, by the terms of that conveyance, termed "Assignment and Conveyance" (Exhibit "A" attached hereto) The Prudential Insurance Company of America assigned and conveyed to Plaintiffs certain interests called for identification purposes only "the net profits overriding royalty interest", subject to certain terms, covenants, exceptions and conditions. By virtue of the Assignment and Conveyance Plaintiffs acquired without limitation all of the powers, privileges, causes of action, choses in action, rights and privileges attributable to and which had accrued to Plaintiffs' grantor, The Prudential Insurance Company of America, and its predecessors in title.

At the time of the Assignment and Conveyance above referred to, which occurred on or about September 13, 1984, Sun Exploration & Production Company had already succeeded to the rights of Joseph E. Seagram & Sons, Inc., an original party in that certain instrument of conveyance dated April 1, 1966, and hereinafter called "Agreement" and which is marked and made Exhibit "B" hereto.

5.

Immediately upon purchasing the interest of The Prudential Insurance Company of America, Plaintiffs initiated a

policy of cooperation and assistance with Defendant Sun Exploration & Production Company, and attempted to determine with regard to all of the properties, its various interests, costs and production. Although Sun Exploration & Production Company (hereinafter called "Sun") had duties specifically set forth in Section 3.01 of said Agreement to: (a) cause the interests to be operated in a good and workmanlike manner; (b) to pay all costs and expenses and to maintain in good state of repair all equipment and to promptly replace all worn out or obsolete equipment; (c) to obtain from an independent petroleum engineer an evaluation of the reserves underlying or attributable to the subject interests and a projection of income and expenses incident to the production as may be requested by Plaintiffs; (d) to keep true and correct books and records in a form satisfactory to Plaintiffs; (e) to comply with and perform for the benefit of Plaintiffs all express and implied covenants of the leases; (f) to permit the accredited agents and nominees of Plaintiffs to go upon the property at all reasonable times; and (g) to make no single expenditures in excess of \$5,000.00 in connection with any producing well. Plaintiffs would show that Sun has not complied with the express terms of the aforesaid conveyance. Plaintiffs have determined that the Defendant Sun has totally failed and refused and still fails and refuses to comply with the express provisions of the conveyance with regard to the Plaintiffs'

security interests and has further failed to demonstrate the spirit of cooperation called for in the Conveyance Agreement with regard to Plaintiffs' undivided security interests. Plaintiffs would also show that the Defendant Sun has unilaterally altered the terms of the Agreement in such an unreasonable, unnecessary, impossible, burdensome and expensive manner that such conduct constitutes a breach by Sun of its fiduciary duties, obligations, and responsibilities mandated by The Securities Act of 1933 and the Securities Exchange Act of 1934, and that Sun is now offering piecemeal certain undivided interests in the oil and gas mineral leases, called "Subject Interest", for sale to a multitude of third parties in violation of the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and in violation of Plaintiffs' rights under the Act.

6.

In a spirit of cooperation, Plaintiffs, individually and through their representatives, have met with representatives of Defendant Sun in an effort to show that the activities of Sun were imprudent, harmful and ruinous to the total value of Plaintiffs' securities interest, but at all times Defendant Sun has failed and refused to comply with the terms of the Agreement of Conveyance, which also serves as an operating agreement, all to Plaintiffs' irreparable harm and injury.

Defendants' failure and refusal to comply with the terms of the Agreement, have caused and will continue to cause serious and irreparable injury to Plaintiffs, which injury at this time is not capable of exact calculation and for which there is no adequate remedy at law because Plaintiffs are being deprived of their right to the use and enjoyment of their undivided mineral interests. Further, Defendant has failed to fully and accurately account to Plaintiffs and has breached their fiduciary duty by causing the subject interests to be continuously operated to the detriment of Plaintiffs in violation of all applicable federal and state laws. Plaintiffs would show that Defendant has breached its fiduciary duty it has:

(i) failed to account for and has withheld certain moneys owing Plaintiffs on certain properties;

(ii) attempted to sell or discharge their operating rights without authority to do so;

(iii) made certain sales of its interest in subject properties to third parties without complying with the terms of Section 4.09 of said Agreement;

(iv) drilled new wells without authority from Plaintiffs but have charged Plaintiffs for same;

(iv) reworked and made expenditures in excess of \$5,000.00 in connection with currently existing producing wells located upon the subject interests without the prior written consent of Plaintiffs;

(v) failed to report accurately to Plaintiffs the amount of production from each subject interest during the preceding calendar month;

(vi) placed certain properties, owned 50% by Plaintiffs into the marketplace without giving Plaintiffs any notice whatsoever and a chance to match the highest offer on a preferential basis, or alternatively, giving them a shorter and less desirable period of time and information upon which to bid the properties than they do the public generally.

The existing and continued action by Defendants is depriving and will continue to deprive Plaintiffs of their rights and privileges in the undivided mineral interests, and if allowed to continue will seriously jeopardize the value of the property and cause material economic injury to Plaintiffs.

8.

Further, Defendant Sun has sold 21 properties to various operators are unqualified to operate the interests sold and who have rejected and ignored Plaintiffs' rightful interests. Sun has also made no effort, as required in the Agreement Exhibit "B" to, protect Plaintiffs' interest herein and Defendant Sun has not and will not execute and deliver those certain instruments and documents or undertake other such actions as may be necessary to protect the rights and interests of Plaintiffs. In fact, Sun has also made certain sales of properties, including the attempted sale of operations, for which there is no provision under the terms of the contract, and such proposed sales are in all things in derogation of Plaintiffs' rights. Although this has been pointed out to Defendant Sun, Sun continues to offer its

interests for sale, which will continue to diminish the value of security interests of Plaintiffs. If Defendant Sun is allowed to continue its threatened action of sale as hereinabove set forth, same will result in the inability of Plaintiffs herein to have their interests properly operated and their name and costs properly determined, and will create an adverse impact and restraint in the use of their properties and create additional material economic injury to them. Such injury is irreparable and Plaintiffs are without any adequate remedy at law and for which its only remedy would be a restraining order against the Defendant Sun to protect Plaintiffs from the continuing invasion of their rights to their interests.

9.

Plaintiffs would further show that they have been deprived of certain monies from their security interests in that Defendant Sun has caused expenditures well in excess of the costs and expenses allowed under the terms and agreements between the parties, with regard to the drilling and completion of certain wells on the subject interest, which amount to at least \$500,000.00 and for which Plaintiffs seek repayment and recovery; and further, Plaintiffs would respectfully show that Defendant Sun has failed to report all of the 50% profits which Plaintiffs are entitled to receive under the terms of the Agreement, and that Defendant Sun has not kept accurate books and records

showing the amount of production nor has Sun reported to Plaintiffs the amount of production attributable to them. Further, Sun has not projected income and expenses incident to the production in the necessary detail required, and has failed and refused to pay Plaintiffs all of the moneys due them, being in an amount of at least \$300,000.00. Further, Defendant Sun, by selling its undivided oil and gas mineral interests to a variety of third parties, without first protecting the interests of these Plaintiffs, as provided for under the terms of the Agreement above-referred to, has already to this date reduced the net profits as that term is described in the Agreement, due and owing to Plaintiffs herein by a minimum of \$20,000.00 per month, which amounts are now being held by the new owners, in dispute. In making such sales Defendant Sun made no arrangements and no provisions for the protection of Plaintiffs herein. Such loss of \$20,000.00 per month inures to these Plaintiffs for an indefinite future and for which Plaintiffs herein sue Defendant Sun for at least \$250,000.00.

10.

Plaintiffs further say that all of said acts and omissions above referred to constitute a violation of the fiduciary obligations owed by the Defendant Sun to Plaintiffs herein under federal and state statutes and the common law. The Defendant named herein participated in, caused, ratified and

acquiesced in the fraudulent acts hereinabove, and even after same were called to their attention, specifically the improper sale of both interests and operations, overcharging, failing to pay, failing to properly account, and with knowledge of the aforesaid breaches of fiduciary duty to these Plaintiffs the Defendant Sun in all things continued its prior acts, and Plaintiffs herein would show that the said Defendant Sun is liable to them, for all damages sustained by them and all unlawful profits and gains derived by Sun from the aforesaid unlawful acts, in an amount of at least \$200,000.00 as exemplary damages.

WHEREFORE, premise considered, Plaintiffs demand that a temporary restraining order and preliminary injunction be issued against the Defendant Sun, that the party Defendant be required to appear and answer herein and that Plaintiffs receive judgment:

(a) that an order requiring the Defendant Sun to appear before this Court at such time and place as the Court may fix to show cause, if any, their be why a temporary restraining order should not be issued to prevent Defendant Sun from selling or disposing of undivided mineral interests without either:

(i) conveying operations as to the interest of all parties in and to the subject oil and gas mineral interests to Plaintiffs herein; or

(ii) in the event of the sale of Sun's interest in any of the subject properties providing adequate safeguard for Plaintiffs' interests in the subject properties, which safeguards should be to:

[a] convey operations to Plaintiffs herein;
or,

[b] cause Defendant Sun to retain such operations; and

[c] provide to the Plaintiffs a preferential right to purchase said offered properties; and

[d] provide the Plaintiffs with the right to collect and disburse all runs from the subject sale properties;

(b) for a temporary restraining order as prayed for in said complaint;

(c) for preliminary injunction as prayed for in said complaint;

(d) that upon final hearing hereof, the preliminary injunction be made permanent;

(e) requiring the defendant named herein to account to Plaintiffs for its acts and conduct described in this complaint;

(f) for recovery of its damages as herein alleged;

(g) for exemplary damages as herein alleged;

(h) for its costs and attorneys' fees as hereafter shown;

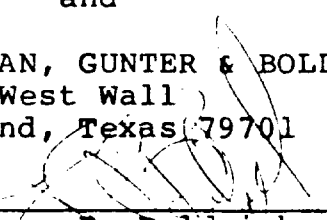
(i) for such and further relief, both at law and in

equity to which they may show themselves justly entitled to receive.

ATWOOD, MALONE, MANN & TURNER
P. O. Drawer 700
Roswell, New Mexico 88201

and

RASSMAN, GUNTER & BOLDRICK
1801 West Wall
Midland, Texas 79701

By: 
James P. Boldrick
State Bar ID No. 02569000

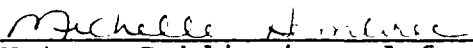
ATTORNEYS FOR PLAINTIFFS

STATE OF TEXAS)
)
COUNTY OF MIDLAND)

BEFORE ME, the undersigned Notary Public in and for the above County and State, personally appeared DOYLE HARTMAN, known to me to be the person whose name is ascribed to the foregoing Plaintiffs' Original Complaint, and who, after being sworn by me, states that he is one of the Plaintiffs in the above-numbered and entitled cause, and that he is duly authorized to execute this affidavit, that he has knowledge of the facts set forth in the complaint, and that the allegations set forth in Paragraphs 4, 5, 6, 7, 8 and 10 are true and correct.


DOYLE HARTMAN

SUBSCRIBED AND SWORN TO, before me, this 14th day of May, 1985.


Notary Public in and for
State of Texas


MICHELLE NEMBRACE, Notary Public
My Commission Expires October 25, 1985

STATE OF TEXAS)
)
COUNTY OF MIDLAND)

BEFORE ME, the undersigned Notary Public in and for the above County and State, personally appeared JAMES A. DAVIDSON, known to me to be the person whose name is ascribed to the foregoing Plaintiffs' Original Complaint, and who, after being sworn by me, states that he is one of the Plaintiffs in the above-numbered and entitled cause, and that he is duly authorized to execute this affidavit, that he has knowledge of the facts set forth in the complaint, and that the allegations set forth in Paragraphs 4, 5, 6, 7, 8 and 10 are true and correct.


JAMES A. DAVIDSON

SUBSCRIBED AND SWORN TO, before me, this 14th day of May, 1985.


Notary Public in and for
State of Texas

MICHELLE NEMBRACE, Notary Public
My Commission Expires October 25, 1985