

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 MARBOB ENERGY CORPORATION)
FOR COMPULSORY POOLING, EDDY COUNTY,)
NEW MEXICO)

CASE NO. 13,348

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

November 18th, 2004

Santa Fe, New Mexico

2009 DEC 2 AM 11:43

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, November 18th, 2004, 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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 Examiner Hearing
 CASE NO. 13,348

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A P P E A R A N C E S

FOR THE APPLICANT:

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By: WILLIAM F. CARR

FOR MARY T. ARD; THE W.W.I. 1990 TRUST; THE S.J.I., JR.,
1990 TRUST; THE P.I.P. 1990 TRUST; IVERSON III, INC.; THE
S.J. IVERSON TRUST; and THE EDWARD R. HUDSON TRUST 4:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 10:53 a.m.:

3 EXAMINER CATANACH: All right, at this time I'll
4 call Case 13,348, the Application of Marbob Energy
5 Corporation for compulsory pooling, Eddy County, New
6 Mexico.

7 Call for appearances.

8 MR. CARR: May it please the Examiner, my name is
9 William F. Carr with the Santa Fe office of Holland and
10 Hart, L.L.P. We represent Marbob Energy Corporation in
11 this matter, and I have one witness.

12 EXAMINER CATANACH: Call for additional
13 appearances.

14 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe.
15 I'm in this case representing Mary T. Ard; W.W.I. 1990
16 Trust; S.J.I., Jr., 1990 Trust; the P.I.P. 1990 Trust;
17 Iverson III -- that's the Roman numeral III --
18 Incorporated; S.J. Iverson Trust; and Edward R. Hudson
19 Trust 4.

20 Mr. Examiner, my prehearing statement did list
21 two other people, Delmar's Living Trust and Lindy's Living
22 Trust, but I believe they've come to terms with the
23 Applicant or with someone, and therefore we are not
24 representing them in this matter.

25 EXAMINER CATANACH: Mr. Bruce, are all these

1 parties listed on your prehearing statement?

2 MR. BRUCE: I'm afraid they are.

3 EXAMINER CATANACH: Okay. And do you have a
4 witness, Mr. Bruce?

5 MR. BRUCE: Yes, I may have one witness.

6 EXAMINER CATANACH: Okay, can I get the witnesses
7 to stand and be sworn in?

8 (Thereupon, the witnesses were sworn.)

9 RAYE P. MILLER,

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

12 DIRECT EXAMINATION

13 BY MR. CARR:

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

15 A. My name is Raye Paul Miller.

16 Q. Where do you reside?

17 A. Artesia, New Mexico.

18 Q. By whom are you employed?

19 A. Marbob Energy Corporation.

20 Q. What is your current position with Marbob Energy
21 Corporation?

22 A. I'm listed as an officer of the company, as
23 secretary/treasurer.

24 Q. Have you previously testified before this
25 Division?

1 A. Recently.

2 Q. At the time of that testimony, were your
3 credentials as a practical oilman accepted and made a
4 matter of record?

5 A. Yes, sir.

6 Q. Are you familiar with the Application filed in
7 this case?

8 A. Yes, sir.

9 Q. Are you familiar with the status of the lands in
10 the subject area?

11 A. Yes, sir.

12 MR. CARR: We tender Mr. Miller as a practical
13 oilman.

14 EXAMINER CATANACH: Any objection, Mr. Bruce?

15 MR. BRUCE: No objection.

16 EXAMINER CATANACH: Mr. Miller is so qualified.

17 Q. (By Mr. Carr) Mr. Miller, would you briefly
18 state what Marbob seeks with this Application?

19 A. We seek an order pooling all the minerals from a
20 correlative depth below 4230 in the BTA JVP Puckett Number
21 1 well, located 1880 from the north, 1880 from the east in
22 Section 25 of 17-31, to the base of the Morrow formation,
23 underlying the following described acreage in Section 12 of
24 17-31, Eddy County, New Mexico:

25 It would be the south half for all formations and

1 pools to be developed on 320-acre spacing, which includes
2 the Undesignated Fren-Morrow Gas Pool

3 the southwest quarter for all formations or pools
4 developed on 160-acre spacing;

5 and the northeast of the southwest for all
6 formations or pools developed on a 40-acre spacing, which
7 could include, but not limited to, the Undesignated
8 Grayburg-Jackson-Seven Rivers-Queen-Grayburg-San Andres and
9 Undesignated East Fren-Paddock Pool, but again it would
10 only be as correlative depth below 4230 in that BTA JV
11 Puckett well down in Section 25.

12 Q. Could you identify the subject well for us?

13 A. It is the Knockabout Federal Number 1.

14 Q. And where will it be drilled?

15 A. 1830 from the south line and 1980 from the west
16 line, unit letter K of Section 12.

17 Q. Would you identify what's been marked Marbob
18 Exhibit Number 1 and review the information on this
19 exhibit?

20 A. Exhibit Number 1 is again a copy of a Midland
21 map, showing a good portion of Township 17 South, Range 31
22 East. The orange outline actually shows the 320-acre
23 spacing unit. Obviously, the smaller units would be inside
24 of that. It shows the proposed well location as that dot
25 roughly to the south and west of Number 13, or Section 12.

1 And it actually outlines the federal leases in
2 this area that largely have common ownership. The blue
3 lease is one federal lease. The green lease is another
4 federal lease. And our review of the area indicates that
5 all of the working interest owners below that specific
6 depth are actually common across largely those four
7 sections.

8 Q. What is the primary objective in the Knockabout
9 well?

10 A. The primary objective is the Morrow formation.
11 It would be in the Fren-Morrow Gas Pool.

12 Q. Let's go to Exhibit Number 2. Would you identify
13 and review that one?

14 A. Yeah, Exhibit Number 2 is a copy of our latest
15 JOA proposal, which -- it shows basically the committed and
16 the uncommitted interest. You can tell it was handwritten
17 down there with the description. I hope nobody's color
18 blind. Basically, the orange are the parties who have
19 committed to the proposal as currently proposed, and I
20 think the green represent the parties who are uncommitted
21 at this point.

22 Q. Approximately what percentage of the interest is
23 voluntarily committed to the well?

24 A. I believe it's about 77 percent.

25 Q. Let's go to what has been marked Marbob Exhibit

1 Number 3, and I'd ask you to refer to this exhibit and
2 summarize for the Examiner your efforts to reach voluntary
3 agreement for the drilling of this well.

4 A. Well, there's a lot of paper there, and probably
5 the easiest thing for me to do is just kind of make a quick
6 summary of what all of it has. There's a copy of basically
7 each letter, a couple of different JOA's that were sent.

8 Our first contact with all the parties was
9 actually back in December of 2003. At that time we
10 attempted to purchase interest in the four sections, to
11 obtain a position in the acreage. We basically offered
12 \$1500 per net acre for the rights that are described under
13 this compulsory pooling.

14 The shallow rights in part of the sections have
15 been segregated off, or in all four of the sections have
16 been segregated and have different owners, and so our offer
17 was basically for the -- what's called a deep rights. That
18 offer would have totaled \$3.8 million, had everybody
19 elected to sell.

20 Our next contact was actually fairly soon, it was
21 December 12th. It amended the proposal and added options,
22 including the option to retain a small override with a
23 different cash offer and also a term-assignment option.

24 Our next contact was December 22nd of 2003. We
25 extended the offer deadline because of requests from a

1 couple of the parties and also it being the holiday season.

2 Our next contact was January 7th of 2004. We re-
3 extended the offer and sweetened one of the proposals with
4 more overriding royalty being retained.

5 And then the next proposal that went to every
6 party was actually done in June 8th of this year, which was
7 a well proposal. It included a JOA and an AFE. The JOA
8 was an attempt to actually cover all four sections and the
9 two leases that included the common ownership.

10 There was a follow-up letter that was done on
11 July 19th with a farmout option, with a back-in and a
12 proration, or a back-in on a proration-unit basis, with a
13 continuous-development clause.

14 July 26th, there was a follow-up with B of A
15 regarding some JOA changes requested by Bank of America,
16 which is trustee for one of the parties. Again, we were
17 still at that time trying to maintain a four-section JOA.
18 We scheduled a force-pooling hearing for October 7th.
19 Based on further discussions with several of the parties,
20 we continued the case until November 4th.

21 We sent the parties on October 8th a revised JOA,
22 which only covered the 320-acre proration unit, and the
23 revised JOA attempted to address most of the concerns that
24 it expressed regarding the previous provisions of the JOA.

25 We were contacted by one of the parties late in

1 October regarding some possible additional JOA changes that
2 they would like to see. There have been many parties in
3 this agreement, and we were a little hesitant to try to
4 negotiate with just one. They indicated they thought if
5 some of these issues could be resolved, that all the
6 parties would agree and thereby avoid having to come to
7 compulsory pooling.

8 We actually sent a proposal, which was approved
9 by Hudson Oil Company, on October 28th, basically with a
10 deadline of November 1st, which is obviously a short fuse,
11 but all the parties were aware of our negotiations as they
12 went forward, but basically that offer asked for all the
13 parties to agree, or that offer was withdrawn.

14 All the parties, unfortunately, agreed except for
15 one party representing two of the interests. And on
16 November 2nd we notified them that we had had a failure by
17 all the parties to agree and advised them that the hearing
18 was continued until today.

19 In the spring of '04 -- you may be recognizing a
20 significant gap between the early offers and then when the
21 actual well proposal came out -- there was discussions
22 between us and BP America Production Company. BP had at
23 one point prior to some of our offers actually sent
24 requests to many if not all the parties for possible term
25 assignment of part of this acreage. BP had an interest in

1 seeing about getting a well drilled.

2 We tried to negotiate with BP to see if we could
3 work some type of deal where they would be involved. That
4 formal proposal was sent to BP in April. We failed to work
5 a deal with BP, and that deal fell apart in May or June of
6 '04.

7 In May of '04 we actually sent letters -- there
8 are some overriding royalty owners on at least one of the
9 leases, and we sent offers attempting to buy the overriding
10 royalty owners out of this area. We didn't have any
11 success in that.

12 Our offers back in the winter of '03 actually did
13 result in purchases of part or all of seven different
14 parties' interest in the spring of '04, and we secured a
15 term assignment on one party's interest. So there was some
16 movement by some of the parties, but there still remain
17 several parties uncommitted.

18 Q. In your opinion, have you made a good-faith
19 effort to reach voluntary agreement with all interest
20 owners in the subject pooled units, or two units you're
21 seeking to pool?

22 A. I think I've tried just about everything I could
23 try.

24 Q. In your opinion, are negotiations at an end?

25 A. I don't believe there's anything I can offer to

1 the folks that would actually what they would like.

2 Q. Would you identify Marbob Exhibit Number 4,
3 please?

4 A. Exhibit Number 4 was the AFE that went out with
5 the -- I believe the latest JOA in October. It shows that
6 the dryhole cost for the well is anticipated to be \$780,938
7 and the completed well cost \$1,420,288.

8 Q. Are these costs in line with what has been
9 charged by other operators for similar wells in the area?

10 A. It's a thing where we believe that these costs
11 are reflective of the actual costs but are actually below
12 what some costs would be proposed by other parties.

13 I'm familiar, because of another deal that we're
14 working on, with a Morrow well that was proposed by BP in
15 north Eddy County, and its completed cost was estimated to
16 be slightly over \$2 million. It was slightly shallower and
17 there were no additional casing strings proposed, and so I
18 believe these costs are well within line of very reasonable
19 costs.

20 Q. Would you identify Exhibit 5?

21 A. Yeah, Exhibit 5 is actually just the accounting
22 procedures, which is taken out of the JOA that was included
23 in Exhibit 3, or the second JOA included in Exhibit 3,
24 which outlines the accounting procedures that would be used
25 under the proposed well.

1 Q. And this is a COPAS form?

2 A. Yes, sir.

3 Q. Does it provide for periodic adjustments in the
4 overhead and administrative charges to be assessed for the
5 well?

6 A. Yes, it does provide for that.

7 Q. Does Marbob request that the administrative and
8 overhead costs set by the order that results from this
9 hearing be adjusted in accordance with these COPAS
10 procedures?

11 A. Yes.

12 Q. Have you made an estimate of overhead and
13 administrative costs while drilling and also while
14 producing the well?

15 A. As you can see on page 4 of that exhibit, the
16 requested -- or the proposed rate for a Morrow producer was
17 \$550 for a producing well, \$5500 for a drilling well rate.
18 It was actually proposed at the same time for any other
19 formation it would be \$400 and \$4000. Those would be
20 shallower depths. And based on the last, earlier case we
21 heard, those rates seemed reasonable.

22 Q. And this is actually the accounting procedure
23 from the JOA for the subject well?

24 A. Yes, it is.

25 Q. Do you recommend that these figures be

1 incorporated into the order that results from today's
2 hearing?

3 A. Yes, we would.

4 Q. Does Marbob request that a 200-percent charge for
5 risk, as authorized by statute, be imposed on each cost-
6 bearing interest not voluntarily committed to the well?

7 A. Yes, we do.

8 Q. Does Marbob seek to be designated operator of the
9 well?

10 A. We actually are requesting this on behalf of
11 Hudson Oil Company of Texas. Hudson Oil Company operates
12 the shallow production to the south of this in these
13 leases, and is actually -- through the various entities or
14 working interest owners and this, we have discussed with
15 Hudson or have actually developed this project in
16 conjunction with Hudson, and Hudson is a smaller operator,
17 at least in this area, than we are.

18 We currently have three drilling rigs that are
19 working on us continuously, that are capable of drilling
20 wells to the depth indicated here, and we had agreed with
21 Hudson to let one of those rigs, if a project should be
22 finalized, to be scheduled in whereby they would actually
23 use one of those three rigs, use the associated supervisory
24 and wellsite personnel that are following those rigs
25 currently.

1 In today's environment actually going out and
2 seeking a single-well-type bid can be very difficult. Most
3 of the good rigs are very busy, and also the associated
4 service companies. We have a wellsite consultant that
5 actually follows each one of our deep rigs as well as
6 mudloggers and all that we're using rig to rig, and so
7 we're able to keep the same -- what we believe are
8 qualified personnel following them. And Hudson saw that as
9 a benefit for this project.

10 Q. Marbob owns 21 percent of the working interest in
11 this well?

12 A. Yes, sir.

13 Q. Is Hudson and Hudson an acceptable operator to
14 Marbob?

15 A. Yes, they are.

16 Q. You testified that approximately 77 percent of
17 the working interest was voluntarily committed to the well?

18 A. Yes.

19 Q. Have the owners of that 77-percent working
20 interest also accepted Hudson and Hudson as an appropriate
21 operator for the well?

22 A. Yes, we've talked to Yates Petroleum. Yates has
23 acquired roughly a 32-1/2-percent interest in this well.
24 They have no problems with the operation being conducted as
25 it's proposed.

1 Q. How long has Hudson and Hudson been an operator
2 in the area?

3 A. Longer than I've been in the oil and gas
4 business. I started in 1980, and I believe that they were
5 operating these wells, shallow wells, before I came to work
6 for Marbob.

7 Q. Do you consider them a prudent and responsible
8 operator?

9 A. I have no reason to not believe that they can
10 operate this well.

11 Q. Is Marbob Exhibit Number 6 an affidavit
12 confirming that notice of this hearing has been provided in
13 accordance with the Rules of the Division?

14 A. Yes.

15 Q. Were Exhibits 1 through 6 prepared by you or
16 compiled under your direction and supervision?

17 A. Yes.

18 MR. CARR: May it please the Examiner, at this
19 time we move the admission into evidence of Marbob Exhibits
20 1 through 6?

21 EXAMINER CATANACH: Any objection?

22 MR. BRUCE: No objection.

23 EXAMINER CATANACH: Exhibits 1 through 6 will be
24 admitted.

25 MR. CARR: That concludes my direct examination

1 of Mr. Miller.

2 EXAMINER CATANACH: Mr. Bruce?

3 CROSS-EXAMINATION

4 BY MR. BRUCE:

5 Q. Mr. Miller, I think at the beginning of your
6 testimony you said that the pooling would only be as to
7 depths below 4230 feet subsurface; is that correct?

8 A. It's actually correlative depth, because the well
9 -- or identified is actually in Section 25, which is three
10 miles to the south, but I believe that is the identifying
11 marker that actually segregates the rights of the different
12 parties.

13 It's been identified by some folks as being the
14 base of the San Andres in some of the documents, but our
15 geologists don't believe that that's actually anywhere
16 close to the base of the San Andres, and so as a result
17 we've actually been -- or attempted to be very specific,
18 because all of the assignments actually utilize that
19 particular well and depth marker.

20 Q. Correct, correct. The first thing is, the
21 Application -- and Exhibit 6, I think, actually requests
22 pooling from the surface to the base of the Morrow
23 formation as -- it should not be surface?

24 A. No, the surface to that particular shallower
25 depth is not owned by Marbob, is not owned by the same

1 parties as to the deeper. We would only want to pool the
2 interests that are common. We have no interest above.
3 Marbob has no interest above. Some of the parties may
4 have, but we do not.

5 Q. Okay. And -- But as to that correlative 4230-
6 foot depth, below that interest ownership is common, your
7 title exam shows?

8 A. Yes.

9 Q. Okay. In going through your Exhibit 3, which is
10 your correspondence, Mr. Miller, there's quite a bit of it,
11 so I'll try to minimize, but the first -- the very first
12 page that -- your initial letter went out, and it was more
13 of an acquisition letter than a well -- it was an
14 acquisition letter, rather than a well proposal?

15 A. Yes, at the time of the first letter, we actually
16 owned no rights in the four sections, and so it's a little
17 bold of folks -- it may be a new technique in New Mexico,
18 but it's a little bold to actually send a well proposal
19 when you don't own any interest on HBP acreage.

20 Q. And I'm more interested in -- for quite some time
21 you were -- all of your proposals, whether it was
22 acquisition or well proposals, all concern the four-section
23 area?

24 A. Yes, we -- in discussions with Hudson, they
25 indicated that the rights were largely common. They

1 indicated there was no agreement or no JOA covering those
2 depths. There had been an old JOA between the parties,
3 there had been some litigation involved between the
4 parties, and the ultimate resolution of that terminated the
5 JOA below that 4230 depth. I believe that JOA still
6 remains in effect as to the shallow rights by the owners of
7 those shallow rights, but there was no agreement between
8 the parties as to the deeper depths.

9 And so if we're successful on this proposal, then
10 if we try to do additional development, if you have an
11 existing JOA that covers all the parties' rights, then it's
12 easy to propose a well. The parties then have elections
13 they can make under the JOA, and you can progress forward
14 in a much more timely fashion.

15 Q. One of your next letters, the June 8th letter --
16 and the one I'm looking at is a letter to the S.J. Iverson
17 Trust and the Bank of America --

18 A. Right.

19 Q. -- this was a well proposal, a specific well
20 proposal?

21 A. Yes.

22 Q. But again, it covered -- you were still seeking
23 to include all four sections?

24 A. It was the specific well that is being proposed.
25 We proposed a JOA under that proposal for all four

1 sections, again, hoping that we could actually reach
2 agreement with the parties. The seven or eight interests
3 that I described earlier that we had picked up, at that
4 time, were all interests that covered all four sections,
5 and so we were trying to maintain that uniformity of
6 interest and agreements across the entire tract, yes.

7 Q. Now, attached to that is an AFE, and this AFE
8 designates Marbob as operator, does it not?

9 A. The AFE was prepared by our office. They showed
10 it as Marbob. The JOA was -- actually showed Hudson. All
11 the documents were prepared by our office. The preparer is
12 Sherrill Baker, he's our drilling superintendent. It's a
13 mistake in identifying us as operator.

14 Q. Okay, that was going to be my next question. I
15 wondered who Sherrill Baker was.

16 A. Sherrill Baker works as an employee of Marbob,
17 he's our drilling superintendent. He actually is the
18 person who oversights all five of our rigs. But as I said,
19 we actually have a wellsite consultant who is hired
20 specifically for each one of the deep rigs. The two
21 shallow rigs are actually directly overseen by Mr. Baker.

22 Q. Okay. And then right behind that is the first
23 JOA. Again, that covered all four sections?

24 A. Yes, sir.

25 Q. What type of penalty or nonconsent penalty did

1 this JOA provide for?

2 A. It provided for a 500-percent nonconsent penalty.

3 Q. Did it also contain language regarding forfeiture
4 of shallow rights?

5 A. Yes, it did. It also had a preferential right-
6 to-purchase clause inside of it.

7 Q. Okay. And at least those were some of the
8 objections that the Iverson trusts and others had to it,
9 was it not?

10 A. We were contacted by Bank of America in regards
11 to some of those items. I explained to two of the parties
12 who contacted me that the JOA's that we had just recently
13 entered into with Yates Petroleum and Chesapeake, one well
14 was in Lea County, the other was in Eddy County, both were
15 Morrow projects, and Chesapeake and Yates had proposed a
16 500-percent penalty under their JOA's, and those were
17 signed by us. So it's not something that is out of the
18 realm of reason to have a 500-percent penalty.

19 You also mentioned the loss of shallow rights,
20 type of language. It actually addressed a nonconsent in a
21 proration unit related to a shallow development. We are
22 currently under a JOA with Atlantic Richfield, now BP
23 Production Company of America, which contained -- well, it
24 covered a lot of acreage and contained our development of
25 both deep and shallow provisions under it.

1 In the development of some of our shallow
2 projects with BP we have recognized that having an
3 individual option per well on a 40-acre proration unit
4 doesn't seem to adequately account for the real risks
5 undertaken, then, by the operator, particularly where the
6 nonparticipating party actually is retaining offset
7 proration units, possibly completely surrounding the
8 proposed operation.

9 And this language basically was an attempt to
10 increase the penalty for not participating in shallow
11 horizons, and it was based, as many changes to JOA's are,
12 based on our experience of having carried BP in various
13 proposals with them retaining the offset option. So if we
14 make a good well, they retain their interest in all the
15 offsets, and this was seen as a way to try to remedy some
16 of that risk factor contained for a shallow proposal.

17 Q. Okay.

18 A. Are you going to also note that the October 1st
19 does not contain those penalties, and those items were also
20 changed in the later JOA that is now the one that has been
21 proposed to each of the parties?

22 Q. The October 1 JOA, which is in your Exhibit 3?

23 A. Yes.

24 Q. Three, yes --

25 A. Yes.

1 Q. -- excuse me. And the October 1 JOA was the
2 first proposal by you, which only covered a specific half-
3 section well unit?

4 A. At that point we're down to a compulsory pooling.
5 It was obvious to me that we were force-pooling, it was
6 obvious to me that we were not going to reach agreement on
7 a four section. As a result, there was no reason not to
8 see if we couldn't try to make agreement and get to a 320
9 and get the well drilled and then worry about the offset
10 proration at the next. My hope was that if we could get
11 this one under our belt, it would set, hopefully, a
12 precedent for what we would then be looking at if any of
13 the offset acreage was then proposed for development.

14 Q. And this October 1 JOA was sent to the parties
15 after the pooling Application was filed?

16 A. That is correct.

17 Q. Now, with respect to the negotiations with the
18 parties I'm representing, Mr. Miller, other than the
19 letters, have you had phone discussions with the various
20 interest owners?

21 A. I've had discussions with several of them, yes,
22 sir.

23 Q. And just for the record, could you identify who
24 they were?

25 A. I've certainly talked with Mr. Ard, I believe

1 I've talked with your witness.

2 Q. Mr. Grappe.

3 A. Mr. Grappe. I didn't want to mispronounce his
4 name. And I've talked with Wendell Iverson, I've talked
5 with Bank of America, I think I've talked with at least
6 someone representing almost all the parties you represent.

7 Q. To the best of your knowledge, did Hudson Oil
8 Company of Texas make any effort to contact the parties?

9 A. I don't believe they did. I believe all of the
10 correspondence, as far as I'm aware, has been done out of
11 our office.

12 I will tell you that each time -- It's been an
13 interesting deal. Each time I've received some type of
14 correspondence or discussion with one of the parties, then
15 I get on the phone and talk to Hudson as to what the issue
16 is. They've reviewed and come back with, you know, what
17 they believe is reasonable and fair.

18 Each one of the offers, including the JOA's and
19 all, have been sent out after their acceptance of the forms
20 and the terms, such that, you know, the October 1st JOA is
21 very different in form to the previous JOA in regards to
22 the various terms that were proposed in the acreage, but
23 Hudson agreed to all those changes prior to it being sent
24 out, so that I not only had our concurrence but their
25 concurrence prior to submitting it.

1 Q. Okay. And your Exhibit 4, which is the current
2 AFE, I believe --

3 A. Yes, sir.

4 Q. -- has Hudson Oil Company of Texas ever signed
5 this or approved of it?

6 A. I think they have signed the JOA and the AFE. I
7 don't have it in my possession, but I mean, they're the
8 operator. I'm just worrying with the parties who haven't
9 signed up, but I can get that if you would like, but...

10 Q. And again, Marbob did prepare this AFE?

11 A. Marbob did prepare it. It is our -- either -- we
12 have two Patriot rigs and one Patterson rig that are all
13 capable of drilling this depth of well, and our discussions
14 with Hudson is that they would allow us -- or that they
15 would actually utilize one of those rigs, they would
16 actually contract the services, just as we have done, and
17 as a result, that's why we prepared the AFE, because it's
18 costs based on who we were using and our experience.

19 Q. Now, in your Exhibit 3, the final letters, the
20 letter dated November 2, where I believe you withdrew your
21 offer, your prior offer?

22 A. Yes, sir.

23 Q. Now, was it your understanding at that time that
24 certain parties would accept your offer?

25 A. Yes, sir.

1 Q. And who were they?

2 A. Our offer of October 28th specifically said that
3 it was made if all parties agreed so that we didn't have to
4 come to this hearing, because I wanted to reach agreement
5 and not attend one of these. I believe all the parties
6 agreed to the proposal of October 28th, outside of the two
7 interests represented by the Ards.

8 Q. The Mary Ard and Edward Hudson Trust 4?

9 A. Yes, sir.

10 Q. But you would not accept the Iversons' -- the
11 Iversons said they would sign your deal, but you made it
12 contingent upon everyone signing?

13 A. They did sign the deal. They did send back
14 signed AFE's and JOA's based on my October 28th proposal,
15 but as I explained to Wendell Iverson, when we -- I had a
16 week's vacation where I took my mother, who has
17 Alzheimer's, to Los Angeles to locate her in a facility. I
18 moved her furniture, and I spent that entire week, at least
19 an hour or more every day, negotiating with Wendell in
20 regards to the items that came forward on the October 28th
21 letter.

22 And in the first discussion I had with him I
23 says, Well, Wendell, do you think everyone may agree if we
24 resolve these issues?

25 He says, Well, I'm pretty sure the bank and I

1 will. I don't know about the Ards but I'll be talking to
2 them, and I think there's a chance.

3 And I says, Well, if everyone will agree then I
4 don't mind trying to do this, but I don't want to negotiate
5 single changes for one set of parties and then still have
6 another set of parties that are out there that are still
7 there. I mean, there's just so many folks involved and so
8 many problems in this.

9 And I explained that to him, and he understood
10 that it was contingent on trying to get everybody done.
11 And we spent days faxing stuff back and forth, and every
12 time I thought I had his issues addressed, he would wake up
13 the next morning and realize that maybe something else
14 needed attention, and we would negotiate another day on
15 that, and I'd have to talk to the Hudsons. And my vacation
16 was hell with my mother, but anyway it may also have been
17 related to the circumstances of why I was out there, and it
18 was a tough week.

19 Q. Well, I understand that, Mr. Miller.

20 What is your understanding of why the Ards would
21 not reach agreement with Marbob or Hudson Oil Company of
22 Texas?

23 A. You asked me if I had conversations with the
24 parties. I specifically called Mr. Iverson and Mr. Ard
25 both, I believe on November 1st, to see if there was any

1 chance that we would actually reach agreements, because I
2 had not heard from the Ards.

3 At the time of that conversation -- and I think
4 Mr. Grappe was there also -- I asked if there was any type
5 of agreement or deal that we could make to possibly resolve
6 this. Mr. Ard's response was that if someone other than
7 Hudson was the operator -- myself, Yates -- I don't say
8 myself -- Marbob, Yates -- that he would be agreeable to
9 join. But other than that, he was not agreeable. And
10 that's what prompted my letter of the 2nd, because I don't
11 believe that that's reasonable.

12 Q. But you understood that actually all of the
13 people I'm representing had no problem with Marbob Energy
14 as operator of the well?

15 A. I believe they would have had no problem, that's
16 correct.

17 Q. Or Yates Petroleum, for that matter?

18 A. We participate with Yates. If Dave's still here,
19 I love him.

20 Q. In getting to that issue, since Marbob is an
21 experienced operator, why aren't you seeking to be named
22 operator?

23 A. These leases are federal leases. It winds up
24 being a thing where Hudson is the operator of the shallow
25 horizons. Those shallow wells are subject, I believe, to

1 federal royalty reduction. If the operator of a property
2 which is eligible for federal royalty reduction then drills
3 a well under the current regulations to a deeper horizon
4 that is a successful oil well producer, then the properties
5 are also eligible for the royalty reduction rate of the
6 shallower horizons.

7 We have a situation in Section 27 of 17-29 where
8 we operate the Barnsdall Federal. We only own the Yeso
9 rights in that lease. The shallow rights are owned by
10 Vintage Petroleum and another local party. Vintage
11 Petroleum is out of Artesia, or Vintage Drilling is out of
12 Artesia, New Mexico. They operate the Robinson-Jackson
13 unit on those same lands at shallow horizons, they're
14 eligible for royalty reduction. We approached them before
15 we drilled the Yeso wells to see if we could work some type
16 of deal whereby the ownership would be common above and
17 below, and drill those wells. It had the advantage of
18 actually being able, then, to commingle possibly or
19 ultimately utilize the wellbores at different depths. It
20 also had the advantage of the royalty reduction.

21 We were unsuccessful in that project of reaching
22 agreement. We drilled those wells as Marbob Energy. We
23 pay a 12-1/2-percent royalty on those wells. If Vintage
24 had drilled those wells as operator with ownership in that
25 property, we believe that they would have been eligible for

1 Vintage's royalty rate, which is probably 1 1/2 to 2
2 percent, instead of 12 1/2.

3 We have another property in 17-30, which is
4 called the Dale H. Parke A. It was a similar situation
5 where BP America and Marbob owned rights to the Yeso. The
6 shallow rights were owned by Premiere Production Company
7 and Dave Barrett. We negotiated with the Barretts and
8 Premiere to see if we could actually make the interest
9 common. A deal was worked out between the parties, Premier
10 drilled those wells, and the royalty rates on those wells
11 are substantially lower because of the royalty reduction.
12 That's only available on oil, and it's only available on
13 oil well pools; it's not available for gas.

14 But there is actually an economic reason for
15 having Hudson be the operator of this property. We don't
16 anticipate any shallow oil below that 4230 in this area,
17 but that's certainly a possibility, so why would you not
18 want to take that risk by a different operator?

19 Q. Okay. So again, the major objective is the
20 Morrow, or at least the deep gas zones?

21 A. That's correct.

22 Q. And we're not seeking to pool down to that
23 correlative interval of 4230 feet, but I believe you just
24 said you do not expect oil production below that depth?

25 A. Don't expect it, but it's always possible.

1 That's the beauty of the Permian Basin. If you ask
2 Mewbourne about their Fren 8 lease to the south here, they
3 were drilling a Morrow and they hit a beautiful Strawn
4 section and, my goodness, that geologist looks like the
5 brightest person on earth.

6 So there are multiple pays, and this area
7 certainly could have Yeso, Paddock, Wolfcamp, there could
8 be some oil, Cisco-type production.

9 Q. Did Marbob include any oil production in its own
10 internal economic analysis for this project?

11 A. We don't do internal economic analysis, we just
12 look at the prospect.

13 Q. Do you know how many Morrow wells Hudson Oil has
14 drilled as operator in New Mexico?

15 A. No. I know they drilled one well to the south in
16 Section 13, but I'm not aware of how many wells they've
17 drilled.

18 Q. Was that well in Section 13 successful?

19 A. I believe it was drilled to total depth and was
20 plugged back to a shallower horizon. It was not completed
21 successfully in the Morrow.

22 Q. Do you have any idea of the size and nature of
23 Hudson Oil's technical staff?

24 A. No, I believe they actually have a real engineer.
25 Randall, I think, is actually qualified. I think he worked

1 for Burnett and actually has an engineering degree, which
2 is more than I have, so...

3 Q. Did -- I thought I heard you say that since --
4 apparently the rig that would be used for this is a rig
5 that Marbob currently has under contract; is that correct?

6 A. Yes, sir, that's correct.

7 Q. And would any Marbob supervisory personnel be
8 used on this well?

9 A. Yes, sir, I believe that the consultant that
10 we're using for the drill site work will actually be
11 utilized. I believe our drilling superintendent will be
12 the first party that he calls if there's a problem. I
13 believe that our geologists will be actually following the
14 well on a daily basis, the mudloggers will actually be
15 reporting directly to them, and I believe that there is
16 certainly the chance that we'll actually be issuing the
17 daily reports out of our office, just because of the time
18 limits of information, directly to all of the non-op
19 parties, rather than it actually coming out of Hudson,
20 since they're located in Forth Worth.

21 Q. So it sounds like the majority of people there
22 would be Marbob or Marbob contract personnel?

23 A. I don't believe that that's unreasonable to
24 assume. That's the agreement that we have with Hudson.
25 And it's not in writing but, you know, obviously they can

1 change that. They're operator. But they've indicated a
2 willingness to do that, because it would make it a very
3 efficient operation.

4 Q. Okay. Do you know if they have a New Mexico
5 office?

6 A. I believe they do. I met a man, I know that they
7 have -- or they produce all of these wells, and I think
8 they have personnel that work directly for them located in
9 this area.

10 Q. Will the joint account be billed for the services
11 that Marbob is providing?

12 A. The joint account will only be billed in
13 accordance with COPAS. I think the consultant supervisor
14 will actually be billed, but I don't believe there will be
15 any bills for our geologist or our time.

16 We see -- and I mean, our company is different,
17 Mr. Bruce. We don't see operations as anything but a pain
18 in the neck, but it's a necessary pain in the neck, and
19 unlike some operators who I won't mention on the record, we
20 don't see operations as a profit center, we see them just
21 as a way to develop reserves.

22 And actually we are probably one of the lowest
23 cost operators in the area. We actually don't, under our
24 billing, currently do any adjustment under the COPAS deal,
25 and when I get the BP auditor in every year, I sit down and

1 we have a come-to-Jesus meeting with him, explaining to him
2 that if he wants to nit-pick us to death, he better make
3 sure that it's nit-picking greater than the value of the
4 COPAS adjustments, because we could make those retroactive
5 adjustments, but we don't because that's not the way -- The
6 accountants have got this industry screwed up, but I guess
7 that's a little bit of a rhetoric.

8 I have a \$1271-a-month overhead rate from Chev-
9 Tex in the Lusk for a 100-MCF-a-day gas well that has no
10 tanks, it's flowing into Duke's low-pressure gathering
11 system, and it doesn't even have a separator or anything on
12 location. It flows directly into a pipeline. And they're
13 charging me \$1271 a month, legally, under COPAS, and I'm
14 the only partner.

15 Q. Well --

16 A. Sorry, I digressed a little bit there, but you
17 can tell it's a --

18 Q. Well, at least Mr. Carr and I escaped criticism.

19 A. Operations are a very difficult thing. I mean,
20 they're a necessary evil, but they're very difficult.

21 Q. Who will be in control of the costs on this well?
22 Hudson or Marbob?

23 A. Hudson is the operator. They have actually --
24 under the way our agreement has worked with Premier, which
25 we described to them and they seem to have no problem of,

1 we'll actually approve the invoices by the parties who are
2 on site to make sure, you know, that they're proper. And
3 then they'll be forwarded to Hudson for payment. Hudson
4 will actually pay the invoices and then bill the parties.

5 Q. Does Hudson Oil Company of Texas own any working
6 interest or any interest in this well?

7 A. I don't believe so, but I believe there are
8 numerous parties from that Exhibit Number 2 who are related
9 to Hudson Oil Company of Texas. I believe Edward R. Hudson
10 Trust 2, Trust 3, the Javalina Partners, the Zorro
11 Petroleum, virtually everybody with a 616 Texas Street
12 address is probably related.

13 You might also note that there are many companies
14 who have an operating entity that operates for them, and
15 all of their interests, for liability purposes, are held in
16 other entities. I think Magnum-Hunter operates under Gruy
17 as their operating company. It's not uncommon to see that
18 in the business today.

19 Q. Okay. Well, since Hudson Oil owns no interest in
20 this property, you know, what would my clients' remedy be
21 if Hudson Oil Company of Texas conducts imprudent
22 operations?

23 A. Probably similar to what Marbob and Yates' would
24 be.

25 Q. Which is -- ?

1 A. I don't know, I'm not a lawyer, you are.

2 Q. How long does Marbob anticipate this well will
3 take to drill?

4 A. Somewhere between 35 and 45 days. It's
5 anticipated that if it's a successful well, that casing
6 would be run. I suspect it's drawn up as a 5-1/2-inch
7 casing design to TD. Marbob's geologists and engineers
8 will make recommendation to Hudson in regards to what we
9 believe to be the appropriate completion technique to
10 employ.

11 If Hudson agrees, we would actually rig up one of
12 the five or six -- I can't keep track of how many pulling
13 units we have working for us -- to actually conduct the
14 completion operations on behalf of Hudson.

15 If it's successful, we would probably also then
16 follow up with our field supervisors to order equipment on
17 behalf of Hudson and have the hired roustabout crews
18 actually build production facilities. We also have in our
19 small company staff a young man who strictly does gas and
20 crude oil marketing. He would be looking at trying to
21 ascertain the best-price gas connection for this well, and
22 we would actually look at trying to make recommendations to
23 Hudson on that for the best connection at the highest price
24 that we could get.

25 Q. That's someone who works for Marbob?

1 A. Yes.

2 Q. Okay. Is it -- If people are subject to a
3 pooling order, is it Marbob's general procedure to sell all
4 the gas?

5 A. The wells that we operate, we tend to sell all
6 the gas under the JOA, unless a party specifically wants to
7 do something else. Most folks in a nonoperated situation
8 believe that unless the operator actually has an associated
9 gas pipeline entity or some type of marketing company, that
10 it's probably in their best interests to actually sell
11 under the JOA because of the lack of need for additional
12 facilities and the split stream and the imbalance-type of
13 issues that could arise.

14 Q. It's a lot different than it was 20 years ago,
15 isn't it, Mr. Miller?

16 A. It can be very interesting.

17 This area is also -- while it may not be a worry
18 for most of you all, this area is in the middle of the sand
19 dune lizard habitat. The location has been approved by the
20 Bureau of Land Management for drilling. We were obligated
21 to submit under their new interim management guidelines a
22 plan of development regarding all future locations that
23 might be developed under the blue lease. We narrowed the
24 scope of that plan of development with Hudson to only
25 identify possibly two additional Morrow locations in

1 Section 12. We believe that the BLM would look unkindly if
2 we didn't show some possible future development.

3 The plan also identified that if there were
4 shallow horizons identified that might potentially be
5 productive that the plan of development would have to be
6 altered with the BLM to reflect the new information.

7 It's a -- this location itself has actually been
8 moved from the original spot it was located because of high
9 sand dunes and suitable habitat. The geologist did not
10 believe that the slight movement required by the BLM was
11 adverse to the project's feasibility.

12 Q. Movement of the well location?

13 A. Yes, sir, surface location.

14 Q. Just a few more, Mr. Miller. Has Marbob
15 participated in any wells drilled by Hudson Oil Company of
16 Texas?

17 A. This is our first adventure.

18 Q. Is Hudson Oil Company of Texas more -- what might
19 be called a production company, rather than an exploration
20 or drilling company?

21 A. I mean, you know, I mentioned Vintage Drilling
22 there earlier. You might call him more of a production
23 company. But I know that he drilled four or five wells
24 here a few years ago when oil prices were high, you know,
25 so I mean if you're bonded, you know, you have the ability

1 on your leases to actually drill or produce, or both.

2 MR. BRUCE: That's all I have, Mr. Examiner.

3 MR. CARR: No redirect.

4 EXAMINATION

5 BY EXAMINER CATANACH:

6 Q. Mr. Miller, can I get a copy of just that section
7 of that type log on that well that you've referenced --

8 A. Sure.

9 Q. -- the BTA well? Just a little something that
10 shows the -- gives the well name and location and maybe
11 the --

12 A. Right.

13 Q. -- formation that we're talking about?

14 The -- I believe it was the October offer that
15 was withdrawn in November. Is that now off the table?

16 A. The October 28th offer was actually withdrawn,
17 yes.

18 Q. So the parties that were willing to sign up can
19 no longer do so under that offer?

20 A. No, our letter of November -- or our last letter
21 basically said that, yes, that was withdrawn, and we asked
22 them to submit an AFE/JOA based on the October 8th proposal
23 if they wanted to participate.

24 We believe that the conditions that were proposed
25 under October 8th are extremely reasonable in relation to

1 what we see other folks proposing for the same type
2 operations, and the October 8th was modified substantially,
3 particularly with risk penalty, with the adverse shallow
4 type of loss of interest, preferential right of purchase
5 was taken out.

6 There were many modifications that were made
7 based on requests by part of the parties who are still in
8 opposition after the original four-section JOA was
9 submitted.

10 Q. The parties -- they were aware that that offer of
11 October 28th was only -- was contingent upon everybody
12 signing up for it, were they not?

13 A. It was -- Yes, they all were, that was the whole
14 discussion with them throughout the negotiations, because
15 it was an attempt to not have us come forward to Santa Fe,
16 to this hearing, and that was how it was presented to them,
17 completely through every day's discussion.

18 Q. But in your opinion there still is a very
19 reasonable, viable offer out there that they can agree to,
20 even if it's late time?

21 A. There is more than a reasonable -- yes, a very
22 reasonable offer out there.

23 Q. The new JOA, what risk charges does that propose?

24 A. It has the same risk charges as would be under
25 this. It's a 300-percent nonconsent, which is cost plus

1 200 percent. I believe. Guess I should double-check,
2 probably, if that's correct. Yeah.

3 Q. And the issue of whether Marbob would operate
4 this well, there's no chance that that's going to be
5 changed?

6 A. We -- if it could have, we would already have
7 done it. We basically see no reason that we put ourselves
8 in a position that we would lose possible economic benefit
9 from Hudson Operating by suggesting that the change be to a
10 different operator.

11 EXAMINER CATANACH: Okay, I have nothing further.
12 Anything further of this witness?

13 MR. CARR: Nothing further.

14 EXAMINER CATANACH: You may be excused.

15 MR. BRUCE: Lunch break?

16 EXAMINER CATANACH: You're still going to put on
17 a witness, right?

18 MR. BRUCE: Yes. If you don't want to take a
19 lunch break, Mr. Examiner, what I would suggest is a short
20 break so that I could get together with my witness so we
21 could whittle down what we're going to say.

22 EXAMINER CATANACH: Well, let's take a short
23 break, and then if you could do that -- I mean, if it's
24 possible.

25 MR. BRUCE: Okay. I think it will be.

1 EXAMINER CATANACH: Well, how long do you need?

2 MR. BRUCE: Give us 15 minutes?

3 EXAMINER CATANACH: Okay, let's do that, then, 15
4 minutes.

5 (Thereupon, a recess was taken at 11:55 a.m.)

6 (The following proceedings had at 12:10 p.m.)

7 EXAMINER CATANACH: Okay, if we're all ready,
8 let's go back on the record, and we'll turn it over to Mr.
9 Bruce.

10 RONALD GRAPPE,
11 the witness herein, after having been first duly sworn upon
12 his oath, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BRUCE:

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

16 A. Ronald Grappe.

17 Q. How do you spell your last name, for the court
18 reporter?

19 A. G-r-a-p-p-e.

20 Q. Where do you reside?

21 A. Houston, Texas.

22 Q. What is your occupation?

23 A. I am an oil and gas consultant, serving in
24 various capacities, management, review, land support,
25 litigation support, just various capacities.

1 Q. Have you testified before the Division before?

2 A. No, I have not.

3 Q. Would you go into your educational and employment
4 background?

5 A. Sure, I graduated from Northwestern State
6 University in Louisiana in 1974, graduated from South Texas
7 College of Law in 1986, began in the oil and gas business
8 in January of 1975, have been involved in various
9 capacities with various sized companies, began with
10 Pennzoil, Shell, and also worked for smaller companies like
11 Sams- -- well, Blocker Drilling, Home Petroleum.

12 And my longest tenure in the corporate
13 environment was a company called TGX Corporation, and I was
14 there as an officer for 10 years in various capacities,
15 primarily as vice president of land and legal, was promoted
16 to senior vice president of exploration and production and
17 ultimately president.

18 I've been an oil and gas consultant for the last
19 12 years, and again serving various client bases from
20 individuals to large companies. I've been a consultant for
21 BHP Petroleum, Shell Oil Company and in various capacities,
22 sometimes as litigation support and responding to
23 litigation, sometimes as project review, sometimes as
24 acquisitions and divestiture, sometimes from a management
25 oversight standpoint of coming in and looking at their

1 operations and the efficiencies of their operations in an
2 oil and gas exploration capacity.

3 Q. What is your relationship to my clients in this
4 case?

5 A. I've been retained by the Ards as an oil and gas
6 consultant in various capacities, is to advise them on
7 matters like this, but also to advise them on all aspects
8 of their oil and gas business, as well as some other
9 investments that they have.

10 Q. And in this matter, the Ards have been in a group
11 together with the -- what I will call the Iverson group,
12 and you have had contact with them too, have you not?

13 A. Yes, I have.

14 MR. BRUCE: Mr. Examiner, since this seems to be
15 a -- I would like to qualify Mr. Grappe as a practical oil
16 and gas man, since that seems to be the soup du jour.

17 EXAMINER CATANACH: Any objection?

18 MR. CARR: I have no objection, since it seems to
19 be the best thing you can qualify somebody as.

20 EXAMINER CATANACH: Mr. Grappe is so qualified.

21 Q. (By Mr. Bruce) Mr. Grappe, before we begin into
22 any of the exhibits or anything else, you, along with Mr.
23 Ard, who's sitting to my left here, and the Iversons, have
24 had numerous phone calls as well as correspondence with Mr.
25 Miller on behalf of Marbob?

1 A. Several.

2 Q. And although there have been some hard
3 negotiations, the group of clients I'm representing does
4 not have a problem with Marbob, does it?

5 A. Not at all.

6 Q. You would prefer them to be the operator?

7 A. We've stated that on every telephone
8 conversation.

9 Q. And so it's not your job or your point to be here
10 today to criticize Mr. Miller or Marbob?

11 A. Not in the least.

12 Q. But let's get into -- Although we didn't do an
13 opening statement, one of the big issues is Hudson Oil
14 Company of Texas as operator, is it not?

15 A. Yes, it is.

16 Q. And we'll get into that in a minute. There were
17 other issues which Mr. Miller addressed, such as the
18 penalty under a JOA and things like that, which is -- you
19 know, the penalty under a pooling order when the well unit
20 was first formed or proposed, the penalty under a pooling
21 order was much better than what was proposed under the JOA;
22 is that correct?

23 A. It is correct, initially, and I advised my client
24 that if we couldn't get that negotiated down, that we -- as
25 it related to that particular provision, we'd be better

1 going under the compulsory pooling order.

2 Q. Okay, and we'll get into a couple other things
3 that this group would like a pooling order to address, but
4 let's get into the operatorship issue. What is the basic
5 problem with the Ard-Iverson group, with having Hudson Oil
6 Company of Texas as operator?

7 A. Well, it's past relationships with them. Where
8 Marbob has not participated in a well with them, drilling,
9 my clients and yours have participated in numerous wells
10 with them, primarily from a production standpoint, because
11 our experience with the Hudson Oil Company is that they're
12 not a drilling company. We own prolifically throughout New
13 Mexico, and we've only participated -- and we did the
14 research, we went back ten years, and they've only drilled
15 less than a dozen wells, all shallow wells. They did drill
16 the one deep well, Morrow test that was referred to earlier
17 and was completed -- well, ultimately completed up the
18 zone.

19 Q. It wasn't completed in the Morrow?

20 A. No, it was not. But primarily, without going
21 through a litany of issues, it came to a head, even though
22 there had been numerous letters back and forth, meetings,
23 discussions, disagreements, but it came to a head in
24 litigation that was filed in 1997.

25 Q. And could you identify Exhibit 1 for the

1 Examiner? Just briefly touch upon the main objects of this
2 exhibit.

3 A. Well, the main purpose of this exhibit is to help
4 explain the degree of dissatisfaction that my clients, your
5 clients, I'll call it the Iverson, et al., group had, and
6 still has, with Hudson Oil Company and their related
7 entities and their operations.

8 As is alleged in the complaint -- and it's very
9 succinct -- it dealt with a waterflood that they operated,
10 a shallow waterflood.

11 Q. On this lease?

12 A. On this lease. The subject of this litigation
13 was on this specific lease, yes.

14 The issues primarily -- and I'm summarizing here
15 -- on the waterflood was, an engineering report was done,
16 and the result of the engineering report, they indicated
17 that the whole injection process was not done at pressures
18 that would maximize production. There were wells,
19 injection wells out there, that were just not -- well,
20 frankly, they were doing nothing, they weren't hooked up,
21 they weren't being utilized.

22 Long and short of it, the summary of that report
23 indicated that as a result of the operations, that in
24 excess of 2 million barrels of oil had been lost, based on
25 their operations. That's one aspect of it.

1 The other aspect of it was the operating
2 agreement of 1983 that was referred to earlier, which
3 covered the four sections. Likewise, there was an audit
4 done that uncovered in excess of \$200,000 in audit
5 exceptions, of which, as the complaint points out,
6 something slightly less than \$90,000 they agreed to.

7 Most of these exceptions were because of
8 overcharges in overhead, charging of overhead on wells that
9 were not producing -- ironically, or coincidentally, it was
10 the situation that Mr. Miller referred to earlier, and we
11 were confronted with that widespread here -- the lack of
12 information being forthcoming from the operator, and in
13 essence a breakdown in total communication between better
14 than 70 percent of the nonoperators at that time, and they
15 appear as the plaintiffs in this case.

16 Q. Now, and to go into that, the plaintiffs in this
17 case are various Iverson entities. They are for the most
18 part predecessors in interest to the clients I'm
19 representing today?

20 A. Yes.

21 Q. Except for Mary Ard, who is listed -- and the
22 Hudson Trust Number 4, which is the same party as today?

23 A. Yes.

24 Q. Okay, so -- And then there were some other people
25 involved in this, Moore and Shelton and some other persons

1 involved in this also, correct?

2 A. Yes, it was, and that's -- that are not subject
3 to the present hearing, but they were involved in this
4 litigation.

5 Q. Yes, now -- And then insofar as the defendants it
6 names these particular Hudson individuals. To the best of
7 your knowledge, are these the principals or controlling
8 persons of Hudson Oil Company of Texas?

9 A. Based on a check with the Secretary of State, has
10 filed that these -- the -- Randall Hudson III as vice
11 president, William A. as president, Edward R. Hudson, Jr.
12 is chairman of the board.

13 Q. Okay, so in essence we're dealing with the same
14 -- my clients here today are the same, more or less, other
15 than the Moore and Shelton Company, as the plaintiffs in
16 the 1997 lawsuit?

17 A. Yes, they are, and as you can also refer to later
18 in the complaint -- and just as a side note here, it's
19 because from time to time on the same property they would
20 use as operator two and three different names, and audit to
21 them was very, very difficult.

22 Q. Okay.

23 A. And so from time to time they would come up with
24 a new entity and a new name. And from all the research
25 that I've done over the last several months, I can't

1 discern a business reason why these were set up. But just
2 as a side note, that's a confusing issue as well.

3 Q. Okay. And what was the outcome of the lawsuit?

4 A. Well, the lawsuit ended in a settlement --

5 Q. And that is the second part of Exhibit 1, is it
6 not?

7 A. Yes, it is.

8 Q. Okay.

9 A. -- and again, the settlement brought about the --
10 well, the severance of the shallow rights as defined as a
11 stratigraphic equivalent, that was referred to earlier, of
12 4230 in a specific well -- in a specific log, on a specific
13 date in a specific well, and it's all stated in here.

14 In the shallow well depths there was a movement,
15 they said, Well, we'll -- the Hudson Oil people said, We'll
16 just buy you out of the shallow, and we'll resolve all
17 controversies, all outstanding audits, et cetera, et
18 cetera.

19 My clients were very reluctant to enter into that
20 aspect of the settlement, but -- which is a similar tone
21 that has been delivered here in this hearing. It was
22 delivered as an all-or-nothing proposition, that everyone
23 had to agree to it, or the settlement wouldn't proceed.
24 And as a result of that, my client reluctantly agreed to go
25 along with that aspect of the settlement agreement.

1 The other aspect of the settlement agreement on
2 the deep was the termination of the operating agreement, in
3 essence removing the Hudson Oil Company of Texas or, at
4 that time, these various other entities, as operator of
5 this lease, and that was a vital consideration in this
6 lawsuit, of which in excess of \$250,000 was spent in legal
7 and technical support of geological and engineering.

8 Q. By plaintiffs?

9 A. By plaintiffs.

10 Q. So but for this lawsuit, Hudson Oil Company of
11 Texas or some other Hudson Brothers entity would be
12 operator of the deep rights without having to come to
13 hearing today?

14 A. Yes.

15 Q. Now, you have been spending quite some time with
16 Mr. and Mrs. Ard on their business over the past several
17 months, have you not?

18 A. Yes, I have. I was contacted through a mutual
19 business associate -- as a matter of fact, it had been a
20 prior client of mine -- that put us together in the middle
21 of July, and I visited with them, and we went over their
22 game plan on various aspects of their business, and they
23 retained me at that point in time. And since then I've
24 been working on many facets of their business and making it
25 more efficient and more productive and increased their

1 revenues, et cetera.

2 Q. And as part of that, you've seen what wells the
3 Ards and other interest owners are in and who the operators
4 are, have you not?

5 A. Yes.

6 Q. Are they in a number of wells with Hudson Oil
7 Company of Texas, or some related Hudson entity?

8 A. On shallow wells, yes.

9 Q. On shallow wells. And as part of your duty and
10 as Mr. and Mrs. Ard's agent, have you contacted Hudson Oil
11 to make data requests?

12 A. I have, we have.

13 Q. What type of data requests do you make?

14 A. Well, it's -- from time to time we are in --
15 there may be a follow-up to a Division order. These are
16 very routine, day-to-day operations that you contact an
17 operator about, and maybe they'd send us a Division order.
18 And I -- from the records, I and the Ard staff can't
19 verify. So we request, which is typical in this instance,
20 their title backup, their Division order title opinion or
21 whatever.

22 Q. So you can tell what the Ards own?

23 A. Exactly. And either there's no response in those
24 situations -- but this is a classic example -- or they'll
25 write back and say there is no Division order title

1 opinion, or there is no title.

2 Well, two things. If there is no title, that
3 adds to our --

4 Q. Concern?

5 A. -- concern, the fact that they're operating as an
6 imprudent operator. But also it could turn to the fact
7 that if they had one, the information was not forthcoming.

8 Q. Okay, does the same apply -- have you ever
9 requested production data from Hudson Oil Company of Texas
10 and had that go on in?

11 A. Well, we've gotten where, prior to me coming in,
12 there's dozens and dozens of letters requesting, over a 15-
13 year period, various documents, operating agreements on
14 particular areas, production information, backup to an
15 invoice, et cetera, et cetera, et cetera, and there is
16 either a nonresponse, or the response itself is
17 nonresponsive in saying, You have everything, we've already
18 given it to you.

19 And so in essence, at this point in time there is
20 little or no communication between the Hudson Oil Company
21 and my client, who has, as in this case, the Ards -- and
22 the Iversons as well -- have a substantial interest in
23 these wells. It's not like we're one-third of one percent
24 or something like that. It's either 10- or 20- or 30- or
25 40-percent interest in these wells.

1 Q. In this case --

2 A. We're a major player.

3 Q. In this case, it's 24, 23 percent, correct?

4 A. Twenty-three -- it was closer to 24. I think
5 it's 23.8 percent that is in opposition to the Hudsons
6 operating this property.

7 Q. And you just mentioned these data requests you
8 made, and looking at these various wells that the Ards are
9 in -- and many of them, the Iverson group is in there too?

10 A. Yes.

11 Q. And they do not approve of Hudson Oil Company as
12 operator?

13 A. From many conversations I have had with various
14 ones, the Moores, the Iversons, they're of our same
15 temperament, which was coming out of -- it has not changed,
16 it has not gotten better, you would think, you know, this
17 was a turning point, that perhaps -- but this was on one
18 lease. And this was the way we were somewhat able to
19 rectify getting out from under this Hudson nightmare of
20 operatorship.

21 But we're in hundreds of other leases with them,
22 and so we're doing the best we can, we're operating as best
23 we can, and trying not to be an obstructionist, and we're
24 not trying to be an obstructionist here. We want to
25 participate in this well.

1 Q. That gets to one of my main points. All of the
2 people I represent do not want to go nonconsent in this
3 well?

4 A. My understanding is, they want to participate.

5 Q. So either under a JOA or under a pooling order,
6 they will participate in the well?

7 A. Yes.

8 Q. Now, Mr. Miller went into great detail, and we
9 have a pile of correspondence from him, and he wrote and he
10 called and did many things over the past -- well, gosh,
11 almost a year now. Did -- To the best of your knowledge,
12 has anyone related to Hudson Oil Company of Texas contacted
13 your particular clients or anyone I'm representing in this
14 matter?

15 A. Well, they definitely haven't contacted the Ards,
16 and in all the conversations that I had with the remaining
17 group, no correspondence, no phone calls, nothing with
18 Hudson Oil Company.

19 Q. Now, should Hudson Oil Company of Texas be named
20 operator by the Division, what is your opinion as to the
21 expectation of cooperation and free flow of information
22 from them to the nonoperators?

23 A. You know, it almost gets beyond what my opinion
24 is, but my opinion is based on not a lot of personal -- you
25 know, this has only been over a period of five months.

1 My -- but I've gone through hundreds of records, thousands
2 of pieces of paper, and much of it, unfortunately, is in a
3 nonproductive, money-productive-type of thing, is trying to
4 get information, is trying to give our opinion about an
5 operation and how it could be better conducted.

6 So I have no reason to believe, no expectation,
7 zero, that this will be any different. And what makes this
8 even more critical, the risk investment is higher, roughly
9 about \$400,000 to our group, and we're not the Exxons of
10 the world, we're small working interest owners, but we play
11 a role in this particular area, we're interested in
12 enhancing our investment. Again, we're not trying to be
13 obstructionist. And we want to participate, but we've got
14 to do it prudently.

15 And we're trying to put forth what I classify as
16 the reasonable businessman approach to make sure that our
17 investment, once we make it, is protected.

18 Q. Okay. Now, with respect to data from the well,
19 could you identify Exhibit 2 for the Examiner and discuss
20 what that represents?

21 A. What it is, is -- really, it's the cover page of
22 the -- what has been referred to earlier as the October 1,
23 2001, operating agreement that Marbob said is now left on
24 the table after withdrawing the last offer. And from that,
25 rather than make any -- we would like, in essence -- and

1 then there's a couple of pages attached thereto with some
2 provisions that we would like the Commission to consider
3 incorporating.

4 Q. Into its order?

5 A. Yes.

6 Q. And which specific provisions are those?

7 A. The first is the access to contract area and
8 information --

9 Q. Article VI.D?

10 A. Yes, page 8. And that pretty much is a standard
11 language, and not only standard language in the industry --
12 this is AAPL 610 -- but it's also what was proposed by
13 Marbob.

14 Q. Okay. And what other provision would you like to
15 incorporate?

16 A. It would be on page 10, and that's Article VII,
17 option 2, and that would be relative to decision-making
18 beyond the initial drilling of this well, and what it
19 really goes to the heart of is a completion-point decision,
20 decision to deepen, recomplete and that sort of thing. And
21 it gives our clients an opportunity at that point to
22 participate in the decision-making process, as is the
23 typical case under the JOA.

24 Q. And based upon the history of my client group and
25 Hudson Oil Company of Texas, is there a need for this type

1 of provision in an order? These types of provisions?

2 A. Well, this is so vital. These two provisions --
3 I hate to refer to them as the most important, because this
4 document is a very important document. It works quite
5 well, so long as you have legitimate, good, honest, prudent
6 partners. Needless to say, prudent operator. But if I had
7 to point to two that would be critical to our clients, it
8 would be these two.

9 Q. Okay. And based on the experience of my client
10 group, they need as much protection as they can get?

11 A. Yes.

12 Q. Now, just a couple of final things, Mr. Grappe.
13 You were here listening to Mr. Miller testify, were you
14 not?

15 A. Yes.

16 Q. And Mr. Miller testified that one reason, or
17 perhaps the primary reason that Hudson Oil Company of Texas
18 is being named operator is to secure the economic benefit
19 of the royalty-rate reduction?

20 A. Yes, that's what I understood him to say.

21 Q. Now, a couple of things. With respect -- Have
22 you looked at oil production below that stratigraphic
23 equivalent of 4230 feet?

24 A. I have looked at it in eight or 10 surrounding
25 sections, surrounding this Section 12, yes.

1 Q. And what did you find?

2 A. I found little or no oil production.

3 Q. Okay, so there's a question as to whether there
4 is a big economic benefit here?

5 A. Well, and we obviously have to look at that as an
6 economic benefit to us as well. We're very attuned to it,
7 we've participated and reaped the benefits of it directly.
8 It's not a wish and a hope for us, we've participated under
9 it.

10 Q. You --

11 A. However, we have to look at it and build it into
12 our economics.

13 And I was somewhat confused over Mr. Miller's
14 response that they don't do internal economics. To drill a
15 well and make a decision to invest a million and a half
16 dollars, you do an economic evaluation on -- and I've
17 worked for or inside of close to 50 companies, and you do a
18 reservoir engineering study, you prepare a reserve report,
19 you put anticipated price there, anticipated volumes,
20 whether it's gas or oil, and you run an economic analysis.
21 And of that economic analysis you say, Okay, what is the
22 possible return on my investment over a period of years.
23 And we'd like to look in the short term, three-year period,
24 five-year period, when -- how soon can I recoup my money?
25 What is the percentage of my return on my money?

1 And so we looked at that first of all. We didn't
2 put any oil production into our analysis, and consequently
3 this raved-upon in this situation reduced royalty does not
4 affect the economics at all.

5 Q. Well, what about, do you think there's any
6 economic benefit in having an imprudent operator of a well?

7 A. Of course not. As a matter of fact, when you
8 risk drilling and all the risk in drilling this -- and
9 obviously in most cases the deeper you drill, the more
10 risks are involved -- you try and focus in on that and try
11 and protect yourself, join up with people that you trust,
12 good working relationships, people that bring technical
13 expertise to the table, and where it is a joint effort.
14 It's not -- ironic that this is a joint operating
15 agreement, and it's not -- we don't just sit back and say,
16 Okay, Mr. Operator, here's \$400,000 of our money, go drill
17 it.

18 Q. Could you just -- in conclusion, just summarize
19 why the Ard and Iverson groups do not want Hudson Oil
20 Company of Texas as operator?

21 A. Well, as we've seen in the past, we have invested
22 a substantial amount of money in the operations, in
23 shallow, and from time to time on an ongoing basis we've
24 had to expend greater funds in legal fees, in consultant
25 fees, in trying to get the information that would be

1 fruitful one to begin with.

2 As a result of that, our return on our
3 investment, to this day, is marginalized somewhat by these
4 continued imprudent operations, and so it would be
5 imprudent of me as a consultant to advise them to
6 participate with an operator such as the Hudsons, and quite
7 frankly it would be imprudent of the Ards to spend their
8 money that way, and the Iversons as well.

9 Q. Okay, especially one that has no track record in
10 the Morrow?

11 A. Exactly.

12 Q. Were Exhibits 1 and 2 prepared by you or under
13 your supervision or compiled from the Arch business
14 records?

15 A. They were.

16 Q. And in your opinion, is the granting of the
17 Application, with the provisions that you have requested be
18 incorporated in the order, in the interests of conservation
19 and the prevention of waste, with the exception of naming
20 Hudson Oil Company of Texas as operator?

21 A. Yes, I would.

22 MR. BRUCE: Mr. Examiner, I would move the
23 admission of Exhibits 1 and 2.

24 EXAMINER CATANACH: Any objection?

25 MR. CARR: No objection.

1 EXAMINER CATANACH: Exhibits 1 and 2 will be
2 admitted.

3 Mr. Carr?

4 CROSS-EXAMINATION

5 BY MR. CARR:

6 Q. Mr. Grappe, during your testimony you've referred
7 on a couple of occasions to our group, and my question is,
8 are you here speaking for the Iversons as well as the Ards
9 today?

10 A. I'm here retained by the Ards specifically, and I
11 was attempting to respond to questions relative to my
12 direct conversations with the Ards and my impression of
13 their positions.

14 Q. Have you talked with the Iversons?

15 A. I have, primarily Wendell Iverson, and also I've
16 talked to the representative of Bank of America who was
17 involved in one of the Iverson trusts.

18 Q. You have been advising the Ards for some period
19 of time; is that right?

20 A. Approximately five months.

21 Q. And have you been involved with the negotiations
22 with Marbob concerning the development of this property?

23 A. To the extent that there have been any
24 negotiations.

25 Q. In our exhibit that was the stack of

1 correspondence and all, there was an AFE dated May the 7th
2 of this year that indicated that Marbob might be the
3 operator of the well?

4 A. (Nods)

5 Q. And then shortly after that, there was also a JOA
6 dated June the 1st that had Hudson and Hudson on it as the
7 operator. Were you aware of those documents?

8 A. Yes. Well, I became aware of them in preparation
9 of this hearing.

10 Q. Did you at any time think that Marbob was
11 proposing that Marbob actually operate the well, or do you
12 know they'd been proposing Hudson and Hudson?

13 A. Well, I know that they were proposing Hudson and
14 Hudson, but quite frankly, we've pushing hope without hope
15 that we could use our best negotiations to convince them,
16 really, you're the best operator.

17 Q. But you knew they were proposing Hudson and
18 Hudson?

19 A. Yes, but I never understood why.

20 Q. One of the concerns -- and there were several --
21 was that the initial proposal covered a larger area than
22 just this 320-acre spacing; isn't that right?

23 A. Right.

24 Q. And Marbob did correct that and reduce it just to
25 the south half of Section 12 in the later agreements they

1 proposed?

2 A. They reduced it -- I had a conversation with Raye
3 Miller on the Tuesday before the first hearing was set. At
4 that point I had not received a copy of that revised one,
5 and Ray and I discussed aspects of the JOA, of which my
6 client specifically objected to, and that was one of them.

7 Q. And you did see the October 1st joint operating
8 agreement that was proposed, that was limited to the south
9 half of 12, did you not?

10 A. Yes.

11 Q. And that was also changed by Marbob to reduce the
12 risk penalty that was being sought in that agreement to 300
13 percent?

14 A. Right, and again that was subsequent to our
15 conversation, yes.

16 Q. And these were conversations you had with Marbob?

17 A. A conversation I had with Marbob.

18 Q. You testified that you had received during this
19 time no contact from Hudson; is that right?

20 A. That's correct.

21 Q. Did you -- and you also testified, I think you
22 said there was little communication then between your group
23 and Hudson's?

24 A. On other operations?

25 Q. Yes.

1 A. Yes.

2 Q. Did you at any time contact the Hudsons
3 directly --

4 A. No.

5 Q. -- concerning this proposal?

6 And you have worked through Marbob as it relates
7 to the proposal of the drilling of this Knockabout well?

8 A. What do you mean by "worked through"?

9 Q. Your conversations have been with Marbob, not
10 some other entity concerned, some other interest concerning
11 the well?

12 A. Marbob is the only party that has contacted us
13 relative -- and prior to the first hearing date, we had one
14 telephone conversation.

15 Q. I just wanted to be sure that there weren't other
16 conversations going on. Your conversations have been with
17 Mr. Miller, as Mr. Miller's have been with you; you have
18 not been talking to Hudson and Hudson?

19 A. Correct.

20 Q. You have proposed that certain provisions out of
21 the JOA be incorporated or referenced in the order that is
22 entered in this case; is that what your Exhibit Number 2
23 is?

24 A. Yes.

25 Q. Okay. If the Division should pool these lands

1 and name Hudson and Hudson operator and not incorporate
2 part of this contract, do you understand that just that
3 order will be out there governing your relationship?

4 A. I understand that.

5 Q. And what you want to do is accept part of the JOA
6 by having it incorporated in the order, and reject other
7 parts of the proposed contract?

8 A. No, what we're proposing, utilizing the language
9 in the JOA, is a reasonable expectation to get what we
10 would in essence be as tenants in common, as joint owners.
11 But I used -- or we used the exhibits and the JOA to
12 demonstrate the reasonableness of our request in that these
13 are used throughout the industry on a standard form.

14 Q. You would like what is marked Ard Exhibit 2
15 incorporated into the order?

16 A. That language that I referred to, yes.

17 Q. And you could have gotten that if you had signed
18 the October 1st JOA, but you did other things with the
19 October 1st JOA that you didn't want?

20 A. And as I've stated before, Hudson's -- our
21 objections to the Hudsons being operator.

22 Q. And that's -- isn't that really where we stand
23 today, that the objection is to the Hudsons being the
24 operator of the well?

25 A. Yes.

1 Q. You are aware that Mr. Miller proposed settling
2 -- made settlement proposals to your group, this all-or-
3 nothing sort of a proposal from Mr. Miller. You were aware
4 of those, were you not?

5 A. We've received through certified mail copies of
6 it, but there were no conversations with Mr. Miller --

7 Q. By you?

8 A. -- by me or anyone in the Ards' office. There
9 were no negotiations on that end.

10 Q. Were you aware that the Iverson group was
11 prepared to accept that settlement if they could get Mr.
12 Ard and the Ard interests also signed up?

13 A. I'm sorry, could you repeat that?

14 Q. Were you aware that Mr. Miller and the Iversons
15 had agreed to those terms, but that they had to have Mr.
16 Ard's agreement also, or the offer would be withdrawn?

17 A. Well, I was aware of that by the nature of the
18 letter that was sent qualifying, saying this is an all-or-
19 nothing deal.

20 Q. Did you talk to the Iversons?

21 A. Yes.

22 Q. Did you know they were willing to go forward with
23 this agreement?

24 A. Yes.

25 Q. I believe you testified that all of the group

1 that you represent -- and that group was 24 percent -- does
2 that --

3 A. 23.8, thereabouts.

4 Q. And does that include the Iversons?

5 A. Yes.

6 Q. But the agreement they were willing to accept
7 would have included having Hudson and Hudson of Texas as
8 the operator of the well; isn't that right?

9 A. I was speaking as of today. As of today, and
10 counsel -- they're aware of the position and the testimony
11 I was going to put forth, therefore my opinions represent
12 23.8 percent.

13 Q. As of today?

14 A. As of today.

15 Q. But there was a time when Iverson was willing to
16 go with the deal with Hudson and Hudson as operator?

17 A. Had it been accepted by Marbob.

18 Q. By Mr. Ard?

19 A. Had it been accepted by Marbob.

20 Q. Without Mr. Ard?

21 A. Right.

22 Q. Okay.

23 A. And that was never an option.

24 Q. The point is, when you say 24 percent were not
25 agreeable to Hudson and Hudson operating the well, that is

1 today? There was a time when the Iversons were agreeable
2 and said they would accept that with the other changes
3 Marbob had made; isn't that correct?

4 A. Well, from the standpoint of it having a
5 qualifier on it, an agreement had never been reached,
6 technically.

7 Q. They had accepted Marbob's offer conditioned on
8 Mr. Ard also joining, correct?

9 A. You'll have to speak to Wendell Iverson on that.

10 Q. And you haven't spoken to him on that?

11 A. Not subsequent to the withdrawal of the offer,
12 no.

13 Q. But you say you still represent his interests
14 here today?

15 A. Well, I represent and came into this case
16 representing the Ards' interest. Through our joint counsel
17 we developed our style of the case, our points of the case,
18 and those, I understand, have been communicated with the
19 Iversons, and they have agreed to our positions put forth
20 in this hearing.

21 Q. Is it fair to say that today we don't have an
22 agreement?

23 A. I think that is fair to say.

24 Q. You represent or are here today, if we include
25 the Iversons, speaking for owners of 24 percent,

1 approximately, of the working interest in this acreage --
2 in the subject 320-acre spacing unit; is that fair to say?

3 A. Yes.

4 Q. You have a right to drill a well there, do you
5 not?

6 A. Yes.

7 Q. Have you proposed a well?

8 A. No, we have not.

9 MR. CARR: That's all I have.

10 EXAMINER CATANACH: Any --

11 MR. BRUCE: No, I don't have any follow-up, Mr.
12 Examiner.

13 EXAMINATION

14 BY EXAMINER CATANACH:

15 Q. Mr. Grappe, if I understand what you're
16 requesting, you would like these two provisions that are in
17 the joint operating agreement -- you would like those
18 incorporated into any pooling order that we issue?

19 A. Yes, sir.

20 Q. And if we issue a pooling order, do you
21 anticipate the Ards and the Iversons to join in the
22 drilling of the well?

23 A. Yes.

24 Q. They will be participating interests?

25 A. I can speak -- yes, and quite definitely for the

1 Ards' interest. But Iversons also indicated they would
2 participate.

3 Q. Even if Hudson is designated operator --

4 A. Yes.

5 Q. -- as far as you know?

6 EXAMINER CATANACH: Okay, I think that's all I
7 have.

8 Do you have anything else --

9 MR. BRUCE: I have nothing further.

10 MR. CARR: Do you have a statement?

11 MR. BRUCE: I have a short statement.

12 EXAMINER CATANACH: Okay.

13 MR. BRUCE: Mr. Examiner, just to reiterate,
14 since it is getting a little past lunch here, again, we
15 want to emphasize, although there have been tough
16 negotiations among the parties, I think the Iversons and
17 the Ards and Marbob have really tried to work things out.
18 And my clients have absolutely no problem with Marbob
19 Energy operating this well and with the actions of Raye
20 Miller on behalf of Marbob.

21 But we do have a problem with the Hudson Oil
22 Company of Texas as operator. We are here today
23 representing approximately 24 percent of the working
24 interest in this well. We want to participate in the
25 drilling of the well. But due to the matters that Mr.

1 Grappe testified to, there is and has been, over a number
2 of years, severe problems with Hudson Oil Company of Texas
3 as operator. I think that testimony goes for -- speaks for
4 itself as to the problems that have occurred right on this
5 lease in the past.

6 The other thing we want to point out is, Hudson
7 Oil Company of Texas just has no experience in the Morrow,
8 and that causes us concern. Because of that experience, we
9 would rather be under a pooling order than under a contract
10 with Hudson Oil Company of Texas, and we would like these
11 accounting and other provisions incorporated in the order
12 so that if there is an issue we have recourse and something
13 to point to in an order saying this data is required to be
14 given to the Iverson and Ard group, et cetera, under the
15 terms of the Division's order.

16 Again, we would -- we have no objection to the
17 force pooling itself. My clients intend to participate in
18 the well. But we think someone other than Hudson Oil
19 Company of Texas should be appointed operator.

20 Thank you.

21 MR. CARR: May it please the Examiner, obviously
22 Hudson and Hudson and Mr. Ard have had some problems in the
23 past. If this was to be a hearing on whether or not
24 they're imprudent operators, I would submit to you that
25 they should have been notified and should be here to defend

1 themselves.

2 I would also tell you that what we're here today
3 doing is trying to obtain an Application pursuant to a
4 statute that is, I think on its face, clear, and I would
5 submit to you that we have complied, we being Marbob, and
6 Hudson and Hudson as our drilling agent, have complied with
7 the statute, and we're entitled to an order.

8 The only issue seems to be whether or not Hudson
9 and Hudson of Texas should be the operator. Here we're
10 proposing that the well be operated by them, and we submit
11 it's as proper for us to designate them as an independent
12 drilling arm of our company.

13 On the face of it, 77 percent agree to this. And
14 beyond that, I think if you look at the testimony, the
15 testimony was that we made a proposal to them, that it was
16 accepted by the Iversons, and even they were agreeable, on
17 a spacing-unit basis with a 300-percent penalty, to have
18 Hudson and Hudson operate this well.

19 So those who are acceptable -- who will accept
20 Hudson and Hudson, the number far exceeds even the 77
21 percent that's before you.

22 There are benefits that come from their operating
23 the well. Mr. Miller testified to the issue concerning
24 shallow rights and reduced royalty.

25 But what this all boils down is, we have no

1 agreement, and that's the reason we have a pooling statute.
2 And the Ards stand before you and say, Well, we'd like to
3 take some pages out of your agreement and have the OCD
4 adopt these. And I would submit to you that they could get
5 all of these, and everything they get in a pooling order,
6 and more, in terms of rights and obligations to remove an
7 operator, do everything else, if they'd just sign the
8 documents.

9 But they want you to enforce part of a contract,
10 a contract that they rejected when it was in its totality,
11 and I submit that's something you shouldn't do, that you
12 shouldn't pick and choose.

13 And if you do want to adopt a contract, I would
14 recommend you adopt the October 1st, 2004, operating
15 agreement.

16 We have no agreement, we're here for pooling,
17 we're requesting a pooling order, our application is
18 proper, we ask that you grant it and designate Hudson and
19 Hudson of Texas as the operator of this well.

20 EXAMINER CATANACH: Thank you, Mr. Carr.

21 Mr. Bruce, I've got a question. If these
22 provisions are incorporated into an order, would this be
23 the forum where relief would be sought in case those
24 provisions are not carried out?

25 MR. BRUCE: Whether or not you adopt them, this

1 would be the forum.

2 EXAMINER CATANACH: Okay, can I --

3 MR. BRUCE: It just makes it somewhat clearer
4 than the normal pooling order does.

5 EXAMINER CATANACH: Can I get from you a summary
6 in writing of what you're seeking in this case --

7 MR. BRUCE: Sure.

8 EXAMINER CATANACH: -- your clients?

9 MR. BRUCE: I will do so.

10 EXAMINER CATANACH: And also, Mr. Carr, can I get
11 from you a more detailed description of the economic
12 benefits that will be received by Hudson and Hudson
13 operating this well?

14 MR. CARR: Right, we can do that.

15 EXAMINER CATANACH: Thank you.

16 MR. BRUCE: Mr. Examiner, Mr. Carr may want to
17 respond to this, but in my prehearing statement did raise
18 the issue of the propriety of naming Hudson Oil Company as
19 operator.

20 MR. CARR: Did you serve Hudson?

21 MR. BRUCE: What's that?

22 MR. CARR: Did you serve Hudson?

23 MR. BRUCE: I served you.

24 MR. CARR: Yeah.

25 EXAMINER CATANACH: Anything further, gentlemen?

1 MR. BRUCE: No.

2 EXAMINER CATANACH: Okay.

3 MR. BRUCE: Let's move on to the next circus.

4 EXAMINER CATANACH: There being nothing further,
5 Case 13,348 will be taken under advisement.

6 And let's take a lunch break at this point, and
7 we'll reconvene about 10 till 2:00, five till 2:00.

8 (Thereupon, these proceedings were concluded at
9 12:53 p.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 13348
heard by me on November 18, 2004.
David F. Catanach, Examiner
Oil Conservation Division

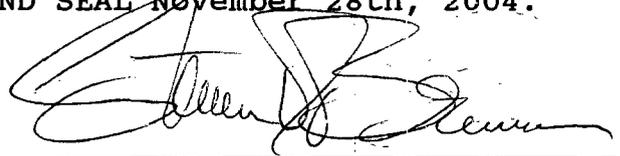
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 28th, 2004.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006