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August 23, 2001

**BY HAND DELIVERY**

Ms. Lori Wrotenbery, Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 Saint Francis Drive  
Santa Fe, New Mexico 87505

Re: Conoco Inc. vs. Sapient Energy Corporation

Dear Ms. Wrotenbery:

Pursuant to NMSA 1978, §70-2-29, Conoco Inc. ("Conoco") hereby requests the Division immediately bring suit against Sapient Energy Corporation ("Sapient") to prevent further violation of the rules of the Oil Conservation Division; or, in the alternative, order that the well be shut in pending final resolution of the pending proceedings.

Since August 1999, Sapient has been producing its Bertha J. Barber Well No. 12 (Barber Well) from the Tubb formation, West Monument-Tubb Gas Pool. This pool is developed under statewide rules which provide for wells to be located on 160-acre spacing and proration units "substantially in the form of a square which is a quarter section and a legal subdivision of the U. S. Public Lands Surveys..." Division Rule 104.D(2) provides that "Any well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed may not be produced until a standard spacing unit for the well has been formed and dedicated or until a non-standard spacing unit has been approved." The Hobbs office of the NMOCD erroneously approved a recompletion permit for this well, however, a non-standard unit has not been approved by the Division for the Barber Well.

Conoco is the owner of oil and gas interests in the NE/4 of Section 7 which are being drained by the Barber Well. Conoco has requested that this well be shut in until it is in compliance with the rules of the Division. A hearing on the record was held March 6,

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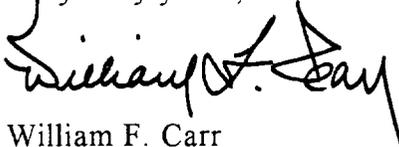
2001 and, despite repeated requests from Conoco for the well to be shut in, the Division has refused to act.

Instead, the Oil Conservation Division has permitted Sapient to continue to produce the Barber Well and retain all production proceeds as if a non-standard gas spacing unit had been approved comprised of the E/2 E/2 of Section 7, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico.

Enclosed is a copy of a Complaint which will be filed against Sapient by Conoco in District Court on Tuesday, August 28, 2001. As you will see it is styled "Complaint for Damages and Injunctive Relief." In its first three claims for relief, Conoco will seek compensatory damages, punitive damages and an accounting. In its Fourth Claim for Relief, Conoco seeks an injunction shutting in the Sapient Barber Well which, if granted, will be issued in the name of the Division whether or not it is willing to meet its statutory duties to protect correlative rights pursuant to NMSA 1978, §70-2-29. Conoco's Fifth Claim for Relief is included in the Complaint because the Division refuses to exercise its statutory duty to protect the correlative rights of Conoco and other operators who are being drained.

Unless the Barber Well is ordered to be shut in before Tuesday, August 28, 2001, the complaint will be filed as drafted.

Very truly yours,



William F. Carr  
Attorney for Conoco Inc.

cc: Bruce Connell, Esq.  
Conoco Inc.

W. Thomas Kellahin, Esq.  
Attorney for Sapient Energy Corporation

**FIFTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF LEA**

**CONOCO INC.  
a Delaware Corporation,**

**Plaintiff,**

**vs.**

**No. \_\_\_\_\_**

**SAPIENT ENERGY CORPORATION,  
a Delaware Corporation.**

**Defendant.**

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**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

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Plaintiff Conoco Inc. ("Conoco"), by its undersigned attorneys, for its claims against the defendant Sapient Energy Corporation ("Sapient"), states as follows:

**NATURE OF THE CASE**

The defendant Sapient operates the Bertha J. Barber Well No. 12 ("Barber Well") which is located in the NE/4 NE/4 of Section 7, Township 20 North, Range 37 East, NMPM, Lea County, New Mexico. Conoco and others own oil and gas mineral interests in the NE/4 of Section 7. Under the rules of the New Mexico Oil Conservation Division, the owners of the oil and gas rights in the NE/4 of this section, including Conoco, are entitled to share in the production from the Barber Well. In violation of New Mexico law and the Rules of the Division, Sapient has refused to pay Conoco and other interest owners their share of the production proceeds from the Barber well.

Pursuant to the Oil and Gas Act, the Oil Conservation Division is charged with protecting the interests of each owner in a pool. Conoco has asked the Division to act to prevent Sapien's continued violation of the Oil and Gas Act and its conversion of the mineral interests of Conoco. The Division has failed to act.

This lawsuit seeks to obtain damages and other appropriate relief for Sapien's wrongdoing including injunctive relief authorized by NMSA 1978, § 70-2-29.

**PARTIES, JURISDICTION AND VENUE**

1. Conoco Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Houston, Texas. Conoco is authorized to do business and is doing business in New Mexico.

2. Sapien Energy Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Tulsa, Oklahoma. Sapien is authorized to do business and is doing business in New Mexico. Sapien may be served with this complaint through its registered agent the CT Corporation, 123 East Marcy, Santa Fe, New Mexico 87501.

3. The object of this suit is to protect an interest in land located in Lea County, New Mexico. Lea County, New Mexico is the county where the violation occurred and continues to occur. Accordingly, venue is proper in this county pursuant to NMSA 1978 § 70-2-28.

## **FACTUAL BACKGROUND**

4. In August 1999, the Bertha J. Barber Well No. 12 (“Barber Well”), a producing oil well located at a standard oil well location 330 feet from the North line and 990 feet from the East line of Section 7, Township 20 South, Range 37 East, NMPM, Lea County, New Mexico, was recompleted as a gas well in the Tubb formation, West Monument-Tubb Gas Pool.

5. The West Monument-Tubb Gas Pool is governed by the general rules of the Oil Conservation Division of the New Mexico Department of Energy, Minerals and Natural Resources (“Division”). Division Rule 104 C(3) provides for gas wells to be located on spacing units consisting of 160 surface contiguous acres, substantially in the form of a square, which is a quarter section and a legal subdivision of the U. S. Public Lands Survey.

6. Sapient and the prior operators of the Barber Well have filed Division forms which indicate a non-standard gas spacing unit comprised of the E/2 E/2 of Section 7 is dedicated to the well. (Copies)

7. Sapient owns the working interest in the E/2 E/2 of Section 1 and all production proceeds from the Barber Well have been paid to the owners of the E/2 E/2 of Section 7 as if a non-standard unit comprised of this acreage had been properly formed and dedicated to the well.

8. Between September 1, 1999 and March 1, 2001 the Barber well produced over 470 MMSCF of natural gas and continues to produce.

9. Sapient has retained all proceeds for production from the Barber Well and has disbursed these funds to the owners of oil and gas interests in the E/2 E/2 of Section 7.

10. Rule 104 D(2) provides that “Any well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed may not be produced until a standard spacing unit for the well has been formed and dedicated or until a non-standard spacing unit has been approved.”

11. Division Rule 104 D (2) contains specific requirements to be met by an operator to obtain approval of a non-standard gas spacing unit.

12. The Division has not approved a non-standard spacing unit for the Barber Well.

13. Pursuant to Division rules, the standard spacing unit for the Barber Well is the quarter section upon which it is located and the owners therein are entitled to their share of the production from this well.

14. Conoco is a working interest owner in the W/2 of the NE/4 of Section 7 which acreage should be included in a standard gas spacing unit for the Barber Well.

15. Conoco is entitled to its working interest share of the production from the Barber Well.

16. Conoco has objected to the proposed non-standard gas spacing unit for the Barber Well and requested that the Division Order the well shut-in until it is in compliance with the rules, regulations and orders of the Division. The Division has refused to act.

17. Conoco has requested the Division bring suit to enjoin the continued violation of its rules. The Division has refused to act.

18. Each day the Division permits the Barber Well to produce at unrestricted rates and retain all production proceeds, Conoco's is denied the opportunity to produce its just and equitable share of the reserves from this Tubb reservoir and it suffers irreparable harm.

19. Conoco has been informed and believes that Sapient is attempting to sell this property and other properties which it owns and operates and believes that due to the actions of the Defendant its right to a share of the production proceeds from the Barber well may go unsatisfied. (Attachment)

### **FIRST CLAIM FOR RELIEF**

#### **(Conversion-Damages)**

20. Plaintiff incorporates by reference the allegations of paragraphs 1 through 19.

21. The defendant is wrongfully and intentionally keeping for itself the fractional share of the production owned by Conoco from the spacing unit created by the rules regulations and orders of the Division for the Barber Well.

22. Plaintiff is entitled to damages for the conversion of its share of the production from the Barber Well in an amount to be determined at trial.

## **SECOND CLAIM FOR RELIEF**

### **(Punitive Damages)**

23. Plaintiff incorporates by reference the allegations of paragraphs 1 through 22.

24. By its status as operator of the Barber Well, the implied duties of the operator to the other owners of interest in the spacing unit dedicated to the well and pursuant to the rules, regulations and orders of the Division, Sapient is required to share the economic benefits of the production from the Barber Well with the other owners of interest in the standard spacing unit for the Barber Well in proportion to those owner's respective fractional ownership interests in the gas produced from this spacing unit.

25. Defendant willfully and in violation of the duties imposed on it by law and equity has failed and continues to fail to share the economic benefit of the oil and gas produced from the Barber Well with the owners of the production.

26. Plaintiff is entitled to punitive damages from the Defendant in an amount to be determined at trial.

## **THIRD CLAIM FOR RELIEF**

### **(Accounting)**

27. Plaintiff incorporates by reference the allegations of paragraphs 1 through 26.

28. It is necessary and proper that the defendant account for and pay to plaintiff all working interest amounts it is determined by the Court that they have failed to pay in the past as required by law and equity.

29. Plaintiff is entitled to a full accounting of all costs associated with the Barber Well, all production and revenue received for this production, and all methods and procedures utilized to calculate the interest of all owners in the production from the Barber Well.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Injunction)**

30. Plaintiff incorporates by reference the allegations of paragraphs 1 through 29.

31. Defendant continues to produce the Barber Well and retain all production proceeds for itself.

32. A fractional share of the production proceeds from the Barber Well by law and rule of the Division are the property of the Plaintiff.

33. Plaintiff has learned and believes that the Defendant is attempting to sell some or all of its assets including the property which is the subject of this suit.

34. Upon the sale of the assets of the Defendant, Plaintiff will have no adequate remedy at law against Sapient and any money judgments may go unsatisfied.

## FIFTH CLAIM FOR RELIEF

### (Exhaustion of Administrative Remedies)

35. Plaintiff incorporates by reference the allegations of paragraphs 1 through 34.

36. Administrative remedies available are inadequate for the Oil Conservation Division has failed and refused to exercise its statutory jurisdiction to act to protect the rights of Conoco in this property.

37. Where the Oil Conservation Division has failed and refused to meet its statutory duties, having been asked to do so by a person damaged by the Division's failure or inability to act, it is appropriate for a private party to seek an injunction for violation of any rule, regulation or order of this state with respect to the conservation of oil and gas, and in these circumstances, an injunction is expressly authorized by NMSA 1978 §70-2-29.

38. Plaintiff is entitled to an injunction issued in the name of the Oil Conservation Division shutting in the Barber Well and directing that any and all proceeds from the well currently held or received by the Defendant be placed in escrow until final judgment is entered in this case.

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant for all compensatory and punitive damages awarded at trial; that the Court by judgment declare defendant has failed to properly calculate and pay plaintiff its fractional share of the production proceeds and require an accounting for the underpayment to the plaintiff; that the Court award pre-judgment interest at the highest

rate allowed by law; and that the Court award injunctive relief as requested, along with costs of the litigation and such other relief as is proper.

HOLLAND & HART LLP  
and  
CAMPBELL & CARR

By: \_\_\_\_\_  
William F. Carr  
Michael H. Feldewert

ATTORNEYS FOR CONOCO INC.