

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
)
APPLICATION OF MARBOB ENERGY CORPORATION) CASE NO. 13,348
FOR COMPULSORY POOLING, EDDY COUNTY,)
NEW MEXICO)
)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DIRECTOR'S HEARING ON MOTION TO STAY

BEFORE: MARK E. FESMIRE,
Director, New Mexico Oil Conservation Division

February 28th, 2005

Santa Fe, New Mexico

2005 MAR 2 AM 9 38

This matter came on for hearing before MARK E. FESMIRE, Director, New Mexico Oil Conservation Division, on Monday, February 28th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

February 28th, 2005
Hearing before MARK E. FESMIRE, Director,
New Mexico Oil Conservation Division
CASE NO. 13,348

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A P P E A R A N C E S

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By: WILLIAM F. CARR

FOR ARD ENERGY GROUP, LTD., SUCCESSOR IN INTEREST TO MARY
T. ARD; and ARD OIL, LTD., SUCCESSOR IN INTEREST TO MARY T.
ARD, TRUSTEE OF THE EDWARD R. HUDSON TRUST 4:

JAMES G. BRUCE
Attorney at Law
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* * *

ALSO PRESENT:

Mary T. Ard
Julian Ard
Ronald Grappe

* * *

1 WHEREUPON, the following proceedings were had at
2 9:06 a.m.:

3 DIRECTOR FESMIRE: At this time we'll go on the
4 record, and this is a hearing to determine a procedural
5 matter for the Oil Conservation Division. Let the record
6 reflect that it's 9:06 a.m. on Monday, February 28th.

7 And can we get the appearances from the
8 attorneys?

9 MR. CARR: Mr. Chairman, my name is William F.
10 Carr with the Santa Fe office of Holland and Hart, L.L.P.
11 I represent Marbob Energy Corporation, the Applicant in
12 this case, as well as Hudson Oil Company of Texas, the
13 party who we are seeking to designate operator of the well.

14 DIRECTOR FESMIRE: And Jim?

15 MR. BRUCE: Mr. Director, Jim Bruce. I am here
16 representing -- since the names have changed I have to get
17 this correct -- Ard Energy Group, Ltd., who is the
18 successor in interest to Mary T. Ard; and also Ard Oil,
19 Ltd., who is the successor in interest to Mary T. Ard,
20 Trustee of the Edward R. Hudson Trust 4.

21 And as I said, I do have clients and witnesses
22 with me, but I do not plan on presenting any evidence at
23 this time.

24 DIRECTOR FESMIRE: Okay. Mr. Carr, I guess
25 you're probably entitled to opening statements first,

1 aren't you?

2 MR. CARR: Well, since this is really just an
3 argument on a motion, I don't have an opening statement.
4 I'd like to respond to Mr. Bruce's argument on the motion.

5 DIRECTOR FESMIRE: Okay, Mr. Bruce?

6 MR. BRUCE: Mr. Director, as I said, we're not
7 here today to present testimony. The Ard interests will
8 present evidence to the Commission in probably much more
9 detail than was presented to the Division. However, we are
10 here today on a motion for the stay, which we believe is
11 necessary to preserve my client's rights to a *de novo*
12 hearing.

13 This is a pooling case, and -- brought by Mr.
14 Carr's client, Marbob Energy Corporation, seeking pooling
15 of a half section for a deep gas well. The Application
16 also requested that an entity called Hudson Oil Company of
17 Texas be appointed operator under the order.

18 We did -- In association with some other clients
19 who are not taking part in the *de novo* appeal, we presented
20 evidence before the Commission, and I'll get into that in a
21 minute.

22 We are here seeking a stay, and -- well, Mr. Carr
23 and I argued another stay motion a few weeks ago, so I
24 won't go into the details. We believe that the standard
25 that applies is set forth in Rule 1220. The Ard interests

1 must show that a stay is necessary to prevent waste or
2 protect correlative rights or to prevent gross negative
3 consequences.

4 I do note that Mr. Carr in his response requests
5 that District Rule 74 be applied. At most, that rule
6 applies to an appeal to a district court, and we think that
7 the proper standards are set forth in the Division's Rules.

8 We believe that if a stay is not granted, there
9 will be negative consequences to my clients and potentially
10 also waste and impairment of correlative rights.

11 Now, in drilling a well, we think there are
12 several key items, and in no particular order, you know,
13 the right geologic location, obviously important, the right
14 drilling procedure and the right operator. We believe
15 without these items a working interest owner can't make an
16 informed decision to join in a well.

17 The Ard interests seek a stay of the existing
18 order so that at the *de novo* hearing they can argue two
19 main issues before the Commission: first that Hudson Oil
20 not be named operator of the well, and second that the
21 pooling order should contain some protections for
22 nonoperators under the order.

23 DIRECTOR FESMIRE: And you're not attempting to
24 argue that today, are you?

25 MR. BRUCE: No. I mean, except in passing why we

1 think it's necessary for a stay so that we can argue these
2 orders.

3 DIRECTOR FESMIRE: Okay.

4 MR. BRUCE: Now as to operatorship, we presented
5 testimony at the first hearing and will present further
6 evidence to the Commission that we believe will show that
7 Hudson Oil is not a qualified operator.

8 I will reiterate two points from the first
9 hearing, first that Hudson was sued in District Court in
10 Eddy County to remove them as operator of this very same
11 lease that we're here for today. And as a result of the
12 settlement of the litigation, Hudson voluntarily resigned
13 as operator of deep rights on this lease. They do operate
14 some shallow rights above roughly 4000-4300 feet.

15 Now we believe that the current case is merely
16 circumventing this restriction by seeking to be named
17 operator of the well in a pooling case.

18 Another issue, Marbob in its response refers to
19 this as an old grievance. Just so you aware, the people
20 who run Hudson Oil are relatives of my client, Mary T. Ard.
21 This is not a family squabble, however, and it is not an
22 old grievance. The fact is that Hudson was and continues
23 to be an imprudent operator, predating the 1997 lawsuit and
24 up to this day. Furthermore, Hudson has virtually no
25 experience in drilling deep gas wells.

1 As a result of these ongoing problems, the Ard
2 interests will not sign a JOA with Hudson Oil as operator,
3 because of these continuous ongoing problems that affect a
4 number of wells. These include matters such as failure to
5 provide title data, failure to provide well information,
6 and high operating costs.

7 As noted at the previous hearing, we suggested
8 that Marbob itself be named as operator. We have no qualms
9 about Marbob as operator.

10 Now, insofar as negative consequences go, I don't
11 think a monetary value can be placed on the need for a good
12 prudent operator of a well scheduled to cost over, at this
13 point, about 1.6 million bucks. And the Ard interest share
14 of that is roughly \$175,000. So we're not talking a small
15 amount of money.

16 Now, one other thing I mentioned, at the Division
17 Hearing we did argue that certain provisions -- we did
18 request that certain provisions be incorporated in the
19 order, such as providing well data to the nonoperators and
20 giving nonoperators a casingpoint election.

21 Yes, we could get those under a JOA. But because
22 of these other ongoing problems, we're not going to consent
23 to Hudson Oil as an operator, and we would ask that these
24 items, which everybody agrees are normal in the course of
25 business of the oil and gas business, should be

1 incorporated into a pooling order.

2 Now, regarding providing well data -- and maybe
3 Mr. Carr can clarify this, but at page 2 of his response he
4 states that Mrs. Ard is the only interest owner who does
5 not have the right to the data she seeks -- in other words,
6 well data -- as the well is drilling.

7 Now, the way I read this, even if the Ard
8 interests pay their share of well costs and are consenting
9 owners, Marbob and Hudson aren't going to provide us any
10 well information. And right there, I think that's negative
11 consequences. We believe that such provisions are
12 unobjectionable, except as a way to force the Ard interests
13 to sign a JOA.

14 Now, Marbob's response also states that all
15 preconditions to pooling have been met by Marbob and that
16 pooling must be granted. As such, we don't object to
17 pooling, and we're not trying to prevent the drilling of
18 the well.

19 But we think this sidesteps the main issues,
20 which are the need to appoint a qualified operator and
21 protections for the interest owners.

22 Marbob's response states a couple places that 90
23 percent of the interest owners have signed a JOA. I take
24 this as saying, well, 10 percent don't, big deal. I don't
25 think that's how the Oil and Gas Act reads. I think you

1 have to look at the interests of all the owners, even if
2 they're a minority owner.

3 And finally, I would reiterate the one final
4 matter I brought up in the very first part of my argument.

5 Under the Oil and Gas Act, an adversely affected
6 interest owner has the absolute right to an appeal of the
7 Division's order and to have it heard *de novo* before the
8 Commission. The hearing on appeal was not discretionary.

9 Now, in most instances where there's an appeal, a
10 stay won't be necessary, perhaps because of the type of the
11 case, or if the Division's decision has no time deadlines
12 in it, or because the parties voluntarily agree to the
13 stay. And for instance, in the Pride-Yates matter they
14 voluntarily agreed to withhold any action, pending appeal
15 before the Commission.

16 But in this case if a stay isn't granted, we
17 believe the right to an appeal is negated because the time
18 deadlines in the order will expire before the Commission
19 can consider these issues which I've referenced in my
20 argument. The Ard interests will have to make a decision
21 to join in the well with the order as it is, not as it
22 could possibly be amended by the Commission after hearing.

23 In addition, Hudson Oil will be the operator.
24 And once it commences the well, I just don't foresee the
25 Commission changing horses in midstream. I've never seen

1 it before.

2 In short, we think that due-process rights of the
3 Ard interests will be denied, and I think a hearing is
4 necessary to present these issues to the Commission. And
5 we think that pending the hearing before the Commission,
6 whenever that may be, a stay should be granted so that not
7 only negative consequences will not ensue to my clients,
8 but also protect the rights, keep the status quo, pending
9 the drilling of the well.

10 DIRECTOR FESMIRE: Mr. Bruce, first thing that
11 comes to mind, are there any lease issues that would --

12 MR. BRUCE: No, these are old fed- -- I think it
13 is a single federal lease that has been in existence 30
14 years.

15 DIRECTOR FESMIRE: So it's an HBP lease?

16 MR. BRUCE: It is a large lease that covers a
17 couple, three sections of land.

18 DIRECTOR FESMIRE: Okay.

19 MR. BRUCE: I am through, Mr. Examiner -- "Mr.
20 Examiner", sorry -- Mr. Director.

21 DIRECTOR FESMIRE: Mr. Carr?

22 MR. CARR: May it please the Examiner, as you
23 know, I represent Marbob Energy Corporation and also Hudson
24 Oil Company of Texas. There are several things I think it
25 is important for you to know.

1 The principals and officers of Hudson Oil Company
2 own over 21 percent of the working interest in the spacing
3 unit that is the subject of this hearing. Only Marbob and
4 Yates own more of the working interest than the Hudsons.
5 The Hudsons operate approximately 70 wells in New Mexico
6 with other partners -- Barnett Oil, Wiser Oil -- and the
7 issues that are complained about in this proceeding and
8 that will be explained before the Commission are issues
9 which neither of these other operators have ever raised in
10 regard to Hudson operations.

11 Since the Commission -- or since the Division
12 Hearing, there have been some changes in the names of the
13 parties that hold the Ard interest, but it's my
14 understanding that what we're talking about here, however
15 they're now structured, we're talking about only interests
16 held by Mary T. Ard as her separate property. And if it's
17 different than that, it's just something I don't know, but
18 that is my understanding of it.

19 And Mrs. Ard is the sister of the Hudsons. And
20 although we can say, or Mr. Bruce can say, this isn't a
21 long-term issue, there have been problems between the
22 Hudsons and Mrs. Ard for many years, and the lawsuit that
23 Mr. Bruce has discussed is just merely one of those issues,
24 and it's been a long feud or problem.

25 There have been a number of problems within the

1 family. There have been other legal proceedings last year,
2 and I understand that even last week there was new
3 litigation commenced in Dallas directed at the Hudsons and
4 the will of Mrs. Ard's mother over how interests have been
5 conveyed. What's in that suit I don't know, except it is
6 evidence of what is really a long-term problem, and they're
7 fighting it out in the courts. And they now bring it
8 before the OCD. And my suggestion is that these disputes
9 properly belong in the courts.

10 Mrs. Ard seeks a stay until there's a decision on
11 the merits before the Commission. And we can say, well,
12 this is a very simple thing: Ten days from today we'll be
13 before you. But we're absolutely convinced that that's
14 going to resolve nothing. It's only one more step.

15 And what the end result of this will be --
16 because we're ready to drill, we're planning to be out
17 there building location at this time -- is that the well is
18 going to be delayed and delayed and delayed.

19 Mr. Bruce says, well, I indicated that Mrs. Ard
20 was the only party that would not be receiving data. Well,
21 she is today the only party who hasn't paid her share.

22 When we were before the Division there were other
23 interests, a number -- The property interests are
24 complicated here, but the Iverson group was -- you know,
25 several names, but they were here. They have all paid

1 their share and are now committed to the well. We have 90
2 percent of the working interest committed and ready to go
3 forward.

4 And so for a few minutes I'd like to address some
5 of the arguments raised by Mr. Bruce. I'd like to talk
6 about the stay issue, and then I'd like to tell you what we
7 believe is really going on in this proceeding before the
8 Oil Conservation Commission.

9 Mrs. Ard complains about the Hudsons being
10 designated. And when I say the Hudsons, Mr. Bruce spends a
11 lot of time reading every word that I say in transcripts,
12 and one minute I say Hudson, then the next minute I say
13 Hudson Oil Company of The- -- I'm talking about just Hudson
14 Oil Company of Texas. But she complains about Hudson Oil
15 Company of Texas being designated operator in the joint
16 operating agreement and our proposing that they be named as
17 operator by the Oil Conservation Commission.

18 As to the joint operating agreement, let me point
19 out that that is a contract between parties who commit to a
20 well. Mrs. Ard has declined and refuses to sign that
21 contract. And when you can't get people to sign a
22 contract, what you do is, you come in and you seek a
23 pooling order. And Marbob and Hudson stand before you, we
24 believe, entitled to a pooling order asking you to name
25 Hudson Oil Company of Texas operator of the well.

1 Basically, we see here the argument as to the
2 operating agreement being simply an argument about a
3 contract that Mrs. Ard will not sign, a contract that they
4 have not proposed be amended. They want to complain about
5 something they're not a party to. And that's one issue,
6 but we're here with a pooling Application.

7 They talk about the 1997 litigation. They attach
8 it to their motion, they argue it before the Examiner. But
9 there is one very key thing about that: That case settled,
10 the parties reached an agreement.

11 And I think when Mr. Bruce sits here and says
12 that this case violates that settlement, that is absolutely
13 not true. The documents are before you, you can look at
14 those.

15 What happened? There was a dispute, one of the
16 disputes between Mrs. Ard and her brothers, and they were
17 unhappy with how these wells were being operated. And what
18 they did was, they split it. The shallow rights were
19 bought out by the Hudsons, the operating agreement was
20 amended to give the shallow rights to the Hudsons, and they
21 went on their way.

22 Read those documents. Is there anything in any
23 of those agreements that says the Hudsons that own these
24 deep rights waive their right to ever go back and develop
25 their own reserves? There is nothing like that there.

1 They have a right to develop these. And in the seven years
2 since that case was settled, there's been no well proposal
3 by Mrs. Ard. They didn't -- Mrs. Ard didn't buy the deep
4 rights, Hudson still has them. And they have a right to go
5 forward and develop them.

6 There is absolutely nothing in this Application
7 that violates the settlement which split out the shallow
8 rights, paid Mrs. Ard and said the Hudsons will operate
9 these. And to suggest that is simply misstating the
10 settlement of this lawsuit.

11 Our problem is -- And I guess, actually, you
12 could say the Iversons must not have that view either.
13 They were plaintiffs in the lawsuit and they have paid
14 their share, and they're ready to go forward with the
15 drilling of the well.

16 Mr. Bruce points out that as to the stay, the
17 standard announced in the Rules of this agency is that they
18 have to show that there are gross negative consequences
19 that are going to flow from this order unless it is stayed.
20 Now, when I look at that I don't really see in that rule
21 what you have to show to establish that you're going to
22 suffer gross negative consequences. Certainly you have to
23 have more than just bald allegations, or stays would be
24 like *de novo* applications: Anyone wanting one could get
25 one.

1 And I suggest that if you're looking for
2 guidance, a good place to look is in the rules of the
3 district court. And if you look at those rules, they say
4 that a party seeking a stay has to show that it's likely
5 that they're going to prevail on appeal. And I would
6 suggest to you, before you stay this order, you have to
7 make a determination as to whether or not Mrs. Ard can show
8 she's likely to prevail on appeal.

9 And that means we have to look at compulsory
10 pooling. This is a compulsory pooling case. We have to
11 ask ourselves, what is it? And I would submit to you, Mr.
12 Chairman, that the compulsory pooling is a statutory
13 process that provides a way to combine interests for the
14 drilling of a well where parties can't, or as here, refuse
15 to agree.

16 The statute is important in the context of this
17 motion. It says there are certain preconditions, and when
18 you meet those you're entitled to an order. And those
19 preconditions are, you have more than one interest in a
20 spacing unit, have it here; we have a party proposing to
21 drill a well, they have a right to drill, and they can't
22 reach voluntary agreement. Those are the preconditions, we
23 submit. And Marbob comes before you, every single one of
24 those is met.

25 And then the statute goes on and it says, when

1 you meet these preconditions, after notice and hearing the
2 Division -- and I quote -- shall pool all or any part of
3 such lands or interests or both in the spacing unit or
4 proration unit as a unit.

5 The key word there is the word "shall". If you
6 come in, you meet all the statutory preconditions, you are
7 entitled to an order. And on the facts of this case, I
8 submit to you that when the hearings are done, Marbob is
9 entitled to an order. These lands, unless you violate your
10 statutory duty, must be pooled.

11 And then we go to the next step, and that is, you
12 don't go out and just, you know, dredge up remedies for the
13 people who come before you. You grant or deny what is
14 presented to you.

15 In this case there is only one party before you,
16 one person before you, to be designated operator of this
17 well, and that's Hudson Oil Company of Texas. You don't go
18 out and look for another operator, you don't go out when 90
19 percent of the working interest is committed to a well on a
20 spacing unit and a party to operate and start looking for
21 somebody else. You grant or deny what's before you.

22 There is no proposal here by Mrs. Ard formally to
23 put anybody else before you, and 90 percent -- the owners
24 of 90 percent of the working interest go the other way.

25 If you look at the rules of the District Court,

1 Mrs. Ard also has to show she's going to sustain or suffer
2 irreparable harm. I would submit to you, that's a hard
3 argument to prevail on when you have proposed no
4 alternative operator. And you're sitting there with a
5 property interest that Yates, Marbob, the Hudsons, the
6 Iversons want to develop. And Mrs. Ard says no and wants a
7 stay, so that 90 percent of the working interest can just
8 sit back and lumbers its way through whatever hearing
9 processes and court proceedings we may have to deal with
10 before we get this resolved.

11 So it seems to me at the bottom line, what does
12 Mrs. Ard want?

13 She wants a different operator. We know 90
14 percent of the working interest is committed to a well to
15 be drilled by Hudson and Hudson, and we know no other
16 operator has been proposed.

17 She wants data. She wants data, but she's the
18 only person in the well who hasn't paid their share. And I
19 will tell you right now, she wants to sign up and pay her
20 share, she'll get data, just like the Iversons, just like
21 Marbob, just like Yates.

22 And then the interesting thing is, and I think
23 the most interesting thing in everything that Mr. Bruce is
24 asking is that they also want a casingpoint election. They
25 say, Well, this is common in the industry. And while a

1 casingpoint election may be common in the industry, it is
2 not common with compulsory pooling. Because when you pool,
3 the other thing you seek is the assessment of a risk
4 penalty. That means if I drill for you, I get in almost
5 all cases the 200 percent risk penalty assessed by the
6 Division.

7 I don't get that if I go out. If I drill the
8 well, if I take the risk, give you the data, and if it's
9 good you get to elect to participate, and if it's not you
10 don't. That subverts the entire pooling process. It would
11 give Mrs. Ard in this case a free look. And I think that's
12 what this case is about, I think that's what this motion is
13 about.

14 And that is why we, being ready to go with 90
15 percent of the working interest paid up and ready to go,
16 are opposed to having this matter stayed while this case
17 plays itself out wherever it may go.

18 DIRECTOR FESMIRE: Mr. Bruce, what would be the
19 harm to the Ard parties of not granting the motion for
20 stay?

21 MR. BRUCE: Well, we are going to have to make a
22 decision based on the order as it is. Now, if we -- It
23 will be a lot easier to make that decision if we go before
24 the Commission and present our evidence and you decide that
25 someone else should be named operator.

1 Number two, it will be a lot easier to make that
2 decision if there are these protections in there that say,
3 yes, we get a casingpoint election, although frankly I
4 think that's one of the more minor things. But certainly
5 well information, as Mr. Grappe testified at the prior
6 hearing, and as we'll go into in more detail, we have had
7 the devil of a time, my clients, getting any well
8 information out of Hudson Oil on an ongoing basis, on a
9 number of properties.

10 And so we're going to have to go in blind to see
11 whether or not we'll even get well information, whether or
12 not -- who will be the ultimate operator. Like I said, if
13 the well is started drilling now, we know who it will be,
14 because I just don't foresee the Commission changing horses
15 in midstream insofar as the operator goes.

16 DIRECTOR FESMIRE: Mr. Carr, what is the
17 relationship between Marbob and the Hudsons? You're here
18 representing both parties?

19 MR. CARR: Marbob owns part of the working
20 interest, Yates owns part of the working interest, the
21 Hudsons do. There is nothing in terms of any kind of
22 formal relationship. I don't believe that Marbob and the
23 Hudsons have been involved in other drilling efforts. I
24 may be wrong, but my understanding was that this was a
25 prospect that they had discussed and among themselves

1 decided Hudson would be the proper party to operate.

2 DIRECTOR FESMIRE: Who proposed the well in the
3 first place?

4 MR. CARR: I think Marbob did.

5 DIRECTOR FESMIRE: Marbob. So how did Hudson end
6 up -- Hudson, Hudson, or --

7 MR. CARR: Well, and this is something that Mr.
8 Bruce and I will also argue about, but you see, what we
9 have got out here in this property, Mr. Examiner, is a
10 situation where the Hudsons have qualified this and three
11 other sections for a federal royalty reduction. And Mr.
12 Bruce and I will argue whether -- what that means.

13 But we believe -- and when I say that, I mean
14 Hudson and Marbob believe that if, in fact, Hudson drills
15 and operates the well, they will qualify for the royalty
16 reduction, which could result in a 10-percent benefit to
17 all interest owners in the well. And they've discussed it,
18 and because of that, they think Hudson is the proper
19 person, that they can operate and -- drill and operate the
20 well.

21 And they also believe there are financial
22 benefits that come from it. And that is, as I understand
23 it, the reason that this decision was made.

24 MR. BROOKS: Mr. Carr, is there -- this issue
25 about well information, is this only about information that

1 will arise during the drilling of the well? Is there any
2 issue --

3 MR. BRUCE: It's ongoing, it's ongoing.

4 MR. BROOKS: Is there any issue about prospect
5 information that they want --

6 MR. BRUCE: Not prospect information, but --

7 MR. BROOKS: Okay.

8 MR. BRUCE: -- such things as logs, title data,
9 just the whole panoply of matter that affect operations
10 between working interest owners.

11 MR. BROOKS: Well, what I was trying to clarify
12 was, is there an issue about what information that your
13 client wants prior to making an election, or is it just
14 what will happen later?

15 MR. BRUCE: Well, assuming we go under the
16 pooling order, David, you know, we'd have to pay our money
17 up front.

18 MR. BROOKS: Right.

19 MR. BRUCE: But we have no guarantee at this
20 point that we will receive well information. Let's assume
21 we don't even get a casingpoint election, even though
22 everybody else gets one. But what we're looking for is
23 just well information on an ongoing basis, not only during
24 the drilling of the well, but continuing thereafter,
25 assuming they make a good well, during the life of the

1 well.

2 MR. BROOKS: But you're not -- you don't have an
3 issue about what information you need now before you make
4 the election?

5 MR. BRUCE: Not the well information right now --

6 MR. BROOKS: Okay, that's what I wanted to
7 clarify.

8 MR. BRUCE: -- they have made their own
9 individual, you know, geologic determination on that --

10 MR. BROOKS: That's what I wanted to clarify.

11 MR. BRUCE: -- but if we think -- I mean, I think
12 there's a non-monetary effect in the future as to what type
13 of well information are we going to be supplied by this
14 operator, who in the past has denied us information on an
15 ongoing basis?

16 I would like to point out a couple other things.
17 I didn't say that this pooling violates the 1997 lawsuit; I
18 did say it circumvents it. Obviously, there's a severe
19 squabble among the parties, and involved in that lawsuit
20 were Moore and Shelton, an old-time oil and gas company out
21 of -- I think they're out of Galveston now -- and the
22 Iverson family, which is out of -- well, I think based out
23 of Dallas and Midland.

24 So it wasn't just -- The 1997 lawsuit was just
25 not Mrs. Ard against the Hudsons. There was a full listing

1 of nonrelatives of the Hudsons involved in this matter.

2 And I would also point out that we're not looking
3 for a free look. We're going to have to make a decision.
4 Unless Marbob and Hudson Oil decide to go through and start
5 spudding this well right now -- and I don't think that has
6 occurred -- we're not looking for a free look before we
7 make our election unless they go forward and drill right
8 now.

9 We're just looking for a decision before the
10 Commission to see if we get some relief before the
11 Commission and then make our election, and we would
12 probably only have a few days to make it anyway, even under
13 a Commission order, once the Commission order comes out,
14 because the period of that election deadline has already
15 expired.

16 DIRECTOR FESMIRE: Jim, right now, the way the
17 case appears to me is that we have a dispute between
18 Hudsons and Mrs. Ard, and that that dispute is causing a
19 delay in the drilling of this well. Is there anything
20 about that dispute that can't be addressed later, you know,
21 if this thing is denied?

22 MR. BRUCE: You know, it makes it virtually --
23 extremely difficult for us to decide whether to join in the
24 well in the first instance, because --

25 DIRECTOR FESMIRE: Because you don't have the

1 information?

2 MR. BRUCE: -- we don't have the information, we
3 don't have the protections in an order. I mean...

4 I would also point out -- I mean, first of all,
5 you know, as far as getting the well drilled now, I mean,
6 the first contacts, although they were with respect to
7 purchasing Mrs. Ard's interests, were well over a year ago
8 now. There have been negotiations and stuff among the
9 parties starting in May or June of last year. It's not
10 that -- The well needs to be drilled right now. I don't
11 see any precipitous drop in gas prices. I mean, yes, the
12 parties want to drill the well. That's not the reason for
13 our appeal, is to prevent the drilling of a well. It's
14 just to look for protections in an order that we think are
15 reasonable.

16 DIRECTOR FESMIRE: Well, it seems to me that
17 granting this motion would delay the benefit of the well to
18 other partners that constitute about 90 percent of the
19 well.

20 MR. BRUCE: Well, I mean, you know, that happens
21 all the time when parties don't sign up for JOAs and the
22 parties can't agree. Then you have to go to the force
23 pooling. And even under most force-pooling, just routine
24 force-pooling, there's a several-month delay in the
25 drilling of a well. I mean, that's just a factor of the

1 administrative process.

2 DIRECTOR FESMIRE: That's a good point.

3 Mr. Carr, did you have a --

4 MR. CARR: Yeah.

5 DIRECTOR FESMIRE: -- response to that?

6 MR. CARR: I think as to data before an election
7 has to be made whether or not they're going to participate
8 in a well, they're going to have to make an election before
9 they have data. We're standing down, we have to stand
10 down. And we're going to stand down for as long as it
11 takes, and that may be much more than three months.

12 And in the meantime the property isn't being
13 developed, and the -- 90 percent of the working interest is
14 not being allowed to go forward, not being able to develop
15 their property interest.

16 I think that one of the things that happens in a
17 lot of these proceedings is that there is some confusion
18 between what is the role of the OCC and what is the role of
19 the court. And in this case we're asking the OCC to
20 exercise their pooling authority in the Oil and Gas Act and
21 combine these lands so a well can be drilled.

22 That doesn't mean that there aren't other issues
23 that are going to be resolved in the courts or that other
24 things may develop that need to be resolved and that the
25 Hudsons will testify next week that they will -- anyone who

1 pays their share -- will receive exactly the same
2 information Yates, Marbob, Mrs. Ard, the Iversons, whoever
3 it is.

4 And if the Hudsons don't properly perform, you
5 can always come back here and seek an order to remove them
6 as operator, you can ask for -- you can go challenge -- if
7 you're under a joint operating agreement you can go to
8 court and bring actions under those if the operator isn't
9 properly performing. They don't have to all be decided up
10 front before we even get started.

11 Mr. Bruce points out, well, in 1997 there were an
12 awful lot of other people in this, it wasn't just Mrs. Ard.
13 And that's right. And every single one of those interests
14 is now voluntarily committed to this proposed well.

15 We're not going to drill, we can't drill, until
16 these issues are resolved. We'd like to resolve them in
17 the context of what you do to drill a well, not a property
18 dispute or a fight that goes on between -- within a family
19 or for everything from prior operating rights to what's
20 been covered by a well, all those kinds of things. Those
21 aren't here.

22 What's here is the drilling of a well. We're
23 ready to go, 90 percent of the working interest is
24 committed. We will share with everyone the same
25 information, and if they don't like it they can come back.

1 DIRECTOR FESMIRE: Mr. Bruce?

2 MR. BRUCE: Well, I would just say, you know, if
3 there are improper operations coming in three, four, five,
4 six months from now, the damage is already done. And I
5 don't think that's a good option.

6 One other thing I would ask. Mr. Carr says the
7 only thing the Division or the Commission can do is grant
8 or deny an Application. Well, in many cases the Division
9 will grant part of an Application, deny another part of it,
10 or grant something in between.

11 I have not filed an Application to name somebody
12 else as operator. Those issues have been raised in --
13 before the Division and in the filing of the prehearing
14 statement. You know, if I need to file something, fine.
15 But I don't know that that's ever been necessary before the
16 Division before, to file a counter-application, unless, for
17 instance, Mrs. Ard was seeking to be named as operator
18 rather than Hudson or something.

19 MR. CARR: If you want an operator other than the
20 party designated by the parties who are bringing the
21 application, the way you traditionally do it is, you file
22 another application so there are two people before you.
23 And so we stand with 90 percent of the interest owners.
24 Mr. Bruce can file an application to name Mrs. Ard as
25 operator if he wants, but those are the choices.

1 DIRECTOR FESMIRE: Mr. Carr, I have never known
2 Marbob or Yates to turn down operating a well when they had
3 the opportunity.

4 MR. CARR: But you've never been in a situation
5 where they thought they had this royalty, reduced-royalty
6 situation before them as well.

7 DIRECTOR FESMIRE: I'm not familiar with that.
8 Will that only apply if Hudson operates?

9 MR. CARR: That's their understanding. They
10 worked that out without -- Maybe they asked Mr. Bruce.

11 MR. BRUCE: Well, I stay away. We are checking
12 into that, that is an issue. That was an issue raised
13 before the Division, and we're not certain that that really
14 applies, but --

15 MR. CARR: But even if that's the issue, 90
16 percent of the working interest is committed to this well.

17 MR. BRUCE: And you know, the implication is, you
18 can ignore the other 10 percent, and I just --

19 DIRECTOR FESMIRE: Okay, counsel Brooks, could
20 you and I step outside for just a minute? We'll go off the
21 record.

22 (Off the record at 9:45 a.m.)

23 (The following proceedings had at 9:49 a.m.)

24 DIRECTOR FESMIRE: Let's go back on the record.
25 After consultation with counsel Brooks, I've

1 decided to deny the stay and grant the Ard interest until
2 9:00 a.m. the morning of the hearing to make their
3 election, and we'll draft an order to that effect.

4 Is there any objection to -- or further argument
5 to that?

6 MR. BRUCE: The decision has been made, Mr.
7 Chairman.

8 DIRECTOR FESMIRE: Okay. Well, we'll go ahead
9 and word the order the way it is, and if you'd be so kind
10 as to announce that decision before the beginning of the
11 hearing on Tuesday, March 8th.

12 (Thereupon, these proceedings were concluded at
13 9:50 a.m.)

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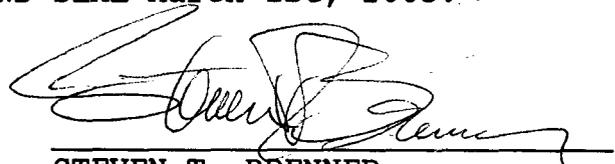
CERTIFICATE OF REPORTER

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 March 1st, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006