

**STATE OF NEW MEXICO  
COUNTY OF SAN JUAN  
ELEVENTH JUDICIAL DISTRICT COURT**

**EDWIN SMITH, LLC, a New Mexico limited liability company; and JERRY T. WALMSLEY, trustee of the June Walmsley Bypass Trust under the will of June H. Walmsley dated April 7, 1992,**

**Plaintiffs,**

**v.**

**No. D-1116 CV-06-59-6**

**Class 1: SYNERGY OPERATING, LLC, a New Mexico limited liability company; JODIE YATES-SIMON; ROBERT E. KOUNS; CHARLA VARNER; KIMBERLY BRAUTIGAM; DEBRA KOUNS LAY; KRISTI CLARK; F. KEVIN KURTZ;**

**Class 2: RICHARD H. KOUNS, if living, if deceased, THE UNKNOWN HEIRS OF RICHARD H. KOUNS, deceased; CLARA PRANGLEY, if living, if deceased, THE UNKNOWN HEIRS OF CLARA PRANGLEY, deceased; ANNEMARIE KELLER, if living, if deceased, THE UNKNOWN HEIRS OF ANNEMARIE KELLER, deceased; MARGARET K. DUNN, if living, if deceased, THE UNKNOWN HEIRS OF MARGARET K. DUNN, deceased; F. NORMAN KURTZ, if living, if deceased, THE UNKNOWN HEIRS OF F. NORMAN KURTZ, deceased; MELBA ANDERSON KOUNS, if living, if deceased, THE UNKNOWN HEIRS OF MELBA ANDERSON KOUNS, deceased; DAVID F. JONES, if living, if deceased, THE UNKNOWN HEIRS OF DAVID F. JONES, deceased;**

**Class 3: THE UNKNOWN HEIRS OF: MARGARET HASSELMAN JONES, deceased; JULIA HASSELMAN KELLER, deceased; MAY HASSELMAN KOUNS, deceased; JENNIE HASSELMAN HILL, deceased; EVELYN K. KURTZ, deceased; ROBERT H. KOUNS, deceased,**

**Class 4: ALL UNKNOWN CLAIMANTS OF INTEREST IN THE PREMISES ADVERSE TO PLAINTIFFS,**

**Defendants.**

**SYNERGY OPERATING, LLC, THEROLYN K. WILLIAMS,  
ANNEMARIE KELLER, JODIE YATES-SIMON,  
ROBERT E. KOUNS, CHARLA VARNER and  
KIMBERLY BRAUTIGAM,**

**Counter-plaintiffs and Cross-plaintiffs,**

**vs.**

**Class 1: EDWIN SMITH, LLC and JERRY T. WALMSLEY, trustee,**

**Counter-defendants, and**

**Class 2: MARGARET K. DUNN, if living, if deceased, THE UNKNOWN HEIRS OF  
MARGARET K. DUNN, deceased; RICHARD H. KOUNS, if living, if deceased, THE  
UNKNOWN HEIRS OF RICHARD H. KOUNS, deceased; CLARA PRANGLEY, if living,  
if deceased, THE UNKNOWN HEIRS OF CLARA PRANGLEY, deceased; F. NORMAN  
KURTZ, if living, if deceased, THE UNKNOWN HEIRS OF F. NORMAN KURTZ,  
deceased; MELBA ANDERSON KOUNS, if living, if deceased, THE UNKNOWN HEIRS  
OF MELBA ANDERSON KOUNS, deceased; DAVID F. JONES, if living, if deceased,  
THE UNKNOWN HEIRS OF DAVID F. JONES, deceased,**

**Cross-defendants, and**

**Class 3: THE UNKNOWN HEIRS OF: MARGARET HASSELMAN JONES, deceased;  
JULIA HASSELMAN KELLER, deceased; MAY HASSELMAN KOUNS, deceased;  
JENNIE HASSELMAN HILL, deceased; EVELYN K. KURTZ, deceased; ROBERT H.  
KOUNS, deceased,**

**Cross-defendants, and**

**Class 4: ALL UNKNOWN CLAIMANTS OF INTEREST IN THE PREMISES  
ADVERSE TO PLAINTIFFS,**

**Cross-defendants, and**

**Class 5: MILDRED DELANO, WILLIAM SCHMITT, GERALDINE CHIPUSIO,  
WILLIAM BROWN, MYRNA SCHMITT, CAROLYN EVANS, RACHEL EVANS,  
DOMINIQUE EVANS,**

**Additional parties, and**

**Class 6: LEOLA KELLOGG, if living, if deceased, THE UNKNOWN HEIRS OF LEOLA KELLOGG; ROBERT ROY PRANGLEY, if living, if deceased, THE UNKNOWN HEIRS OF ROBERT ROY PRANGLEY; JOY LYNN PRANGLEY, if living, if deceased, THE UNKNOWN HEIRS OF JOY LYNN PRANGLEY; RITA KOUNS, if living, if deceased, THE UNKNOWN HEIRS OF RITA KOUNS,**

**Additional parties.**

**ANSWER TO FIRST AMENDED COMPLAINT TO QUIET TITLE  
OF SYNERGY OPERATING, LLC, THEROLYN K. WILLIAMS,  
ANNEMARIE KELLER, JODIE YATES-SIMON,  
ROBERT E. KOUNS, CHARLA VARNER, AND KIMBERLY BRAUTIGAM,  
AND COUNTERCLAIM AND CROSSCLAIM TO QUIET TITLE  
AND COUNTERCLAIM FOR ACCOUNTING**

Defendant Synergy Operating, LLC and Defendants Theroiyn K. Williams, Annemarie Keller, Jodie Yates-Simon, Robert E. Kouns, Charla Varner, and Kimberly Brautigam, sometimes collectively referred to herein as "Defendants," answer the First Amended Complaint to Quiet Title ("Complaint") and state their defenses as follows.

**First Defense**

1. The allegations in ¶ 1 of the Complaint are admitted.
2. The allegations in ¶ 2 of the Complaint are denied.
3. The allegations in ¶ 3 of the Complaint are denied insofar as they allege the four Hasselman women are sisters. Margaret Hasselman Jones was the stepmother of sisters Julia Hasselman Keller, May Hasselman Kouns and Jennie Hasselman Hill.
4. The allegations in ¶ 4 are denied as to the date the action was initiated and Defendants state affirmatively, on information and belief, that in or about June, 1958 Claude Smith, Margaret Hasselman Jones, Julia Hasselman Keller, Jennie Hasselman Hill, and May Hasselman Kouns, Plaintiffs, filed a Complaint and Amended Complaint to quiet title in San Juan County, New Mexico, District Court Cause No. 5994 ("1958 Quiet Title") relating to

Southwest Quarter, Section 8, Township 29 North, Range 11 West, N.M.P.M., San Juan County, New Mexico ("SW/4 Sec.8, T29N, R11W").

5. The allegations in ¶ 5 of the Complaint are admitted.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged in the first sentence in ¶ 6 of the Complaint and therefore deny the same. The remaining allegations are admitted.

7. With respect to the allegations in ¶ 7, Defendants state that the Judgment in the 1958 Quiet Title vested title in the names of Margaret Hasselman Jones, Julia Hasselman Keller, Jennie Hasselman Hill, and May Hasselman Kouns [sometimes referred to herein as "the Hasselman women"] "as heirs at law of Herman Hasselman, deceased" "in fee simple," and deny all allegations inconsistent therewith.

8. With respect to the allegations in ¶ 8, Defendants state that the conveyance described was ineffective to transfer an undivided one-half interest in the SW/4 Sec.8, T29N, R11W to June Hill Walmsley because the joint tenancy was severed by the 1958 Quiet Title and by the subsequent conduct, admissions and conveyances of the Hasselman women. Defendants deny all allegations inconsistent therewith.

9. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged in ¶ 9 of the Complaint and therefore deny the same.

10. As to the allegations of ¶ 10 of the Complaint, these Defendants admit that each of them made and/or makes a claim of right, interest, or title in and to the SW/4 Sec.8, T29N, R11W. They deny that their prior or current claims constitute a cloud on Plaintiffs' titles and they deny the truth of the remaining allegations.

11. As to the allegations of ¶ 11 of the Complaint, Defendants admit that Defendant Annemarie Keller, who is living, and Therolyn K. Williams, who is living and is an heir of Margaret K. Dunn, made and/or make a claim of right, interest and title in and to the SW/4 Sec.8, T29N, R11W, but deny that their prior or current claims constitute a cloud on Plaintiffs' titles, and deny the truth of the remaining allegations.

12. As to the allegations of ¶ 12 of the Complaint, Defendants admit that the Class 3 Defendants made and/or make claims of right, interest and title in and to the SW/4 Sec.8, T29N, R11W, some of which may be adverse to Plaintiffs' titles and deny the truth of the remaining allegations.

13. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged in ¶ 13 of the Complaint and therefore deny the same.

14. These Defendants are not required to admit or deny the contention of ¶ 14 of the Complaint because it is a contention of law, not fact; to the extent it requires an answer, Defendants deny the same.

### **Second Defense**

15. Plaintiffs are not the owners of the interests they claim.

### **Third Defense**

16. Plaintiffs' claims are barred by the doctrine of *res judicata* and collateral estoppel by virtue of Judgment in the 1958 Quiet Title, which quieted title to the minerals in the SW/4 Sec.8, T29N, R11W as follows :

George B. Robbins	undivided	4/160
J.R. Robbins	undivided	1/160
Claude Smith	undivided	75/160
Hasselman women	undivided	one-half "in fee simple"

**Fourth Defense**

17. Plaintiffs have failed to join Joseph C. Robbins, owner of an undivided mineral interest in the SW/4 Sec.8, T29N, R11W, and judgment in this action as requested by Plaintiffs (50% in Smith and 50% in Walmsley) would prejudice Joseph C. Robbins.

18. Plaintiffs have failed to join numerous other persons who own an undivided mineral interest in the SW/4 Sec.8, T29N, R11W, namely those persons who are named as additional parties to Defendants' Counter- and Cross-claim to quiet title, Class 5. Judgment in this action as requested by Plaintiffs would prejudice each of these persons.

**Fifth Defense**

19. Plaintiffs' claims are barred by the doctrine of estoppel.

**Sixth Defense**

20. Plaintiffs' claims are barred by the doctrine of waiver.

**Seventh Defense**

21. Plaintiffs' claims are barred by the doctrine of ratification and acceptance.

**Eighth Defense**

22. Plaintiffs' claims are barred by the doctrine of release.

**Ninth Defense**

23. Plaintiffs' claims are barred by the doctrine of laches.

**Tenth Defense**

24. Plaintiffs' claims are barred by their unclean hands.

**COUNTERCLAIM AND CROSS-CLAIM TO QUIET TITLE**

Counter- and Cross-plaintiffs Synergy Operating, LLC ("Synergy"), Therolyn K. Williams, Annemarie Keller ("Heirs of Julia Keller"), Jodie Yates-Simon, Robert E. Kouns,

Charla Varner, and Kimberly Brautigam ("Heirs of May Kouns"), hereby counterclaim against Edwin Smith, LLC and Jerry T. Walmsley, trustee, and cross-claim to quiet title against the cross-defendants and additional parties listed in the caption above, as follows:

1. Counter- and Cross-plaintiffs are the owners of certain undivided title interests in SW/4 Sec. 8, Township 29 North, Range 11 West, in San Juan County, New Mexico (hereafter referred to as "the Property"). There are producing wells on the Property and ownership of the mineral interests and of the working interests in said wells is in dispute.

2. Synergy is the assignee of the working interests of Joseph C. Robbins and of the Heirs of Julia Keller, the Heirs of May H. Kouns and the Heirs of Margaret H. Jones in the Property and is the operator under a joint operating agreement of a producing oil and gas well located on the Property, the Duff 29-11-8 #104. Counter-defendant Walmsley has executed the operating agreement covering the Duff well which designates Synergy as operator of the well.

3. As operator of the Duff well, Synergy has an interest in determining title to the Property so as to properly distribute royalty and working interest payments.

4. In 1924 Herman Hasselman acquired an undivided one-half interest in the Property. He conveyed his undivided one-half interest in the Property in equal shares to his wife, Margaret Hasselman and his three daughters by a previous marriage, Julia Hasselman Keller, May Hasselman Kouns and Jennie Hasselman Hill (the Hasselman women).

5. In 1951 the Hasselman women conveyed the Property to Earl Kouns (May's husband) who on the same day conveyed the Property to the Hasselman women in joint tenancy.

6. The joint tenancy was subsequently terminated, severed and/or converted and the Hasselman women thereafter owned the Property as tenants-in-common. Their heirs and

assignees have succeeded to the undivided 1/8 interest in the Property of each of the Hasselman women.

7. The following persons own an undivided interest in the Property, subject to the assignments of working interests to Synergy, as described below:

Heirs of Julia Hasselman Keller  
Counter-plaintiff Therolyn K. Williams 1/16

Counter-plaintiff AnneMarie Keller 1/16

Heirs of May Hasselman Kouns  
Patricia Ann Prangle Roberts 1/32

Counter-plaintiffs Charla Varner, Robert E.  
Kouns, Jodie Yates-Simon, Kimberly  
Brautigan 1/32

Heirs of Margaret Hasselman Jones  
Mildred Delano, William Schmitt, Geraldine  
Chipusio, William Brown, Myrna Schmitt,  
Carolyn Evans, Rachel Evans 1/8

8. Synergy has assignments of working mineral interests from Counter-plaintiffs Therolyn K. Williams, Annemarie Keller, Charla Varner, Robert E. Kouns, Jodie Yates-Simon, Kimberly Brautigam and from additional parties Patricia Ann Prangle Roberts, Mildred Delano, William Schmitt, Geraldine Chipusio, William Brown, Myrna Schmitt, Carolyn Evans and Rachel Evans and Synergy is the owner of more than one-quarter of the working mineral interests in the Property.

9. Counter- and Cross-plaintiffs are credibly informed and believe that Class I Counter-defendants Edwin Smith, LLC and Jerry T. Walmsley, trustee, make a claim of right, title or interest in or lien upon the Premises, adverse to the title of the Counter- and Cross-plaintiffs. Said claims are inferior to the title and interest of the Counter- and Cross-Plaintiffs in



the Property, and said claims constitute a cloud on the Counter- and Cross-Plaintiffs' title in the Property.

10. Counter- and Cross-plaintiffs are credibly informed and believe that each of those Cross-defendants listed in Class 2, 3 and 4 of the caption of this Counter- and Cross-claim makes a claim of right, title or interest in or lien upon the premises, adverse to the title of Counter- and Cross-plaintiffs. Said claims are inferior to the title and interest of the Counter- and Cross-Plaintiffs in the Property, and said claims constitute a cloud on the Counter- and Cross-Plaintiffs' title in the Property.

11. The additional parties listed in Class 5 and Class 6 are brought in pursuant to NMRA 1-013(H), because their presence is required for the granting of complete relief in the determination of this Counter- and Cross-claim. Jurisdiction upon them may be obtained through personal or substituted service and their joinder will not deprive the court of jurisdiction of the action.

12. Counter- and Cross-plaintiffs are credibly informed and believe that each of those additional parties listed in Class 5 and 6 of the caption of this Counter- and Cross-claim may make a claim of right, title or interest in or lien upon the premises, adverse to the title of Counter- and Cross-plaintiffs. Said claims are inferior to the title and interest of the Counter- and Cross-Plaintiffs in the Property, and said claims constitute a cloud on the Counter- and Cross-Plaintiffs' title in the Property.

13. Counter- and Cross-plaintiffs have made due search and inquiry to ascertain whether the persons named as Class 2, 3, 4 and 6 Cross-defendants and additional parties are living or dead and are unable to ascertain with certainty whether such persons are living or dead,

and such persons are therefore named as Cross-defendants in Class 2, 3, 4 and 6 and service by publication may be had upon them.

WHEREAS, Counter- and Cross-plaintiffs pray that this Court quiet title as requested in paragraphs 7 and 8 above, and for such other and further relief as to the Court seems proper.

**COUNTERCLAIM FOR DAMAGES FOR BREACH OF FIDUCIARY DUTY,  
CONVERSION, AND FOR AN ACCOUNTING AGAINST EDWIN SMITH, LLC.**

Counter-plaintiffs, for their Counterclaim against Counter-defendant Edwin Smith, LLC ("Smith") state as follows:

1. Counter-plaintiffs and additional parties are the owners of mineral royalty interests in the Property as set out as follows:

Therolyn K. Williams	1/16
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Annemarie Keller	1/16
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Charla Varner, Robert E. Kouns, Jodie Yates-Simon, Kimberly Brautigan	1/32
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Mildred Delano, William Schmitt, Geraldine Chipusio, William Brown, Myrna Schmitt, Carolyn Evans, Rachel Evans	1/8
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2. Counter-plaintiff Synergy is the owner of more than a one-fourth undivided working interest, by assignments from the mineral owners listed in ¶ 1 above, in the Claude Smith #1 well, which is located on the Property.

3. Smith is the operator of the Claude Smith #1 well which has been producing in paying quantities for decades. Upon information and belief, Smith does not have a valid lease or an operating agreement entitling him to operate the Claude Smith #1 well.

4. As *de facto* operator of the Claude Smith #1 well, Smith has a fiduciary obligation to account to interest owners for payments due to them.

5. Despite demand, Smith has failed and refused to make proper payment from production of the Claude Smith # 1 well to the Counter-plaintiffs and the additional parties, as interest owners in the well, in violation of his fiduciary duties.

6. As *de facto* operator of the Claude Smith # 1 well, Smith has a fiduciary obligation to account to all interest owners, including Counter-plaintiffs, for Smith's expenditures related to operations of the Claude Smith # 1 well.

7. Despite demand, Smith has failed to properly account to Synergy and the other Counter-plaintiffs for amounts expended by Smith related to operations of the well, in violation of Smith's fiduciary obligations.

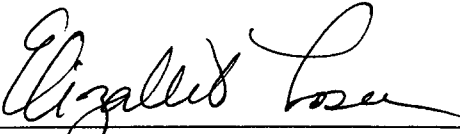
8. As a fiduciary, Smith may charge the appropriate interest owners only those amounts which are fairly necessary for operation of the Claude Smith #1 well. Upon information and belief, Smith has charged excessive amounts for operating the well in violation of his fiduciary duties.

9. Smith has charged a one-eighth royalty against working interests in the Claude Smith #1 well, despite the fact that Smith has no valid and enforceable agreement entitling him to withhold a royalty. Smith's conduct is in violation of his fiduciary duties and amounts to conversion of the mineral interest and the proceeds thereof.

10. Smith's breaches of fiduciary duty and conversion, as set out above, have caused damages to Counter-plaintiffs for which they are entitled to damages.

WHEREFORE, Counter-Plaintiffs request an accounting of all expenditures related to the Claude Smith # 1 well and payments of all sums due them as interest owners in the well, and for damages for Smith's breaches of fiduciary duty and conversion, and for such other and further relief as to the Court seems proper.

ATKINSON & THAL, P.C.



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This is to certify that on May 31, 2006,  
a true copy of the foregoing Answer to First  
Amended Complaint and Counterclaims was served  
via facsimile and first class mail to:

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Sarita Nair, Esq.  
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for Clifford K. Atkinson