

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 1:13-cv-01036-ML
	§	
ROBERT A. HELMS, ET AL.,	§	
<i>Defendants,</i>	§	
	§	
and	§	
	§	
WILLIAM L. BARLOW AND GLOBAL CAPITAL	§	
VENTURES, LLC,	§	
<i>Relief Defendants.</i>	§	

**RECEIVER’S NOTICE OF FILING  
OF DEPOSITION TRANSCRIPT AND ERRATA SHEET**

**COMES NOW** Thomas L. Taylor III (“Receiver”), Court-appointed receiver in the above-styled enforcement action for the Defendants and all entities they own or control, and hereby gives notice of the filing of the transcript of Receiver’s deposition taken January 21, 2015, and the executed Errata Sheet with respect to same, attached hereto as Exhibit A.<sup>1</sup>

Dated: February 9, 2015

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By:           /s/ Andrew M. Goforth            
Andrew M. Goforth

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<sup>1</sup> Receiver notes that transcripts of the depositions of Avery Chapman (Doc. 162-4), Philip Gaucher (Doc. 162-5) and Clovis Capital Ventures LLC (through its designated representative Douglas Smith) (Doc. 162-6) were previously filed of record with this Court.

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**CERTIFICATE OF SERVICE**

On February 9, 2015, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Western District of Texas, using the CM/ECF electronic filing system. All counsel of record and *pro se* parties have been served electronically via CM/ECF notice, or by other means as listed below consistent with the Federal Rules of Civil Procedure.

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/s/ Andrew M. Goforth  
Andrew M. Goforth

SECURITIES AND EXCHANGE COMMISSION VS. ROBERT A. HELMS, ET AL.

Thomas L. Taylor, III on 01/21/2015

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

4 SECURITIES AND EXCHANGE )  
COMMISSION, )  
5 ) CIVIL ACTION NO.  
Plaintiff, ) 1:13-CV-1036  
6 )  
VS. )  
7 )  
ROBERT A. HELMS; ET )  
8 AL., )  
9 Defendants. )

10 And )  
11 WILLIAM L. BARLOW, and )  
GLOBAL CAPITAL )  
12 VENTURES, LLC, )  
13 )  
Relief Defendants, )  
14 solely for the purposes )  
of equitable relief. )

17 ORAL DEPOSITION OF  
18 THOMAS L. TAYLOR, III  
19 JANUARY 21, 2015

20 ORAL DEPOSITION OF THOMAS L. TAYLOR, III, produced  
21 as a witness and duly sworn, was taken in the above  
22 styled and numbered cause on January 21, 2015, from 9:02  
23 a.m. to TIME 11:13 a.m., before KATERI A. FLOT-DAVIS,  
24 CSR, CCR in and for the State of Texas, reported by  
25 machine shorthand, at the offices of The Taylor Law

1 Offices, P.C., 4550 Post Oak Place, Ste. 241, Houston,  
2 Texas, pursuant to the Federal Rules of Civil Procedure  
3 and the provisions stated on the record herein.

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A P P E A R A N C E S

FOR CLOVIS CAPITAL VENTURES, LLC:

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**SECURITIES AND EXCHANGE COMMISSION VS. ROBERT A. HELMS, ET AL.**  
**Thomas L. Taylor, III on 01/21/2015**

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6	Receiver's Motion for Entry of	
7	An Order (1) Rejecting Secured	
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34	E-mail from Thomas L. Taylor, III	
35	To William R. Terpening, dated	
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**SECURITIES AND EXCHANGE COMMISSION VS. ROBERT A. HELMS, ET AL.**  
**Thomas L. Taylor, III on 01/21/2015**

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1 THOMAS L. TAYLOR, III,

2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. TERPENING:

5 Q. (BY MR. TERPENING) Mr. Taylor, good morning.

6 I thank you for making time for this deposition this

7 morning.

8 I'm guessing you know the rules and

9 procedures for depositions better than -- or at least as

10 well as any of us, so I'm not going to belabor those.

11 The only request that I have is, at the

12 outset of the deposition, since this is obviously being

13 taken by telephone and I can't see what's going on

14 there, is I would like to confirm that the content of

15 your answers to my questions today is coming from you

16 and you alone.

17 So I would request that you don't expect

18 input for the content of any of your answers from

19 anybody while the deposition is under way. Is that

20 fair?

21 A. That's fair. I have no notes, and I will not

22 be guided by counsel in my answers.

23 Q. Thank you, sir.

24 MR. TERPENING: I just want to confirm with

25 the court reporter, you received our e-mail with the

1 exhibits. There should have been ten, and we had asked  
2 for those to be printed and made available.

3 Are those on the table or at least  
4 available in the room?

5 THE COURT REPORTER: Yes.

6 A. They are.

7 Q. (BY MR. TERPENING) Thank you. Well, with  
8 that, Mr. Taylor, if you could please state your full  
9 name for the record.

10 A. Thomas L. Taylor, III.

11 Q. And would you please tell me all of your duties  
12 as the receiver in this case.

13 A. All of my duties in the case are delineated in  
14 a very lengthy order appointing receiver.

15 They were essentially to enforce the --  
16 initially to enforce the freeze of assets entered by  
17 Judge Yeakel in the case to marshall the assets; to take  
18 position of the premises; to make an assessment of the  
19 assets and liabilities; to collect amounts due; to  
20 ascertain whether there are claims or potential claims  
21 against third parties, and more importantly, the  
22 defendants in the case; to cooperate with federal law  
23 enforcement, which I have done; to then attempt to  
24 liquidate the assets; develop a plan of distribution to  
25 equitably distribute whatever assets have been liquified

<http://www.yeakel.com/step>

1 or available to me; and ultimately to make a  
2 distribution to the claimants to the estate.

3 Q. Do you have any duties in this case that are  
4 not delineated in the order appointing receiver that you  
5 referred to?

6 A. No.

7 Q. Okay. Would you please explain to me any past  
8 experience that you have had working as a receiver.

9 A. Well, that's fairly extensive. I'll give you  
10 my best recollection.

11 I believe I have served as a receiver in  
12 five federal law enforcement proceedings, both by the  
13 Commodity Futures Trading Commission and the Securities  
14 and Exchange Commission.

15 I have also represented receivers as  
16 counsel, not in recent years, but years ago, I know I  
17 served as counsel to receivers.

18 I've also served as a restitutionary  
19 trustee for the Commodity Futures Trading Commission.

20 Q. Where did you go to law school?

21 A. University of Texas.

22 Q. And starting with graduation from law school at  
23 the University of Texas, can you summarize for me the  
24 employment positions you've held.

25 A. Yeah. I started in practice in the General

<http://www.secdatabase.com>

1 Counsel's Office of the SEC in Washington, which was the  
2 unit that represented the commission in the U.S. Courts  
3 of Appeals and in the Supreme Court.

4 I subsequently entered private practice. I  
5 worked as an associate in the securities litigation and  
6 enforcement section at Donovan, Leisure, Newton &  
7 Irvine, which at the time was a very large Wall Street  
8 law firm.

9 During my tenure at Donovan, Leisure, I  
10 took a leave of absence to go and serve at the Commodity  
11 Futures Trading Commission as an assistant general  
12 counsel when the agency was formed, which I guess was  
13 '78 or '79.

14 After a stint of sort of helping to  
15 organize that agency's general counsel's office, I went  
16 back to Donovan, Leisure.

17 Subsequent to that, I was recruited to come  
18 back to Houston to head the Houston branch office of the  
19 SEC, which was a part of the Fort Worth region.

20 After that, I became a partner of a law  
21 firm in California. It was the Finley, Kumble, Wagner  
22 firm. Subsequently became a partner of Morgan, Lewis &  
23 Bockius, where I chaired its Los Angeles litigation  
24 section for a number of years.

25 I returned to native Texas in 2009 as chair

1 of a securities litigation and enforcement section for  
2 the Winstead firm and worked out of its Houston office.  
3 I got the date wrong on that. I returned to Texas in  
4 2005.

5 In 2009 I initiated my own practice, which  
6 I have conducted ever since.

7 Q. All right. Let's take a look at what we've  
8 marked as Exhibit 1.

9 (Exhibit No. 1 Marked.)

10 Q. (BY MR. TERPENING) Exhibit 1 should be the  
11 entire Document No. 95 filing, including 95-1 and 95-2.  
12 And that would be your motion for an entry of an order  
13 rejecting secured claim of Clovis and all the exhibits  
14 that that was filed in.

15 And, Mr. Taylor, I'm going to refer to this  
16 from time to time over the course of the deposition, so  
17 if you could just kind of keep it in front of you, that  
18 would be convenient.

19 And I am -- for purposes of streamlining  
20 the deposition and getting you out of there earlier  
21 today, if possible, I'm going to go ahead and adopt the  
22 terms kind of as used in this filing as sort of a  
23 shorthand, since we've been using those terms over the  
24 past several months anyway.

25 Let's start off by talking a little bit

1 about what we've been calling the Ozona Interests. Can  
2 you please tell me how you would describe the Ozona  
3 Interests.

4 A. Well, they're overriding royalty interests in  
5 certain producing wells in two counties.

6 Q. Explain to me how an overriding royalty  
7 interest works.

8 A. Well, essentially, it's a method of segmenting  
9 royalty interests on producing wells to various separate  
10 royalty interest holders. It is not a working interest,  
11 and distinguished from a working interest in that a  
12 person holding an override does not operate the wells,  
13 is not responsible for operating the wells. It's an  
14 income interest.

15 Q. So do they carry a right to actual oil and gas?

16 A. They carry a right to royalty payments derived  
17 from the oil and gas produced by the wells.

18 Q. Okay. And how would one go about collecting  
19 those royalties?

20 A. Well, typically, the documentation is in the  
21 hands of the operating company, and the operating  
22 company, as I understand it -- and I'm far from an  
23 expert in these matters, but the operating company  
24 tracks, by division orders and other documentations, the  
25 entitlements of various interest holders, and then the

<http://www.secdatabase.com>

1 oil and gas company or other entity disburses royalty  
2 payments as the oil and gas is sold.

3 Q. And in the case of the Ozona Interests  
4 specifically, is that generally how royalties are  
5 collected?

6 A. Right. The receivership entities, the debtor  
7 in particular, receives royalty payments from the  
8 operating company.

9 Q. What's the name of the operating company?

10 A. I don't recall. It's in the papers somewhere.

11 Q. Does Approach sound right?

12 A. Yes, that's correct.

13 Q. Okay. And how often, if you know, would  
14 Vendetta have been receiving payments from Approach?

15 A. I think Approach paid on approximately a  
16 monthly basis. Again, these payments do not come, you  
17 know, regularly on the money, but I believe that the  
18 payments on these interests were received by Vendetta  
19 pretty much on a monthly basis.

20 Q. And for the purposes of receiving these  
21 payments, has the receiver stepped into the shoes of  
22 Vendetta?

23 A. Sure.

24 Q. So you've been collecting these interests  
25 monthly for some period of time?

1           A. I won't swear by the monthly, but periodically,  
2 we have collected the royalties -- royalty payments on  
3 those properties.

4           Q. When did you start collecting those payments?

5           A. Well, theoretically, the day that Judge Yeakel  
6 entered the order appointing receiver, which was  
7 sometime in December of 2013. I mean, if a payment came  
8 in that day, we collected it.

9           Q. Okay. Do you know how much you've collected to  
10 date?

11          A. I don't.

12          Q. Not even a ballpark or an estimate?

13          A. No.

14          Q. Okay. And would the dollar amount that you  
15 receive change a little bit every time?

16          A. Absolutely. It depends on -- it depends on  
17 what is produced and what is sold.

18          Q. Is there -- is there a contact person at  
19 Approach that you deal with?

20          A. I am sure there is. I personally would not be  
21 dealing with the personnel at Approach, but certainly  
22 persons working for the receivership estate would be in  
23 touch, certainly in writing. There may not have been  
24 occasion for direct voice contact, but certainly in  
25 writing.

<http://www.yeakel.com/ethp>



1 Q. And you have a team of people working for you  
2 as the receiver, correct, within your organization?

3 A. That's right.

4 Q. And is there a specific person within your --  
5 within your organization who's responsible for receiving  
6 the royalties?

7 A. There is a group of, I believe, four ladies,  
8 who formerly worked for Vendetta, inputting the data. I  
9 mean, the receipt of a royalty payment is an  
10 unbelievably cumbersome operation. I mean, every check  
11 has to be recorded in great detail, whether it's for  
12 fifty cents or a dollar.

13 So we have a team of people. My legal  
14 assistant here in Houston supervises them, and I  
15 supervise her.

16 But there are -- yeah, the ladies in Austin  
17 receive all of the checks in the -- in a PO box. They  
18 record them, transmit them to us for deposit in the  
19 receivership accounts, and that's how it works.

20 Q. All right. Are they deposited into a separate  
21 receivership account, or are they commingled somehow?

22 A. Well, I wouldn't use the term "commingled."  
23 Judge Yeakel entered an order collapsing Vendetta,  
24 Barefoot, Technicolor, into one receivership based upon  
25 our showing that those entities had not maintained any

<http://www.secdatabase.com>

1 separateness and, indeed, had transmitted money at will  
2 back and forth between and among them.

3 So in substance, Judge Yeakel has made it  
4 one receivership, which embodies the assets and  
5 receivables, et cetera, of Vendetta, Barefoot,  
6 Technicolor, and other entities.

7 Q. Okay.

8 A. And the purpose of that order was that separate  
9 accounts would not have to be maintained as to each,  
10 based upon our showing that they were, essentially, one  
11 continuum.

12 Q. Got it. And is there kind of a principal  
13 document that tracks receipt of these royalties as you  
14 receive them?

15 A. Well, they're input into an electronic system.  
16 There is an industry tracking system that we subscribe  
17 to and pay for, and that sort of tracks the revenue from  
18 all kind of wells, including wells that belong to these  
19 receivership entities -- or I should say receivership --

20 Q. Is there a name for that system?

21 A. I'm sorry, what?

22 Q. Does the system have a name?

23 A. It does. I can't tell you what it is now. I  
24 could find out for you.

25 Q. Thanks.

1 A. I can find out on a break, if you'd like.

2 Q. I would appreciate that.

3 Have you spent any of the royalty funds  
4 that you've collected?

5 A. Absolutely.

6 Q. Okay. And what have you spent them on?

7 A. Personnel, rent, electricity, the service that  
8 I just described to you, professional fees per fee a  
9 applications granted by the District Court.

10 Basically, we're essentially operating a  
11 royalty aggregating business still, so that -- any of  
12 the expenses of that. Obviously, we have reduced  
13 substantially the operating expenses that existed in the  
14 hands of Vendetta. But, yes, we're operating the  
15 business over there, and it's the business of basically  
16 collecting and tracking royalty payments.

17 Q. If the Court or I wanted to see a single  
18 document that would show me the dates and amounts of  
19 royalties that you have collected since December of '13,  
20 does a single document like that exist?

21 A. Well, there's a single document prescribed by  
22 statute which is filed with the District Court every  
23 time there's a fee application. And that would give you  
24 all of the amounts received and all of the amounts  
25 expended by the receivership estate.

1 I don't know how much granular detail you'd  
2 be looking for, but you certainly wouldn't be able to  
3 see from that what amounts came from which oil and gas  
4 operator.

5 You would see an aggregate number of  
6 receipts and 99 -- well, I won't say 99. I would say  
7 virtually all of the receipts would be from royalty  
8 payments, although there have been some other moneys  
9 received upon the execution of leases.

10 Q. Okay. Let's talk a little bit about the  
11 efforts to sell the Ozona Interests.

12 The purchaser for those entities is an  
13 entity called JAL?

14 A. Yes.

15 Q. With respect to those royalty payments, do you  
16 have any arrangement with JAL about how to treat the  
17 royalty payments from the time that JAL agreed to buy  
18 the interests to whenever the sale is completed?

19 A. Well, there's no agreement to escrow them, if  
20 that's what you mean, but there is, embedded in the  
21 agreement itself, the concept that they're entitled to  
22 royalties after the date of the sale.

23 JAL and I do not agree as to the date of  
24 sale. My position is that the sale occurred when they  
25 were declared the winning bidder.

1 Q. Okay.

2 A. If they closed -- let's put it another way. I  
3 think this may be what you're trying to find out.

4 If they close, they're entitled to whatever  
5 receipts there were from the date of the sale.

6 Q. Okay.

7 A. As you know, they are not going to close as it  
8 stands.

9 Q. But you are not holding those payments in  
10 escrow?

11 A. No. There was no requirement that we do so,  
12 and we haven't done so.

13 Q. Okay. And is there any understanding as to  
14 whether you would deal with the royalty payments, if and  
15 when there's a closing, in the form of a credit towards  
16 the purchase price, or would they be dealt with some  
17 other way?

18 A. Tentatively, I'm going to say it would be  
19 credited against the purchase price.

20 Q. Okay. Let's take a look, if we could, at what  
21 we have marked as Exhibit 2.

22 (Exhibit No. 2 Marked.)

23 Q. (BY MR. TERPENING) Mr. Taylor, when you have  
24 received that and have had a chance to glance at it, let  
25 me know, please.

<http://www.secdatabase.com>

1 A. Should I look through -- what is this? Is this  
2 going to be a series of --

3 Q. Exhibit 2, I believe, is an e-mail from Chris  
4 Atherton to Mr. Goforth and to you, Mr. Taylor --

5 A. Right.

6 Q. -- copying other parties. And it appears to be  
7 talking about the Ozona Interests sale, and it appears  
8 to attach a draft Assignment Conveyance, Mineral Deed,  
9 and a draft order confirming sale.

10 A. Right. I will tell you right off the bat that  
11 after I received this e-mail, Atherton and I had a  
12 discussion. And he advised me that it was not necessary  
13 to create an escrow; that the buyer was not expecting us  
14 to do so, but that the moneys would be credited to them,  
15 you know, upon the sale.

16 Q. Okay. Got it.

17 A. Yeah.

18 Q. And this e-mail, just for the record, is dated  
19 October 24, 2014.

20 A. Right.

21 Q. Turning to the first exhibit we've attached,  
22 which is the Assignment Conveyance and Mineral Deed?

23 A. Right.

24 Q. Is this the form that you would contemplate  
25 using in connection with the sale of the Ozona

1 Interests?

2 A. You know, I can't say with certainty if this is  
3 the very document that we would be using. It could have  
4 been subject to changes, but in general, this was the --  
5 I believe this was what the expectation was, that this  
6 form of document would be used.

7 Q. Okay. So nothing in this form jumps out to you  
8 as unlawful or completely improper from a legal  
9 perspective?

10 A. Well, I haven't read it, and I'm certainly no  
11 oil and gas lawyer, but I'd have to say that relying  
12 upon the oil and gas people that are helping us with  
13 this, I assume it is an appropriate, at least, form of  
14 instrument to be used.

15 Q. Okay. And can you tell me just briefly who  
16 Chris Atherton is.

17 A. Chris Atherton is our account person, our at  
18 EnergyNet. He handles our business at EnergyNet. He  
19 presented for them. We engaged them based upon his  
20 involvement.

21 And he essentially administers, and will  
22 administer, any of the sales that we conduct pursuant to  
23 the Court's sales procedures order.

24 Q. Okay. And have you worked with EnergyNet in  
25 the past?

1 A. No.

2 Q. How did you select EnergyNet?

3 A. Well, that's detailed in our motion to the  
4 Court to, A, engage him and, B, follow the sales  
5 procedures that have been followed.

6 I'll summarize for you what I told the  
7 Court at the time. We interviewed four or five  
8 well-known players in the business of marketing oil and  
9 gas interests. We sat and met with representatives of  
10 all four and five. We read all their promotional  
11 materials. All of them were of good repute.

12 EnergyNet had a particularly wide net, if  
13 you will, in that they have a huge following on their  
14 Internet sales service. They also offered us an  
15 arrangement where we didn't have to pay for all the very  
16 considerable costs for preparing properties for sale.

17 Some of the other players would have  
18 required us to pay their employees to do a lot of work  
19 here, which we simply didn't have the resources to do.

20 So those were the considerations we  
21 presented to the Court. And when we presented to the  
22 Court our proposed sales procedures, we asked for  
23 permission to engage EnergyNet, and that's what the  
24 Court authorized us to do.

25 Q. And the e-mail at the top of this exhibit



1 begins with Mr. Atherton instructing you that he was  
2 able to convince the buyer to patiently wait.

3 Do you have any understanding of the  
4 background surrounding that sentence?

5 A. Let's see. This is Friday, October 24th.  
6 Yeah. I know what he's talking about. I was -- after  
7 you opposed the motion to confirm sale, I obviously was  
8 doing my best to keep JAL on board, through  
9 Mr. Atherton. At this juncture, I'd never had direct  
10 contact with JAL. I mean, Chris Atherton and EnergyNet  
11 were our brokers.

12 MR. BALLARD: For clarification, when you  
13 say "you," you mean the Clovis opposed the sale?

14 THE DEPONENT: Correct.

15 A. So I'm assuming -- I don't have an absolute  
16 recollection, but I'm relatively certain that he was  
17 telling me that JAL wasn't going to withdraw from the  
18 transaction, at least at that juncture.

19 Q. (BY MR. TERPENING) Was there any discussion of  
20 changing the sale price at that point?

21 A. No, no.

22 Q. When was the first time that the JAL proposed  
23 changing the sales price?

24 A. I believe the first time that there was a  
25 specific, you know, threat or ultimatum, or however you

<http://www.secdatabase.com>

1 want to characterize it, was at or about the time --  
2 probably right after the mediation that we conducted in  
3 this case.

4 Q. So approximately December 12th?

5 A. I know I'm not supposed to consult with others  
6 here, and I'm going to say I believe so.

7 (Exhibit No. 3 Marked.)

8 Q. (BY MR. TERPENING) If we could take a look at  
9 what we've marked as Exhibit 3, please.

10 And, Mr. Taylor, this appears to be an  
11 e-mail chain dated between November 17th and 18th, 2014.  
12 The earliest e-mail is from Billy Jean at  
13 Vendettaroyalty.com to Scott M-ODTA at Hotmail.com. And  
14 then Scott Marshall responds, and really, that's where  
15 the part the part I'm interested in stops.

16 First of all, who is Scott Marshall?

17 A. Scott Marshall is an oil and gas consultant  
18 that has worked -- he worked for Vendetta before the  
19 receivership. We kept him on because he has the most  
20 comprehensive knowledge of the portfolio and has worked  
21 hundreds of hours on it. And he is assisting us in  
22 attempting to get portfolio assets ready for sale.

23 Q. Do you have any knowledge of Marshall's  
24 relationship with Helms?

25 A. Well, He worked for Vendetta. He worked for

1 Vendetta prior to the receivership.

2 Q. Do you know whether he had a personal  
3 relationship with Helms?

4 A. No.

5 Q. You just don't know one way or another?

6 A. Well, my understanding is not. My  
7 understanding is he was a consultant, and he's a  
8 known -- he's a known player here. I mean, he works for  
9 a lot of oil companies, major oil companies. He's a  
10 significant factor in this kind of business.

11 Q. Got it. Okay.

12 And the initial e-mail in this chain  
13 indicates, "Here's a copy of the latest Approach check."

14 That would be the royalty check?

15 A. Yes. This was -- I believe this exchange was  
16 initiated, actually, by me. My name is not on here.  
17 But I wanted to know what we were going to owe the  
18 buyer, what we were receiving and so forth.

19 Q. Okay. Where Scott indicates, "Thanks, we will  
20 forward all to the buyer," do you know what he's  
21 indicating there?

22 A. I don't.

23 Q. Okay.

24 A. I'm assuming copies of receipts, checks.

25 Q. Got it. And the last sentence where he

1 indicates, "As such, it seems that the last two checks  
2 are owed to the buyer."

3 Can you just confirm if you have an  
4 understanding of what he means there?

5 A. I do. I think he means that there were two  
6 checks received that would fall into the timeframe,  
7 which would give entitlement to the buyer.

8 Q. Okay. Let's back up a little bit and talk  
9 about your discovery of the Ozona Interests. When did  
10 you first discover the Ozona Interests?

11 A. I can't tell you precisely. I can tell you it  
12 was a period of months, maybe two months, maybe three  
13 months, four months, in the spring after the  
14 receivership began.

15 Q. That's the most specific you can be with  
16 respect to the date?

17 A. It is.

18 Q. Can you explain to me the process through which  
19 you discovered the Ozona Interests?

20 A. Yes. The -- commencing with the inception of  
21 the receivership, my personnel and federal law  
22 enforcement officials spent an enormous amount of time  
23 going through mountains of disorganized papers in the  
24 Austin offices of the Vendetta entities.

25 At the time this was discovered, none of

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1 the legal personnel knew anything about the Clovis  
2 transaction. Someone, in the course of going through  
3 papers on -- I think the office manager's office, found  
4 the Clovis documentations.

5 They were not in the regularly kept  
6 business records of the property, tracking records, or  
7 the title records, any of the usual places you would  
8 expect to find a transaction. They were essentially  
9 loose and in a pile of papers. At least that's what I  
10 was told, and I'm not sure exactly which individual told  
11 me that.

12 Q. Were they -- the loose pile of papers, were all  
13 the documents you needed regarding the Ozona Interests  
14 kind of there in one place?

15 A. I have no way of knowing that. I guess I would  
16 say not.

17 Q. Okay. Were other interests similar to the  
18 Ozona Interests discovered around that time?

19 A. No.

20 Q. Have other interests been discovered  
21 subsequently?

22 A. Can you clarify what you mean by that?  
23 Certainly no transaction has been discovered. I've seen  
24 at least one e-mail suggesting that Mr. Helms was  
25 attempting to do a side deal with someone else, and

1 there was a response from someone else saying you can't  
2 do that.

3 But other than that, I've seen no other  
4 evidence of such a transaction.

5 Q. Just to clarify, I'm interested less in the  
6 side deal aspect of it and more in kind of cataloging  
7 the other gaps in royalty interests that you might have  
8 discovered.

9 A. Well, I mean, yeah, there is a room -- or was a  
10 room where all of the documentation regarding the  
11 interests was kept.

12 Raquel Foti, who was an employee, and is an  
13 employee of the receivership estate, was essentially the  
14 land person who tracked all of that.

15 You have to understand that at any given  
16 time, there are mountains of paper -- and I don't fully  
17 understand why, but there are mountains of paper that  
18 have to be tracked with respect to the payments  
19 themselves, mountains of data.

20 So that, from time to time, would be  
21 located with these ladies who do the clerical work. But  
22 there is a place where the documents related to the  
23 transaction ordinarily would be kept, and that would be  
24 in Raquel Foti's area.

25 THE DEPONENT: F-o-t-i.

1 Q. (BY MR. TERPENING) F-o-t-i. Okay.

2 You are contemplating ways of sale -- ways  
3 of sales that initially were contemplated to be kind of  
4 subsequent to the Ozona Interests sale, right?

5 A. Well, ultimately, we are going to sell all of  
6 it if we can. We have -- I expect to see some  
7 additional properties up on EnergyNet this week,  
8 hopefully.

9 I mean, we're working on some listings now  
10 in the Tuscaloosa Marine Shale, but as with most of the  
11 properties, there -- I might characterize them as  
12 niggling, but a buyer would not, problems with title  
13 documentation, other documentation that would be  
14 necessary to do a clean sale.

15 The Ozona -- as, you know, you've heard me  
16 say before, the Ozona Interests were put up first  
17 because the documentation of those interests is  
18 relatively clean. In fact, it is clean.

19 Q. So are you telling me that there are problems  
20 with documentation for everything other than the Ozona  
21 Interests?

22 A. I wouldn't say everything, no.

23 Q. Okay. What other interests do you have for  
24 which there are not problems with documentation?

25 A. I couldn't answer that, sitting here today.

1 Q. Okay. Would you say that the majority of  
2 interests, other than the Ozona Interests, have problems  
3 with the documentation?

4 A. Very definitely.

5 Q. And those are principally kind of title work  
6 type problems?

7 A. I think they're -- again, I'm not expert in  
8 this, but I would -- from my perspective, I would  
9 characterize them as title work problems and problems  
10 with tracking the revenue.

11 I mean, the royalty interests, I mean, the  
12 key element is the revenue stream, and the revenue has  
13 to be tracked in excruciating detail. And,  
14 unfortunately, the tracking was well in arrears when we  
15 took over and still is, although things are improving.

16 Q. Okay. And are you able to break down the --  
17 let's call them the subpar -- setting aside the Ozona  
18 Interests, do you have names for the other interests  
19 that you have, kind of the way that we've called the  
20 Ozona Interests the Ozona Interests?

21 A. Well, we've been working to get the Tuscaloosa  
22 Marine Shale properties up. They're located in various  
23 counties in Louisiana. I could -- I could recite that  
24 name because we've been looking at it.

25 I'm not sure I could recite other names,



1 although if I looked at, you know, documents, I probably  
2 would recall.

3 Q. And you're going to try to sell Tuscaloosa  
4 Marine Shale through a similar process to the bidding  
5 process that you used for the Ozona Interests?

6 A. We have to sell each and every interest  
7 precisely in that manner, because that's what the Court  
8 has approved.

9 Q. What minimum bid are you planning on using for  
10 Tuscaloosa?

11 MR. BALLARD: Let me just interpose an  
12 objection, Will, that this is, I believe, outside the  
13 scope of the intervention.

14 MR. TERPENING: Okay. Are you going to  
15 allow him to answer?

16 MR. BALLARD: Yes.

17 A. We don't have one yet.

18 Q. (BY MR. TERPENING) Okay.

19 A. At least not one that has been transmitted to  
20 me. The EnergyNet people and Marshall may have  
21 calculated something, but they haven't told me yet.

22 Q. Okay. Do you have some sense of the current  
23 collective value of all the interests that you have,  
24 excluding the Ozona Interests?

25 A. Before the precipitous decline in the market

1 value of West Texas Intermediate Crude, I believe we had  
2 a working hypothesis that the portfolio was worth  
3 10 million plus. I don't know if that would include  
4 Ozona or whether that was exclusive of Ozona.

5 That's just based on a -- at least as  
6 communicated to me, the calculus of, you know, number of  
7 months times revenue, which is kind of standard in the  
8 industry.

9 Q. Do you have any opinion about what percentage  
10 of recovery from each non-Ozona sale Clovis is entitled  
11 to?

12 A. No.

13 Q. Do you have any opinion about what percentage  
14 of Vendetta Partners' assets Clovis is entitled to,  
15 overall?

16 A. Well, they're not entitled to any of the assets  
17 including Ozona, in my view. They are claimants to an  
18 equity receivership estate. Ultimately, there would be  
19 a plan of distribution. And it will proceed as Fifth  
20 Circuit law requires on a net out-of-pocket loss  
21 computation; in other words, net out-of-pocket loss as a  
22 ratio against whatever the total amounts to be  
23 distributed are.

24 Q. Okay. And the calculation of that ratio, do  
25 you have any sense of what percentage Clovis will be

1 entitled to?

2 MR. BALLARD: I want to again impose the  
3 objection that this is beyond the scope of the  
4 intervention.

5 A. I could give you the mechanics of it. It would  
6 be what they lost, what their net loss was as a  
7 percentage of X, which is whatever we ultimately collect  
8 net of the expenses of the estate.

9 Q. (BY MR. TERPENING) Okay. So if I'm trying to  
10 calculate that, if Clovis invested approximately  
11 2.8 million, do you know how much was invested in total?

12 A. I think we're working with a number, based upon  
13 the forensic accounting and so forth, of 34 million.

14 Q. Okay. Let's talk about Clovis' claims,  
15 priority interest in the Ozona Interests.

16 You, of course, discovered at some point  
17 that Clovis claimed a security or prioritized interest  
18 in the Ozona Interests over other Vendetta limited  
19 partners, right?

20 A. I did. I think I referred to that earlier.  
21 Marshall or Raquel Foti were in Houston for a meeting in  
22 my office. They informed me that these documents had  
23 been found, and Marshall described to me what the  
24 documents purported to do.

25 Q. Okay.

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1 A. I may have actually gotten the documents at  
2 that meeting, but I'm not sure.

3 Q. Okay. And do you have any recollection of what  
4 specific documents those were?

5 A. Well, again, without saying I got them on that  
6 day, the documents that I got, whenever I got them,  
7 included the so-called side letter and I believe the  
8 notices that were filed in the county and probably  
9 copies of the purported conveyancing documents that were  
10 placed in escrow over there in Florida. Not 100-percent  
11 sure, but I believe that was the series of documents  
12 that I looked at.

13 Q. All right. Was there ever a stage when you  
14 believed that Clovis' security interests might be valid?

15 A. Not at all. I thought, to be blunt, that the  
16 transaction smelled to high heaven, and I thought it was  
17 an additional fraud on the other limited partners.

18 Q. Okay. So there was never a stage when you  
19 believed that there might even be a possibility that the  
20 interest was valid; is that correct?

21 A. Well, no. These were limited partners, and  
22 they got something the other limited partners were not  
23 going to get, never contemplated getting.

24 Q. Let's take a quick look at Exhibit 4, which is  
25 an e-mail that you sent to me on April 24th, 2014.

1 (Exhibit No. 4 Marked.)

2 Q. (BY MR. TERPENING) And I would ask for you to  
3 please read the first paragraph aloud.

4 A. "Mr. Terpening, Further to my conversations  
5 with John Cole approximately two weeks ago, we would  
6 like to know the position of your client, Clovis  
7 Capital, with respect to security interests purportedly  
8 created for their benefit in properties of the Vendetta  
9 Royalty Partnership. As I indicated, based upon my  
10 investigation to date, it appears clear to me that such  
11 security interests, to the extent that any of them are  
12 actually created, would operate as a fraud upon  
13 subscribers' limited partners who preceded your client."

14 Q. Thank you.

15 A. Okay.

16 Q. So is it fair to say that as of that date,  
17 April 24, 2014, you had concluded that the security  
18 interests were not valid?

19 A. I concluded whenever I saw the transaction and  
20 was told about it for the first time. I mean, the tenor  
21 of the conversation at that time was, can you believe  
22 that Helms did this.

23 So, yeah, it was before this. I don't know  
24 whether it was days or weeks before this, but before I  
25 sent you this, I had concluded that.

1 Q. And, now, the second sentence in the first  
2 paragraph states, "As I indicated, based upon my  
3 investigation."

4 Can you explain to me everything that that  
5 investigation entailed.

6 A. Well, we looked at the documents themselves,  
7 ascertained where they had come from. I had queried  
8 both Marshall and Raquel Foti about it, because they  
9 were the persons -- Marshall was the person most  
10 knowledgeable of the portfolio. Foti was the land  
11 person who tracked all of the assets and interests held  
12 by the entities. And I asked them if they had ever  
13 heard anything about it, and they both answered "no."

14 At some point, I believe I asked to have  
15 some e-mails retrieved, if any, concerning the matter.  
16 It may have been at that point when I saw the -- for the  
17 first time, the e-mails transmitting the documents to  
18 the Clovis principals. I'm not sure of that at all.

19 But that's pretty much the sum and  
20 substance of the investigation.

21 Q. Anything else?

22 A. No.

23 Q. Okay. The sentence goes on. "It appears clear  
24 to me that such security interests, to the extent any of  
25 them were actually created."

1 Can you explain what you mean by  
2 to the extent any of the security interests were  
3 actually created"?

4 A. Well, it was my position that there was an  
5 attempt to create a security interest which failed for a  
6 variety of reasons.

7 Q. What reasons?

8 A. I'm sorry. What reasons --

9 Q. Why did the attempt to create a security  
10 interest fail?

11 A. Well, I think I've detailed why I think they  
12 failed in our Interrogatory Answers, which I obviously  
13 had a hand in drafting. I will try to recite what I can  
14 right now, but I will adopt the Interrogatory Answers  
15 also within my answer.

16 A, this was a transaction that was facially  
17 not permitted by the limited partnership agreement. The  
18 side letter document purported to amend -- in fact, it  
19 stated it was amending the partnership agreement, but  
20 there had been no approval by the limited partners  
21 approving it.

22 It was presumptively a fraudulent  
23 conveyance because at the time the Clovis transactions  
24 occurred, the Ponzi scheme, the Vendetta Ponzi scheme  
25 was in full flower, and Ponzi payments already had been

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1 paid made. So there's a presumption that it was a  
2 fraudulent conveyance.

3           Since no valid security interests had been  
4 created as a matter of law -- and by that I mean that no  
5 value had been given for it, among other reasons, there  
6 was no security interest.

7           Third, as an equity receiver, I would have,  
8 and did take, the position that whatever had occurred  
9 was an inequitable result vis-a-vis the other investors.

10         Q. Other than in that answer and in your  
11 interrogatory response and in your court filings in this  
12 case, are there any other reasons?

13         A. Well, I don't know how far you want me to go  
14 into the legal analysis. I guess there were reasons --  
15 in other words, I said it was a fraudulent conveyance  
16 under the Texas Uniform Fraud Transfer Act.

17           Embodied in that answer is also the notion  
18 that Clovis could not carry the two affirmative  
19 defenses, the burden of the two affirmative defenses,  
20 which it had been required to negative the presumption  
21 of the fraudulent conveyance.

22         Q. Well, give me -- give me your basis for any  
23 position that Clovis did not take the interest in good  
24 faith.

25         A. In other words, what is my position regarding



1 their carrying the burden of the affirmative -- one of  
2 the affirmative defenses they have to carry to negative  
3 the presumption?

4 Q. Yeah. And I'm not interested in legally why  
5 they would have the burden. I'm interested in any  
6 evidence or support you have that you believe supports  
7 the contention that Clovis did not act in good faith.

8 A. Okay. In other words, you want -- you want my  
9 factual bases.

10 Again, I'm going to have to adopt the  
11 detail -- I think you and I both know that Interrogatory  
12 Answers are not usually detailed. These were pretty  
13 detailed. So I'm going to adopt whatever I said in the  
14 Interrogatory Answers. And I mean that literally,  
15 because I was the primary draftsman of the answers  
16 there.

17 But the facts, as I sit here today, that I  
18 would tell you, that there were any number of red flags  
19 on the field, if you will, to use terminology that's  
20 often used in this kind of litigation.

21 Number one, the Clovis principals  
22 apparently had engaged in extensive negotiations; had  
23 conducted due diligence in -- according to your papers  
24 in the hundreds of hours.

25 It looks like thousands of documents were

1 transmitted. Most importantly the -- we knew that the  
2 limited Partnership Agreement and the private placement  
3 memorandum had been transmitted to the Clovis  
4 principals.

5 And it would be obvious to anyone that the  
6 other limited partners did not take, and could not take,  
7 a security interest in specific property. That specific  
8 property could not be conveyed to the limited partners.

9 So right off the bat, I mean, there is a  
10 red flag in that Clovis was giving -- was joining the  
11 limited partnership, A, the same amount for the same  
12 percentage ratio, but was getting a deal that the other  
13 limited partners weren't getting. That's a red flag  
14 that there's some rotten in Denmark.

15 One of the Clovis principals, that's  
16 Mr. Gaucher, received a kickback of a 6-percent  
17 commission to a man named William Brock, which  
18 commissions were facially improper and unlawful under  
19 the Private Placement Memorandum.

20 And then I could recite other facts as,  
21 well, and again, they're set forth in the Interrogatory  
22 Answers. But those are two of the main factual bases  
23 why I believe that they cannot carry the burden of good  
24 faith.

25 I guess now that I think about it, as a

1 separate factual circumstance, they did a side letter  
2 which purported to amend the Limited Partnership  
3 Agreement, when the Partnership Agreement itself clearly  
4 required a vote of the other limited partners to do  
5 that. Another red flag.

6           And finally -- and again, you're testing me  
7 here, but -- and this is an element in these cases  
8 involving Ponzi schemes. Frequently the too good to be  
9 true red flag -- I mean, Clovis was cutting a deal here  
10 where they apparently, at least according to  
11 Mr. Gaucher, expected to receive a 300 percent return in  
12 two or three months.

13           He, being a sophisticated investment  
14 professional, which I believe he purports to be,  
15 obviously would have known, again, there was something  
16 rotten in Denmark about this deal.

17           Q. How many hours did you or anybody on your  
18 behalf spend investigating and analyzing before reaching  
19 the conclusion that the security interests were not  
20 valid in April of 2014?

21           A. Well, I would have to tell you, Will, the  
22 minute I saw the document, I concluded that it was an  
23 unlawful transaction. And that was only enhanced by  
24 seeing that they had deliberately -- they, meaning  
25 Clovis and Helms, had deliberately obfuscated the

1 transaction by concocting a form of filing that would  
2 not give anyone notice of what really was supposed to be  
3 happening here.

4 It did not take me long to conclude it was  
5 an invalid transaction. And to be perfectly honest, I'm  
6 surprised that it has been as controversial as it has  
7 been.

8 Q. When you refer to Clovis having a role in  
9 concocting the document, can you describe that with more  
10 particularity?

11 A. Well, these were negotiated documents. I guess  
12 you had Mr. Gaucher involved in it and Mr. Chapman, who  
13 is a principal of Clovis and, in my view, was acting as  
14 a principal. They came to Austin. The two of them came  
15 to Austin. They received boxes of documents related to  
16 the Vendetta operation.

17 There was back and forth of the  
18 documentation, and I gather that it was -- the  
19 documentation was concluded to their satisfaction  
20 because they executed.

21 Q. Do you have any belief as to whether anybody  
22 from Clovis actually drafted any of these documents or  
23 had a role in drafting them?

24 A. Well, I think the -- I think physical drafting  
25 was primarily done by Helms in Austin. I don't know how

1 many changes were made or not made by the Clovis  
2 principals in doing the process. But I do know that  
3 drafts were transmitted. And my belief, based on the  
4 written record, is that it was negotiated pretty much in  
5 the usual way.

6           You had -- you had professional,  
7 sophisticated investors on the Clovis side, and you had  
8 Mr. Helms, who is Mr. Helms, on the other side.

9           Q. Do you have any opinion about who the primary  
10 drafter of the side letter was?

11           A. I've read the transcripts, Will. I don't  
12 remember exactly. I think it would be fair to say that  
13 the primary draftsperson was Helms, but clearly the  
14 other side was dealing with him on the documents.

15                   In other words, it wasn't presented by  
16 Helms in a manner of, you know, here it is, you sign it,  
17 let's go. I do not believe that.

18           Q. When you say the other side, in terms of  
19 individuals, you mean Avery Chapman?

20           A. And Mr. Gaucher.

21           Q. As part of your efforts to determine whether  
22 Clovis' security interests was valid, did you or anybody  
23 on your behalf interview Mr. Helms?

24           A. Well, Mr. Helms' deposition was taken by  
25 Mr. Littlefield, representing me. I believe the

1 transaction was addressed in that deposition.

2 Q. Setting aside that deposition, did you have any  
3 discussions with Mr. Helms before April 24th?

4 A. Mr. Helms is not what you would call a  
5 cooperating former principal. We don't have a, you  
6 know, pick up the phone, ask Mr. Helms questions. We  
7 don't have that kind of relationship.

8 Among other things, he has law enforcement  
9 issues which probably would preclude him from doing  
10 that, but he does not cooperate with me. Let's put it  
11 that way.

12 Q. Did you try to interview Mr. Helms about  
13 Clovis' security interests before April 24th?

14 A. Well, I told my counsel to ask about it at the  
15 deposition, I believe.

16 Q. Okay. The same question for Ms. Kaelin. Did  
17 you speak with her about Clovis' security interests  
18 before April 24th?

19 A. Let's just be polite and say that Ms. Kaelin is  
20 less apt to be cooperative than Mr. Helms.

21 Q. Okay. Before concluding that Clovis' security  
22 interests was not valid, did you try to interview Doug  
23 Smith?

24 A. No.

25 Q. Avery Chapman?

1           A. No. I believe that at this point, I knew about  
2 you, Will. I wouldn't have contacted any of the  
3 principals, knowing they had counsel. I'm not sure when  
4 I learned that you were involved. But as you see here,  
5 as of April, I was communicating with you, and before  
6 that, I had talked to John Cole. So there's no way I  
7 would have been trying to talk to the principals  
8 directly.

9           Q. So you never asked me or Mr. Cole to interview  
10 Doug Smith, right?

11          A. Well, I asked you to present them for  
12 depositions.

13          Q. Right.

14          A. And I --

15          Q. But not -- but not for any interview before  
16 reaching a conclusion about whether the security  
17 interest was --

18          A. Well, when I talk to counsel, I expect that  
19 whatever information is to be communicated will come  
20 through counsel.

21          Q. Okay. You and experts that you have retained,  
22 I believe, including Ms. Supkis Cheek -- and I don't  
23 know if I'm pronouncing Supkis directly. Am I?

24          A. I think that's right. I think that's right.  
25 You could just call her Danielle if you want.

1 Q. I will. You and Danielle have spent time  
2 studying the Vendetta Partners' cash flow, right?

3 A. Yes. She in particular, under my -- my  
4 direction -- I mean, I'm not an accountant, and she is a  
5 first rate forensic accountant. So I would say that she  
6 did it because I asked her to do it.

7 Q. Are you aware of whether Vendetta Partners  
8 earned any assets from sources other than cash infusions  
9 from limited partners?

10 A. I am aware that Vendetta doesn't receive  
11 legitimate income other than infusions. Vendetta  
12 received a daisy chain of payments from a variety of the  
13 receivership entities. I've forgotten what the forensic  
14 accountants call that, a washing machine or a dryer or  
15 what have you. But money circulated between and among  
16 Vendetta, Barefoot, and Technicolor.

17 Q. Do you know where that money originated?

18 A. Well, it originated, after the investment  
19 scheme got going, from investors, from limited partners.  
20 Obviously, if there are 9,000 royalty interests, there  
21 was money coming in from 9,000 royalty interests, yes,  
22 but -- well, yes.

23 Q. So we've got the money coming in from limited  
24 partner investments, and we have money coming in from  
25 royalty interests. Is that right?



1 A. Yes.

2 Q. Any other sources?

3 A. Well, I have no way of knowing, but my belief,  
4 based upon our study to date, is that those were the  
5 sources of funds.

6 Q. Is it fair to say that the majority of income  
7 came from investors?

8 A. It came from --

9 Q. Investors?

10 A. Investors?

11 Q. Yes.

12 A. I don't know if I could calculate that off the  
13 top of my head. I mean, a lot of money came in from  
14 investors, but a lot of money was generated by these  
15 properties, not enough to -- not enough to sustain the  
16 business, I hasten to add, but substantial moneys came  
17 in from the properties, still does come in.

18 Q. But in terms of a percentage over time, you  
19 don't know what percentage of overall income came in  
20 from the properties?

21 A. Vis-a-vis invested funds, investors' funds?

22 Q. Well, I'm interested in figuring out, if I can,  
23 over time, how much of Vendetta Partners' income came in  
24 from -- let's call it legitimate sources like royalty  
25 interests, versus what I think we can call illegitimate

1 sources like investor funds.

2 A. Well, I wouldn't call investor funds income.  
3 Those are capital investments. These are limited  
4 partnership interests that were sold. So I think we're  
5 talking about apples and oranges.

6 Q. I think that's fair. Okay.

7 Do you know, in terms of total dollar  
8 amount, how much came into Vendetta Partners from  
9 royalty payments?

10 A. No, I don't, not -- not for overall or not for  
11 any specific period of time, either.

12 Q. Okay. And in terms of distribution to limited  
13 partners, have you done any calculations related to or  
14 describing or separating out how much of those  
15 distributions came from royalty payments versus from  
16 investments from new investors?

17 A. Well, Danielle has done extensive work on that,  
18 and I think the first time I asked her -- well, she  
19 would have done that in any case. That's what you do in  
20 a Ponzi scheme.

21 Q. Right.

22 A. You know, the Federal Bureau of Investigation,  
23 the U.S. Secret Service, and many others are, you know,  
24 all over this. But Danielle, on my behalf, has  
25 certainly done a very detailed and extensive Ponzi

1 analysis, which was conclusively -- which was conclusive  
2 prior to the time that I moved to collapse the entities  
3 into one receivership.

4 Q. When did the first limited partners invest in  
5 Vendetta, approximately?

6 A. I honestly can't recall the date when the  
7 offering proceeded.

8 Q. Is it fair to say that Clovis invested towards  
9 the end of the Vendetta Partners enterprise, before the  
10 SEC intervened?

11 A. The very end. And if it hadn't invested, it  
12 probably would have ended sooner.

13 Q. Explain that answer to me. Why do you say if  
14 it hadn't invested, it probably would have ended sooner?

15 A. Well, because -- because the scheme was not  
16 generating enough income to pay distributions. People  
17 were complaining about not getting distributions. They  
18 simply could not service the partnership and its  
19 obligations based on the income stream.

20 And they took investor funds, including  
21 Clovis', deposited it and then distributed it to other  
22 investors, as I think you probably have seen from  
23 Danielle's work.

24 They were also in the business of doing  
25 phony roundtrip transactions with straw persons by that

1 time, as well. So the scheme was at the tipping point,  
2 for sure.

3 Q. Let's kind of guide our conversation by looking  
4 at Danielle's Affidavit and chart, which was attached to  
5 Document 95, which is Exhibit 1, as 95-2. I'll give you  
6 a second to find that. It's at the end of the document.

7 A. Is this the Affidavit that was presented on my  
8 motion to combine the entities?

9 Q. This is the Affidavit that I have as presented  
10 with along with your motion to reject.

11 A. Right.

12 Q. It's at the very end of Exhibit 1, entitled  
13 Declaration of Danielle Supkis Cheeks.

14 A. Yes. Okay. I have it.

15 Q. And you might have a page saying Exhibit 2 on  
16 the front of it, because that's the way you guys filed  
17 it.

18 A. Yes. I have it.

19 Q. And if I could turn your attention to Page 8 of  
20 the declaration, which is Page 9 of the ECF stamp  
21 number, and Paragraphs 15 through 18, that appears to be  
22 the part of her declaration that's talking about the way  
23 the funds by Clovis, investments by Clovis, came in and  
24 then were distributed out to pre-existing limited  
25 partners.

1 A. Right. And then I believe this is referred to  
2 in the brief itself, right?

3 Q. That's exactly right.

4 A. Yeah.

5 Q. Okay. So she concludes at the last sentence of  
6 Paragraph 18 that approximately 122,000 of these partner  
7 distributions were funded through Clovis' equity  
8 distributions.

9 A. Right, right.

10 Q. Have you made any effort to recover that  
11 122,000 and credit it to Clovis?

12 A. No.

13 Q. Why not?

14 A. Let me withdraw that answer.

15 I am doing that to the same extent that I  
16 am doing that for each and every other claimant on the  
17 receivership estate.

18 Q. Okay.

19 A. If you mean have I done anything specific to  
20 recover a specific amount for Clovis or any other  
21 limited partner, the answer is "no."

22 Q. I guess the question -- and I'm not going to be  
23 able to state it in as articulate a fashion as I'd  
24 like -- is that it appears to me that the Clovis funds  
25 that came in at the end, when they were taken and

1 distributed out to existing limited partners, it's very  
2 easy to trace that flow.

3 Is it fair to say that it's easier to trace  
4 that flow of funds from Clovis back out to specific  
5 limited partners than it would be to trace the flow of  
6 funds from earlier limited partners out to other limited  
7 partners?

8 A. Probably so, but since we sit in the  
9 jurisdiction of the U.S. Court of Appeals for the Fifth  
10 Circuit, that's not how we're going to do it.

11 Q. Okay. So the answer is that you're -- the  
12 reason why you wouldn't attempt to recover that specific  
13 122 and send it back to Clovis is because that's the law  
14 of the Fifth Circuit?

15 A. It's the law of the Fifth Circuit with which I  
16 heartily disagree and have litigated the issue in  
17 another receivership not very long ago. It is  
18 inequitable -- I mean, there could have been someone who  
19 put money in one of these Telco checking accounts the  
20 day before we came in. That would be real easy to  
21 trace, but it was money put into a Ponzi scheme, and  
22 equity requires that the playing field be level and that  
23 every victim of the scheme be treated equally.

24 Q. Just out of curiosity, so I can pull it out of  
25 the web file, what was the name of the other case where

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1 you litigated that?

2 A. Let me see. That would be Securities and  
3 Exchange Commission versus PrivateFX Global One. And  
4 actually, there's a fairly extensive opinion. I don't  
5 know if it's reported or not. I'm not supposed to ask  
6 Andrew anything, but he can probably tell you if you  
7 want him to.

8 Q. Would that be a Fifth Circuit opinion?

9 MR. GOFORTH: Well, this is Andrew. It's  
10 Southern District, Judge Miller. And the style of the  
11 case might actually be CFTC versus PrivateFX Global One.  
12 The SEC was also involved, but --

13 THE DEPONENT: And I think the primary  
14 Fifth Circuit case is SEC against Durham; is that right?

15 MR. GOFORTH: I don't recall.

16 A. We can deal with this offline.

17 Q. Well, that's interesting and helpful. Thanks  
18 to all of you.

19 A. If you want, we'll send you Judge Miller's  
20 opinion.

21 Q. Thanks.

22 Let's talk about -- and this probably falls  
23 under a similar legal analysis, but just so I'm clear on  
24 your analysis, Clovis, as we agree, was one of the very  
25 last investors.

1                   As far as the early investing limited  
2 partners go, they received distributions over time from  
3 Vendetta Partners, right?

4           A. They did.

5           Q. And is it fair to say that in that respect,  
6 they got treated better than Clovis in the sense that  
7 they received more funds, relative to their investment,  
8 back in the form of distributions than Clovis did?

9           A. Oh that -- yeah. But, Will, what I'm saying  
10 about the net out-of-pocket loss, the plan of  
11 distribution, they will be -- that will be credited  
12 against their investment before we do the percentages.  
13 In other words --

14          Q. I got it.

15          A. -- it would be -- money in versus anything they  
16 got out will be their basic number for that, and then  
17 treat that in a ratio against the estate.

18          Q. Okay. That's helpful. Thank you.

19          A. Yeah.

20          Q. Do you have any opinion as to whether the  
21 Clovis principals were aware that Vendetta was a Ponzi  
22 scheme?

23          A. I do not assert that and don't think it's  
24 necessary to assert that. I know it's if not necessary  
25 to assert that in the present. I could not say that



1 they knew it was a Ponzi scheme, but obviously I have to  
2 reserve judgment on that until we get to the end of the  
3 road.

4 Q. As you sit here today, do you have any evidence  
5 that suggests to you that any Clovis principals knew  
6 that Vendetta was a Ponzi scheme?

7 A. I have reason to believe that they should have  
8 known it was a Ponzi scheme or some other form of fraud,  
9 yes.

10 Q. And I know you've been through this to some  
11 extent already, but can you briefly list all of those  
12 for me.

13 A. I guess, in my mind, the most important thing  
14 is the obfuscatory or deceptive nature in which the  
15 transaction was documented and recorded. The too good  
16 to be true. The obviously illegal commissions that  
17 Mr. Brock split with one of the Clovis principals.  
18 The -- and the clarity, that this deal was not --  
19 although it was a limited partnership investment, the  
20 clarity that it was a completely different deal than had  
21 been offered to other investors who had signed similar  
22 limited partnership agreements.

23 Again, I adopt, if you don't mind,  
24 everything I said in my interrogatory responses, but  
25 those are the most important red flags, if you will.

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1 And I use red flags, because that comes from cases  
2 addressing the good faith defense to a TUFTA claim.

3 Q. Do you have any opinion, one way or another, as  
4 to whether any other limited partners knew that Vendetta  
5 was a Ponzi scheme?

6 A. Well, Helms and Kaelin certainly knew.

7 Q. Setting aside the obvious.

8 A. I'm trying to think. I doubt -- I mean, there  
9 are some limited partners that are subject, I believe,  
10 of clawbacks, but I don't think I have accused or  
11 asserted that anyone -- any other limited partner knew  
12 it was a Ponzi scheme.

13 Again, I'm reserving judgment on that,  
14 because there were some limited partners that were  
15 pretty close to the operation. In other words, they  
16 weren't innocent bystanders who invested some money.  
17 They were closer to the operations of the entities.

18 Q. What are the names that come to mind of limited  
19 partners who were closer to the operations?

20 MR. BALLARD: Let me just assert an  
21 objection that this is beyond the scope of the  
22 intervention, Will.

23 MR. TERPENING: Thank you.

24 A. I really can't think of anyone right now that  
25 would be characterized in that way.

1 Q. (BY MR. TERPENING) Do you have any opinion as  
2 to whether, if Clovis knew or reasonably should have  
3 known that the investment opportunity was a Ponzi  
4 scheme, why it would choose to invest millions of  
5 dollars and stand to lose that money?

6 A. Because they believed what Helms told them,  
7 that they were going to be able to sell the portfolio  
8 and were just about to accomplish that, and then they  
9 would make 300 percent on their money in 90 days.

10 Q. All right. Let's go through Document No. 95 in  
11 a little bit more detail, starting with --

12 MR. BALLARD: Will, could I ask you a  
13 favor? Could we take a quick restroom break?

14 MR. TERPENING: Sure. No problem.

15 (Brief Recess Taken.)

16 Q. (BY MR. TERPENING) We were looking, before the  
17 break, at -- we were starting to look at Document No. 95  
18 in more detail, which is Exhibit 1, your motion for an  
19 entry of an order rejecting Clovis' secured claim.

20 A. Right.

21 Q. And using the page numbers actually on the  
22 document, not the ECF numbers, although I guess they're  
23 the same at the beginning, let's take a look at the  
24 bottom of Page 4, where you've written, "At the time of  
25 Clovis' investment, Helms and Kaelin were representing

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1 the limited partners and prospects (including Clovis)  
2 that the Vendetta portfolio would be sold to an  
3 institutional buyer by the end of 2013 -- at a projected  
4 price wholly divorced from reality."

5           What I'd like you to do, please, is give me  
6 your complete basis for the conclusion that the  
7 projected sales price was wholly divorced from reality.

8           A. Well, the basis is that the projected price is  
9 100 to \$150 million, depending on who you asked. And at  
10 this juncture, it had been made abundantly clear to me,  
11 by everyone who knows anything about it, that this was  
12 not a 100 to \$150 million portfolio.

13           Now, if they gave some other number, then,  
14 you know, that would not obtain. But my information was  
15 that they were bandying about numbers ranging from 100  
16 to \$150 million, which was ludicrous.

17           Q. And your position is that Vendetta was  
18 promising returns to Clovis that were too good to be  
19 true, and at the time, Clovis invested for that reason,  
20 right?

21           A. No, no. I don't believe that's it at all. The  
22 basis for that is the calculus embodied in Mr. Gaucher's  
23 deal memo. This nonsense about the value of the  
24 portfolio had nothing to do with that assertion. That  
25 assertion is based upon what Mr. Gaucher recorded in his

1 deal memo.

2 Q. And where do you think Mr. Gaucher got the  
3 information about sales price as reflected in his deal  
4 memo?

5 A. I don't know.

6 Q. From Helms?

7 A. Well, I know he was certainly in communication  
8 with Helms, so that's a possibility.

9 Q. Okay. Do you have any knowledge of whether  
10 Vendetta was promising returns to other non-Clovis  
11 investors that were too good to be true at the time they  
12 invested?

13 A. Well, the other investors were not being  
14 induced to invest at that point. They were being  
15 induced to be still, because they were complaining about  
16 the absence of distributions. They were complaining, as  
17 I understand it, about the long-standing delays, and you  
18 know, we're going to sell it next month, next two  
19 months, three months, soon, whatever, what have you.

20 So there were restive investors. I don't  
21 think it was so much a question of inducing new  
22 investors with those kind of numbers. I think it was  
23 shining on people who were already there, if I may put  
24 it that way.

25 Q. And do you have any knowledge of whether those

1 investors were given these high projections, the sales  
2 numbers of 100, 150 million?

3 A. I believe that -- I believe that Helms and  
4 Kaelin bandied those numbers about to various people.

5 Q. Do you have any evidence that any Clovis  
6 principal knew around the time that Clovis invested,  
7 which would be around the end of 2012 and early January  
8 of 2013, that Helms and Kaelin were not close to selling  
9 the Vendetta portfolio to an institutional buyer in  
10 January or February of 2013?

11 A. Yes. There was no -- there was no such  
12 institutional buyer on the horizon.

13 Q. Do you know whether Clovis knew that or not?

14 A. I know that Clovis, according to your papers,  
15 spent hundreds of hours doing due diligence, so surely  
16 since their deal was premised upon an immediate sale,  
17 that they queried Helms or Kaelin about it.

18 Q. Do you have any knowledge of whether Helms or  
19 Kaelin told them the truth, that there was no  
20 institutional buyer, or whether Helms or Kaelin lied to  
21 them and said there was?

22 A. Well, you know, I'm not sure how to answer  
23 that. I would say that based upon the totality of what  
24 we know, it's likelier they were lying to them than not.

25 Q. Right. And you have no direct evidence that

1 anybody at Clovis knew that a sale in early 2013 was not  
2 imminent when they invested, right?

3 A. That's right.

4 Q. Okay. Let's take a look at some of the  
5 statements on Page 5 of Exhibit 1. At the -- I guess,  
6 the second sentence of the first full paragraph you  
7 indicate, "In order to avoid these risks -- and in  
8 patent fraud upon the other limited partners -- Clovis,  
9 Helms, and Kaelin concocted a scheme by which Clovis  
10 would become a limited partner while obtaining a  
11 purported security interest in the partnership's most  
12 valuable asset along with a guaranteed 'put' with  
13 respect to their invested capital."

14 Are you asserting in that sentence that  
15 Clovis committed fraud on the other limited partners?

16 A. No. In fact, if you look later in the brief,  
17 in a footnote somewhere, I specifically characterize  
18 Clovis' state of mind as potentially fraudulent,  
19 something like that.

20 So, no, this is not meant to say that I  
21 knew or believed to a certainty that Clovis was  
22 deliberately engaged in fraud.

23 Q. Sitting here today, do you believe that Clovis  
24 was deliberately engaged in fraud?

25 A. Like I said, I have to keep an open mind about

1 that, given that that will be a consideration when we do  
2 the plan of distribution.

3 But as I also said, I have seen no evidence  
4 that the Clovis principals had actual knowledge that it  
5 was a fraud.

6 We are asserting that they had subjective  
7 bad faith in that they knew or should have known, based  
8 upon the red flags and other evidence before them.

9 Q. Okay. Well, what I'm trying to clarify is  
10 there's really two possible ways -- if Clovis was  
11 involved in any fraud here, theoretically there would be  
12 two possible ways, I guess, that that could occur,  
13 right?

14 There would be Clovis was aware that Helms  
15 and Kaelin were operating a Ponzi scheme, and there  
16 would be the other approach, which -- which I believe  
17 justifies the statement on Page 5, that Clovis'  
18 involvement in preparing the security interest document  
19 somehow constituted a fraud on the other investors.

20 A. Well, the phrase I have used is that it  
21 operated as a fraud on the other investors, who clearly  
22 were at risk, at complete risk, for their entire  
23 investment.

24 Unbeknownst to them, and deliberately  
25 unbeknownst to them, Clovis got a completely different



1 deal, which purported to embody not just an  
2 impermissible interest in specific property, but also a  
3 guarantee against loss.

4 That, in my book -- and I've spent about  
5 40 years dealing with investment fraud -- operates as a  
6 fraud on the limited partners.

7 Q. Okay. To be clear, you have no direct evidence  
8 that Clovis' involvement in the drafting of this  
9 document acts as a fraud by Clovis on the other limited  
10 partners?

11 A. Well, they -- Clovis was definitely involved in  
12 crafting the surreptitious nature in which the  
13 transaction was documented that was, at minimum,  
14 intended to deceive Amegy, and given their apparent  
15 knowledge of the Partnership Agreement, operated as a  
16 deception on the other limited partners.

17 Q. Is your position that Clovis had the intent to  
18 deceive Amegy?

19 A. I'm afraid I'd have to say "yes." They knew  
20 about it. They were concerned about it. And the  
21 documentation, as I recall it, indicates that they  
22 documented it in such a way that Amegy would not find  
23 out about it.

24 Q. Now, of course, there's a difference between  
25 drafting a document such that it doesn't trigger any

1 default provisions in Amegy's loan documentation with  
2 Vendetta, versus attempting to defraud Amegy.

3           Would you agree that that's a distinction  
4 that could be made?

5           A. No. If it --

6           Q. What do you think?

7           A. If the intent was they would not find out about  
8 something quite material to them, there is no  
9 difference.

10          Q. Okay. And tell me all the evidence you have  
11 that supports your contention that Clovis intended that  
12 Amegy would not find out.

13          A. Well, the documents themselves, the exchanges  
14 by which the recorded documents, the notice documents,  
15 would be deliberately vague so that Amegy would not know  
16 about it. I think it's reasonable also to infer so that  
17 the other limited partners, who were being victimized by  
18 this, also would not know about it.

19          Q. In what way were they deliberately vague so  
20 that Amegy would not know about it?

21          A. Well, when you record an interest, you usually  
22 describe what it is. This does not. It said -- and I  
23 don't have it in front of me, but generally, it says  
24 somebody somewhere has some kind of an interest in these  
25 properties in this county. It does not say enough so

1 that it would have triggered a default on Amegy's  
2 documentation, and that was done by design.

3 I can't cite the, you know, line and verse  
4 of the deposition transcripts, but I think that's  
5 essentially admitted.

6 Q. Is it your testimony that whenever a party  
7 drafts a document like notice of an interest in a way  
8 that's intended to avoid triggering a default on  
9 pre-existing loan obligations, that that automatically  
10 and inherently constitutes a fraud?

11 A. You know, Will, I can't comment on the totality  
12 of possible circumstances, so I really am not able to  
13 answer that.

14 Q. Okay. Well, specific to this case, you  
15 indicate -- and I can refer you to Footnote 3 on Page 6.  
16 You indicate that, "Consistent with the deceptive nature  
17 of the entire transaction, the Notices of Interests were  
18 crafted to avoid triggering a default on Vendetta's  
19 pre-existing obligations with respect to a credit  
20 facility supplied by Amegy Bank."

21 And what I'm trying to figure out is  
22 whether that alone is the basis for your contention that  
23 Clovis was trying to deceive Amegy, or whether there are  
24 other facts that support that statement.

25 A. And you're just talking about the question of

1 Amegy, right?

2 Q. Yes, sir.

3 A. I guess what I'm saying is, in the totality of  
4 the circumstances, it's clear to me that both sides of  
5 the transaction knew they had to conceal what was going  
6 on from at least Amegy.

7 Q. And what I'm trying to figure out is, other  
8 than the way that the document was drafted, do you have  
9 any basis for that conclusion?

10 A. Again, I can't cite chapter and verse, but I  
11 am -- I believe I recall testimony of the Clovis  
12 principals which indicated to me that they were well  
13 aware that the documentation had to be handled in such a  
14 way as to prevent Amegy from knowing about it.

15 Q. Okay.

16 A. You know, again, it's the totality of the  
17 circumstances, but I believe there is actual testimony  
18 that I read in that way.

19 Q. But you're not aware of, for example, any  
20 direct evidence like an e-mail between Helms and  
21 Chapman, for instance, saying, "We'd better make sure  
22 Amegy doesn't find out about this"?

23 A. I can't say one way or the other. I'd have to  
24 go back and look at the e-mails.

25 Q. All right.

1 A. But it is certainly my impression from all the  
2 circumstances, including correspondence back and forth  
3 and I believe the testimony of the Clovis principals.

4 Q. And your testimony is that as far as the  
5 Notices of Interest go, at least, the problem with them  
6 or at least what makes them indicate to you that they  
7 were drafted in such a way as to try to ensure that  
8 Amegy didn't find out about it is a vagueness with which  
9 the collateral is described?

10 MR. GOFORTH: Let me just pose an  
11 objection. This has been asked and answered, Will.

12 MR. TERPENING: Okay.

13 A. Well, that's the key to it, yes. The Notices  
14 of Interests were crafted in a way to prevent Amegy from  
15 knowing that the transaction was going down. And as a  
16 derivative of that, others, including the limited  
17 partners in being, did not know this transaction was  
18 going down, notwithstanding that to effect it, there  
19 would have had to have been a vote by the limited  
20 partners to do it.

21 Q. Are you aware of whether any Clovis principal  
22 has less than an arm's length relationship with anyone  
23 inside Vendetta?

24 A. You have to give me a little help with that.  
25 I'm not sure what you mean.

1                   You mean, do I think that someone at  
2 Vendetta was bribing one of them in some way or giving  
3 them some inducement?

4           Q. I'm more interested in information. I'm  
5 interested in whether you have any evidence or opinion  
6 that anybody within Vendetta, such as Helms or Kaelin,  
7 was providing Smith, Chapman, or Gaucher with any  
8 information that any other limited partners wouldn't  
9 have.

10          A. Well, they were giving them thousands of  
11 documents that are not being sent to the other limited  
12 partners. The documents themselves, which are pretty  
13 damning, in my view, were certainly not shared with the  
14 other limited partners.

15                   So the existence of these negotiations and  
16 the transmission of these documents was information not  
17 known to the other limited partners and seriously  
18 prejudicial to their interests.

19          Q. Do you know whether the other limited partners  
20 had the right to demand access to the documents that  
21 were shared with Clovis?

22          A. Well, in some -- in some way, I'm sure there  
23 were provisions in the Partnership Agreement allowing  
24 some kind of access. But do I think Mr. Helms was, in a  
25 forthcoming way, sharing information with the other

1 limiteds? I do not. I think he was actively misleading  
2 them at the time this whole Clovis thing went down.

3 Q. Can you be more specific about the damning  
4 documents that you're referring to?

5 A. Yeah. The side letter.

6 Q. Okay.

7 A. The assignment. The assignment which was made  
8 and put in escrow, which was patently in violation of  
9 the license. The side letter which purported to amend  
10 the Partnership Agreement, which could not be amended  
11 without a vote and which provides guaranties and other  
12 extremely rich offerings to the Clovis people that were  
13 not available to the other limited partners.

14 Q. Okay. Anything else?

15 A. That's pretty much the crux of it.

16 Q. Okay. Let's take a look at Page 38 of  
17 Exhibit 1. Using the -- bear with me for a second while  
18 I find what I'm looking for.

19 I'm moving on to 95-1, which is  
20 Mr. Goforth's declaration. And I just want to make sure  
21 I'm using the right page number to direct you.

22 A. I'm just looking at his declaration. It's not  
23 paginated, but I have the face here in front of me.

24 Q. Thank you. Okay. So starting with Page 1 of  
25 Mr. Goforth's declaration, at Paragraph 3, I believe --

1 strike that -- Paragraph 4, he indicates, "Attached  
2 hereto as Exhibit B is a true and correct copy of the  
3 Vendetta Partners Agreement of Limited Partnership  
4 Agreement transmitted from Helms to Chapman November 28,  
5 2012."

6 And then he attaches that as Exhibit B to  
7 his declaration, which is included within that  
8 Exhibit 1.

9 A. I see that.

10 Q. Are you aware of whether that was the final  
11 Agreement of Limited Partnership or the operative  
12 Agreement of Limited Partnership, or whether it was a  
13 draft?

14 A. Without further inquiry, I couldn't say. No, I  
15 wouldn't be able to answer that.

16 Q. What further inquiry would you need to do?

17 A. I could probably ask him.

18 Q. Are you willing to do that?

19 MR. BALLARD: Well, I think Mr. Taylor can  
20 testify to what he can testify to.

21 MR. TERPENING: Okay.

22 Q. (BY MR. TERPENING) Are you aware of whether --  
23 setting aside the Exhibit B to Mr. Goforth's  
24 declaration, are you aware of whether you ever found a  
25 final, operative Limited Partnership Agreement for



1 Vendetta Partners?

2 A. We believe so.

3 Q. But you're not aware of whether it's Exhibit B  
4 or not?

5 A. That's fair to say. I don't know.

6 Q. Okay. Are you aware of whether you've attached  
7 it to any filing with the court?

8 A. No, I'm not aware.

9 Q. Are you -- are you aware of whether you've  
10 produced it to us or not?

11 A. I'm not aware of that. I'm also not aware of  
12 whether you've produced it to us.

13 Q. We don't have it. And we would if we did. We  
14 would produce it if we did.

15 MR. TERPENING: What I would ask is -- I  
16 think it would close from the loop on one minor issue  
17 that we're going to have to otherwise resolve on  
18 February 12th -- is to the extent you believe you have a  
19 final, operative Limited Partnership Agreement, you  
20 would either produce that to us or consider identifying  
21 the Bates numbers assigned to the document if you've  
22 already produced it to us.

23 Would you consider that and address that  
24 with us after this deposition?

25 MR. BALLARD: Yes, we will.

1 MR. TERPENING: Thank you.

2 Q. (BY MR. TERPENING) Mr. Taylor, are you aware,  
3 in November, 2012, of how many limited partners Vendetta  
4 Partners had?

5 A. I've seen the number. I have the number, but I  
6 can't recall. I'm not going to guess because I just  
7 don't remember.

8 Q. I'm going to direct you to Page -- I'm now  
9 going to use the ECF numbers at the top, Page 74 of 178  
10 of Exhibit 1.

11 A. 74?

12 Q. Yes, sir?

13 MR. BALLARD: Hold on just one second.  
14 Page 74 of 178.

15 A. I'm there. And it appears to be Exhibit B to  
16 the Partnership Agreement, is it?

17 Q. (BY MR. TERPENING) Yeah. It looks like it's  
18 Exhibit B to what Mr. Goforth identified as the  
19 Agreement of Limited Partnership that was sent to Avery  
20 Chapman on November 28th of 2012.

21 A. Okay.

22 Q. And you see in the middle of the page  
23 indicates, Additional Class A Partners contributing cash  
24 and property as determined at 9/30/09."

25 And then there is a lengthy list of

1 redactions that flows over onto the following page, as  
2 well.

3 A. I see that.

4 Q. Are you aware of whether there's an unredacted  
5 copy of this limited partnership floating around?

6 A. I'm sure there must be something from which  
7 there were redactions, yeah.

8 Q. And do you know whether you have a copy or not?

9 A. We must, yeah. Are you saying that we redacted  
10 this document?

11 Q. I don't know. I doubt it, but I'm not sure. I  
12 do note that it's filed with the court, so it's possible  
13 that you did. Do you know whether you did or not?

14 A. It was likely redacted for personal financial  
15 information reasons.

16 Q. Yeah. I think that's probably right.

17 A. Yeah. My guess is that Andrew did that for  
18 that reason.

19 MR. TERPENING: What I would ask Andrew or  
20 Jack is, if you'd consider helping us find an unredacted  
21 copy after the depo, we'd appreciate it.

22 MR. GOFORTH: Okay.

23 MR. TERPENING: Thank you.

24 Q. (BY MR. TERPENING) Let's turn back to the  
25 actual motion, Document 95, Page -- the bottom of

1 Page 29 through the top of Page 30

2 MR. BALLARD: Give us just one second,  
3 Will.

4 MR. TERPENING: Sure.

5 MR. GOFORTH: Will, are you still on the  
6 ECF page numbers, or are you back to the page numbers at  
7 the bottom?

8 MR. TERPENING: Well, for that one, they're  
9 the same. So, fortunately, I cannot confuse them too  
10 much.

11 A. You're back in the motion, right?

12 Q. (BY MR. TERPENING) Yes, sir.

13 A. 29. Okay.

14 Q. And I'm going to ask about the sentence,  
15 "Clovis was aware" -- at the very bottom of Page 29.  
16 "Clovis was aware of the existence of a fiduciary  
17 relationship between Helms, Kaelin and the limited  
18 partners."

19 And I'd like you to please tell me all the  
20 evidence you have supporting the contention that Clovis  
21 was aware of a fiduciary relationship between Helms,  
22 Kaelin, and the limited partners.

23 A. Well, primarily, they were aware that Helms was  
24 the general partner of the partnership, therefore, by  
25 definition, owing a fiduciary duty to the limiteds.

1 Q. Was Mr. Gaucher a lawyer?

2 A. Definitely not.

3 Q. How would he be aware that -- of that fiduciary  
4 relationship, then?

5 A. Well, he's a sophisticated investment  
6 professional. I think anyone who is that, or purports  
7 to be that, ought to know that the general partner of a  
8 partnership owes fiduciary duties to the limiteds.

9 Q. Okay.

10 A. The same would be true of Mr. Chapman.

11 Q. Now, turning back to the ECF numbers, let's  
12 look at 98 of 178, please, which is Exhibit E.

13 A. Okay. I'm there.

14 Q. Starting with the page following that, we have  
15 the infamous side letter.

16 MR. BALLARD: Hold on just one second. You  
17 said 99 of 178?

18 THE DEPONENT: This is the side letter.

19 MR. BALLARD: Okay.

20 Q. (BY MR. TERPENING) Yeah, he side letter.  
21 There's an exhibit cover sheet, and then starting at  
22 Page 99, you've got the side letter.

23 A. Yes. Uh-huh.

24 Q. And I believe you testified earlier that the  
25 principal drafter of this would have been someone at

http://www.secdatabase.com

1 Vendetta; is that correct?

2 A. My supposition may be based on facts that have  
3 come to my attention that Helms initiated the drafting.

4 Q. Okay. Let's look at Page 2 of the letter,  
5 under the heading, Warranties and Representations by  
6 Vendetta Royalty Partners.

7 The first rep indicates a value of nearly  
8 27 million as of December 21st, 2011, for the mineral  
9 assets currently owned by Vendetta.

10 Do you think that statement was true?

11 A. I'm going to go out on a limb here and say this  
12 probably refers to a forged valuation document that was  
13 forged and attributed to a legitimate valuation  
14 organization in Dallas.

15 Q. Okay. So you believe that number is not true,  
16 right?

17 A. You know, I don't want to be 100-percent  
18 certain of this, but I believe this refers to what I  
19 just described.

20 Q. Do you think anybody at Clovis knew that that  
21 statement was not true?

22 MR. BALLARD: Objection. Speculation.

23 A. I don't know. There's several different  
24 individuals involved with varying points of contact with  
25 Vendetta, so I can't say.

1 Q. (BY MR. TERPENING) Do you have any direct  
2 evidence demonstrating that anybody at Clovis knew that  
3 the statement was not true?

4 A. No.

5 Q. No. 2 is, "Vendetta intends to sell the  
6 Portfolio in January 2013 and has disclosed at least one  
7 institutional purchaser, Resource Select, which has a  
8 very strong interest in purchasing the entire Portfolio  
9 at that time."

10 Do you have any direct evidence that Clovis  
11 knew that Resource Select had not indicated a very  
12 strong interest in purchasing the entire portfolio in  
13 January, 2013, at the time this side letter was  
14 executed?

15 A. Well, all I can go on is this representation.  
16 I do not know what the nature of the discussion was  
17 between Helms and the Clovis principals about this  
18 purported potential purchase. I don't know how much  
19 they talked about it or what was said or how ridiculous  
20 it sounded or what.

21 Q. But you don't have any direct evidence that  
22 they knew that the statement was untrue?

23 A. No.

24 Q. Do you know who Resource Select is or was?

25 A. I think at some point, I had some information

1 about them. I don't really recall at this juncture.

2 What I do know is that there was -- they  
3 were nowhere close to effecting a sale of the portfolio  
4 to any investor, be it this or some other -- or another.

5 Q. And how do you know that?

6 A. Just interviews with various people. Review of  
7 the documents. General understanding of the state of  
8 affairs at the entity when we took over and after.

9 Q. What are the key interviews on that issue?  
10 What people?

11 A. Oh, I would say Raquel Foti, Scott Marshall.  
12 The one time that I had Ms. Kaelin in the room to answer  
13 questions. Again, she was not under oath, and I was not  
14 taking a deposition. I was interviewing her. It became  
15 pretty obvious to me that there was no reality to the  
16 expected or anticipate sale of the portfolio.

17 Q. Have you interviewed anybody at Resource  
18 Select?

19 A. I'm not certain because I don't know who  
20 Resource Select's people are.

21 Q. Okay. Let's take a look at No. 5 on Page 2.  
22 "The Capital Contribution shall be used solely for the  
23 acquisition of key, new mineral royalties to add to the  
24 Portfolio prior to the Sale in order to maximize the  
25 value of the Portfolio at sale."



1 Do you think that statement was true?

2 A. I know it was not true.

3 Q. Do you have any direct evidence indicating that  
4 anybody at Clovis knew that it was not true?

5 A. No.

6 Q. Do you have any belief as to whether anybody at  
7 Clovis knew that it wasn't true?

8 MR. BALLARD: Objection. Speculation.

9 A. Again, I can't know the conversations that went  
10 on between the Clovis principals and Helms, so I can't  
11 answer that.

12 Q. (BY MR. TERPENING) All right. Let's look at  
13 Page 4 of the side letter. Okay. Actually, starting at  
14 Page 3, it lists "Trigger Events." And those trigger  
15 events constitute a scenario where Clovis' capital  
16 contribution will be fully recoverable had any of those  
17 trigger events occurred, right?

18 A. Yes. It's Page 4 and not Page 3, but, yes.

19 Q. Thank you. Now, one trigger event -- oh, I  
20 see, you're using the numbers at the bottom of the page?

21 A. Yes.

22 Q. Again, the confusion is we now have three page  
23 numbers going on. This is Page 101 according to ECF,  
24 Page 3 according to the actual letter, and Page 4  
25 according --

1 A. Okay. All right. So Page 3 of the actual  
2 letter, right.

3 Q. But one of the trigger events would be if the  
4 sale of the portfolio was not closed by February 28th,  
5 2013, right?

6 A. Right.

7 Q. And that's only about three months after the  
8 date of the side letter, right?

9 A. Right.

10 Q. Do you have any opinion as to why Helms and  
11 Vendetta would create a situation where it could have to  
12 sell the Ozona Interests if the portfolio didn't close  
13 by February 28th, particularly if Vendetta knew that  
14 there wasn't going to be such a sale?

15 A. Yes. Helms was desperate. He would have said  
16 anything to get \$3 million in the door.

17 Q. All right. Let's take a look at our Exhibit 5.

18 A. I'm going to have to -- may I take a short  
19 break, very short?

20 Q. No problem. Take a break whenever you'd like.

21 (Brief Recess Taken.)

22 Q. (BY MR. TERPENING) I'm going to try to wrap  
23 this up pretty promptly here. I think this has been  
24 useful for us in that I think it's helped us see what  
25 needs to happen on the 12th is principally a legal

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1 debate.

2 But I do want to quickly ask about what  
3 we've marked as Exhibit 5 and 6, which are a letter from  
4 Mr. Goforth to me dated December 19th.

5 (Exhibit No. 5 Marked.)

6 (Exhibit No. 6 Marked.)

7 A. Are we done with the side letter?

8 Q. (BY MR. TERPENING) We're done with everything  
9 except for Exhibit 5 and 6.

10 A. Okay.

11 Q. You guys ready?

12 A. Ready.

13 Q. Okay. 5 is Mr. Goforth's December 19th letter  
14 to me, and 6 is the Receiver's Second Status Report  
15 Regarding The Sale of Receivership Assets, The "Ozona  
16 Interests."

17 And basically, what I want to know here is,  
18 what's the current status of your discussions with JAL  
19 over their contract to buy the interest? In particular,  
20 what's the current status of the purchase price to date?

21 A. Well, initially he started backing away and,  
22 you know, indicated he would still want to participate,  
23 but he propose the \$860,000, which was, I assume, just a  
24 calculation based upon the decline from the price of  
25 West Texas Intermediate in the interim period.

1 My position was, again, the sale had been,  
2 as you know, presented to the Court for confirmation.  
3 So there's no way I could conclusively renegotiate it  
4 without going back to the Court to modify it or  
5 whatever.

6 But my position was, let's see if we can  
7 get him up to a million, and I had some -- I guess I had  
8 discussions with EnergyNet and perhaps with Marshall to  
9 see if that was a plausible number.

10 You know, in the middle of negotiations, do  
11 we really want to discuss this on the record? I mean --

12 MR. BALLARD: Well, I think that Tom's  
13 sensitivity is that these are ongoing negotiations. And  
14 obviously, I mean, in terms of the -- where things stand  
15 now, Will, we're fine, but in terms of what the plan is  
16 going forward, I think there's some discomfort there.

17 MR. TERPENING: Well, let me ask more  
18 specific questions, then, to hopefully alleviate that  
19 discomfort.

20 A. Okay. Let me just cut to the chase on that  
21 one. I wanted to go to a million. I was reasonably  
22 encouraged that he would -- based on advice from  
23 EnergyNet, I thought he would go there. Again, I was  
24 not legally authorized to do it, but I was trying to get  
25 somewhere that I could recommend.

1                   And before we closed the loop on a number,  
2 he came back and announced that given the further fall  
3 in oil and gas, that they didn't think they wanted to  
4 invest capital at all, given the turmoil in the markets.

5                   And that's where it stands. He think he is  
6 relieved of any obligation to go forward. I don't agree  
7 with him. And I'm not going to -- I'm certainly not  
8 going to disclose, you know, legal advice on the matter.

9                   Let's just say that he thinks he can walk.  
10 I think he can't, you know.

11           Q. Yeah. I mean, I, of course, don't want you to  
12 disclose anything privileged, but I do want to  
13 confirm -- I mean, I assume that you all had a contract  
14 that got executed before you presented all this to the  
15 Court back in October, right?

16           A. That is correct.

17           Q. And I assume that contract had a purchase price  
18 in it, right?

19           A. That's right. There is our agreement with  
20 EnergyNet which describes the terms and conditions upon  
21 which it is offered. And attached to that as an  
22 exhibit -- what is it called? The seller -- Buyer's  
23 Agreement? There's a Buyer's Agreement that also has  
24 some specifics.

25                   The order itself, as you know, does not put

1 any time limit on the judicial confirmation. It says  
2 that is the condition. Doesn't say whether it has to  
3 happen today, tomorrow, or next year. It doesn't say.

4           The buyer cites provisions in the Buyer's  
5 Agreement which he thinks are pertinent, which would put  
6 a -- I think an outside limit of 60 days to achieve what  
7 we have to achieve. We disagree.

8           Q. The agreement sets forth a purchase price of  
9 1.21 million, right?

10          A. Well, the agreement sets forth the definition  
11 of the winning bid, and the winning bid happens to be  
12 one two ten.

13          Q. And there's no provision in the agreement for  
14 renegotiating the purchase price, correct?

15          A. That is correct, nor in the order, for that  
16 matter.

17          Q. Well, would you be willing to produce to us a  
18 signed copy of that agreement?

19                   MR. BALLARD: Let us take that under  
20 advisement, Will.

21                   MR. TERPENING: Okay. Well, if I could  
22 have one minute to confer with my colleagues, I think we  
23 can wrap this up, please.

24                   THE DEPONENT: Okay.

25                           (Brief Recess Taken.)

1 MR. TERPENING: I just want to thank you a  
2 lot for your time today. We're through with our  
3 questioning.

4 And I guess we'll see you in Austin on  
5 the 12th.

6 MR. BALLARD: See you there.

7 And I have no questions at this time.

8 MR. TERPENING: Thank you all.

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: THOMAS L. TAYLOR, III

3 DATE OF DEPOSITION: JANUARY 21, 2015

4 PAGE LINE CHANGE REASON

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SECURITIES AND EXCHANGE COMMISSION VS. ROBERT A. HELMS, ET AL.

Thomas L. Taylor, III on 01/21/2015

1 I, THOMAS L. TAYLOR, III, have read the  
2 foregoing deposition and hereby affix my signature that  
3 same is true and correct, except as noted above.

3

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THOMAS L. TAYLOR, III

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11 THE STATE OF \_\_\_\_\_ )

12 COUNTY OF \_\_\_\_\_ )

13

14

15 Before me, \_\_\_\_\_, on  
16 this day personally appeared THOMAS L. TAYLOR, III,  
17 known to me (or proved to me under oath or through  
18 \_\_\_\_\_) (description of identity  
19 card or other document)) to be the person whose name is  
20 subscribed to the foregoing instrument and acknowledged  
21 to me that they executed the same for the purposes and  
22 consideration therein expressed.

19 Given under my hand and seal of office this  
20 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

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SECURITIES AND EXCHANGE COMMISSION VS. ROBERT A. HELMS, ET AL.

Thomas L. Taylor, III on 01/21/2015

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	CIVIL ACTION NO.
Plaintiff,	)	1:13-CV-1036
	)	
VS.	)	
	)	
ROBERT A. HELMS; ET	)	
AL.,	)	
	)	
Defendants.	)	
	)	
And	)	
	)	
William l. Barlow, and	)	
GLOBAL CAPITAL	)	
VENTURES, LLC,	)	
	)	
	)	
Relief Defendants,	)	
solely for the purposes	)	
of equitable relief.	)	
	)	

REPORTER'S CERTIFICATION

DEPOSITION OF THOMAS L. TAYLOR, III

JANUARY 21, 2015

I, Kateri A. Flot-Davis, Certified Shorthand  
Reporter in and for the State of Texas, hereby certify  
to the following:

That the witness, THOMAS L. TAYLOR, III, was duly

1 sworn by the officer and that the transcript of the oral  
2 deposition is a true record of the testimony given by  
3 the witness;

4 There was a request for examination and signature  
5 of the witness to the deposition transcript. The  
6 original transcript was sent for review on  
7 \_\_\_\_\_ to the witness or to the attorney  
8 for the witness for examination, signature and return to  
9 me by \_\_\_\_\_;

10 I further certify that I am neither counsel for,  
11 related to, nor employed by any of the parties or  
12 attorneys in the action in which this proceeding was  
13 taken, and further that I am not financially or  
14 otherwise interested in the outcome of the action.

15 Certified to by me this \_\_\_ of \_\_\_\_\_, \_\_\_\_.

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Kateri A. Flot-Davis  
Texas CSR No. 8462  
Expiration Date: 12-31-15