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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission 28

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DEC 19 2006

COMMISSIONERS:  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY [Signature]

In the matter of:

Docket No. S-20437A-05-0925

Reserve Oil & Gas, Inc., a Nevada corporation  
3507 North Central Avenue, Suite 503  
Phoenix, Arizona 85012

**RESPONDENT ALLEN C. STOUT'S  
RESPONSE TO THE SECURITIES  
DIVISION'S MOTION TO DEPOSE  
ALLEN C. STOUT AND MOTION FOR  
PROTECTIVE ORDER**

Allen and Jane Doe Stout, Sr., husband and wife  
1309 West Portland Street  
Phoenix, Arizona 85007-2102

Allen and Jane Doe Stout, Jr., husband and wife  
1309 West Portland Street  
Phoenix, AZ 85007-2102

Respondents.

Respondent Allen C. Stout hereby respectfully requests the Administrative Law Judge to deny the Securities Division's (the "Division") motion to depose him and to issue a protective order. This response and motion is based upon the Memorandum of Points of Authorities attached hereto and incorporated herein by reference.

MEMORANDUM OF POINTS AND AUTHORITIES

The Division's Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TC&D") is dated December 30, 2005. At no time prior to the November 7, 2006 hearing date did the Division seek permission to take Mr. Stout's deposition. Its November 30, 2006 request to do so was made eleven (11) months after the TC&D was filed and twenty-three (23) days after the hearing was set to begin. The Division's motion to take Mr. Stout's deposition is based upon retribution, not need.

The Division seeks the right to take the deposition pursuant to A.R.S. § 41-1062(A)(4). That section indicates that the Administrative Law Judge may permit a deposition to be taken provided that the Division demonstrates that the Division has reasonable need of the deposition

1 testimony. The Division's tactics and words throughout the pendency of this proceeding establish  
2 quite convincingly that it does not need this deposition. It is meant to impose undue burden and  
3 expense, and to annoy, embarrass and oppress Mr. Stout.

4 The Division's position at pre-hearing conferences has been that this is a simple matter that  
5 on at least on one occasion the Division's counsel represented could be tried in a morning. It is  
6 only after the Administrative Law Judge appropriately granted Respondents' request to take  
7 Mr. Smith's deposition and continue the hearing that the Division filed in its motion to take  
8 Mr. Stout's deposition.

9 In its Memorandum of Points and Authorities, the Division states that Respondents' counsel  
10 verbally requested the deposition of Mr. Smith on November 7, 2006. The Division misstates the  
11 record. On October 30, 2006, Respondents filed a response to the Division's motion to allow  
12 telephonic testimony and, in the alternative, a motion for continuance. Contained within that  
13 motion was a request, on the first page at lines 24 through 26, that the matter be continued to enable  
14 Respondents to take Mr. Smith's deposition. In its November 3, 2006 reply to Respondents'  
15 response to the motion to permit telephonic testimony, the Division represented the following:

16 . . . A key meeting with Smith was recorded, the recording and transcript has been  
17 provided to Respondents. Further, e-mails between Smith and Respondents have  
18 been produced. *Most of the evidence in this case is documented.* . . . Respondents'  
19 *request to continue the case would simply cause unnecessary delay* and not protect  
any significant concerns of the Respondents given the fact that the primary  
allegations have been admitted.

20 See page 2, lines 10 through 16. (emphasis supplied)

21 At no time in its November 3, 2006 reply, four (4) days before the hearing was scheduled to  
22 start, did the Division express any interest in taking Mr. Stout's deposition. The Division  
23 maintained it had the evidence it needed to prove its case. Clearly, the Division's request to depose  
24 Mr. Stout resulted from the Administrative Law Judge's appropriate ruling to continue the case.  
25 The Division should not be permitted to harass a Respondent or to cause him to incur any  
26 additional unnecessary legal fees in defense of this case.

27 Rule 26(c) of the Arizona Rules of Civil Procedure notes that in matters relating to a

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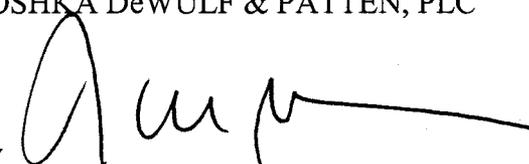
1 deposition, the trier of fact may make any order that justice requires to protect a party or person  
2 from annoyance, embarrassment, oppression, or undue burden or expense. The Division's belated  
3 request to take Mr. Stout's deposition is transparent. The Administrative Law Judge has the  
4 authority to issue an order to protect a party or person from annoyance, embarrassment, oppression  
5 or undue burden or expense. *State Ex Rel Chaney v. Franklin*, 941 SW2d 790 (1997). It should be  
6 remembered that depositions are not to be used to harass opponents, but rather to gain information  
7 which will prevent surprise at a trial. *Crandall v. Ford Motor Co.*, 260 A.D. 380 (1940). *See also*  
8 *MTU of North America, Inc. v. Raven Marine, Inc.*, 475 SO2d 1063 (1985). The Division has  
9 never claimed that it faces surprise at the hearing. Its position has been quite the opposite.

10 CONCLUSION

11 For all the reasons stated above, Allen C. Stout respectfully requests the Administrative  
12 Law Judge to issue a protective order and deny the Division's motion to depose him.

13 RESPECTFULLY SUBMITTED this 19th day of December, 2006.

14 ROSKA DeWULF & PATTEN, PLC

15  
16  
17 By 

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25 Attorneys for Respondents

26 ORIGINAL and thirteen copies of the foregoing  
27 filed this 19th day of December, 2006 with:

28 Docket Control  
29 Arizona Corporation Commission  
30 1200 West Washington Street  
31 Phoenix, Arizona 85007

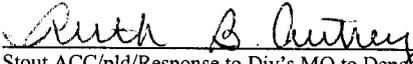
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Copy of the foregoing hand-delivered  
this 19th day of December, 2006 to:

Marc E. Stern, Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Shoshana O. Epstein  
Securities Division  
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