



BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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COMMISSIONERS

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

AZ CORP COMMISSION  
DOCUMENT CONTROL

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

SECURITIES DIVISION'S MOTION TO DEPOSE ALLEN C. STOUT

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

Arizona Corporation Commission  
DOCKETED

NOV 30 2006

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

DOCKETED BY [Signature]

Respondents.

The Securities Division ("Division") of the Arizona Corporation Commission hereby moves the court to order the deposition of Allen C. Stout ("Stout Sr."). This request is made pursuant to A.R.S. § 41-1062 (A)(4). For the reasons addressed in the following Memorandum of Points and Authorities, the Division's Motion to Depose Allen C. Stout should be granted.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

A hearing was scheduled to begin in this matter on November 7, 2006. Although Respondents were present through counsel, no Respondent was present personally at the hearing

1 on November 7th. On the date of the hearing, Respondents' counsel, Mr. Roshka, verbally  
2 requested the deposition of Bill Smith, former investigator for the Division on the basis that the  
3 witness was appearing telephonically and not in person. The court vacated the hearing date,  
4 granted Respondents the deposition of Bill Smith, and postponed the entire hearing to hold the  
5 deposition. The hearing date has not yet been rescheduled.

## 6 7 **II. LAW & ANALYSIS**

8 The Arizona administrative code gives this court the authority to order the deposition of  
9 Stout Sr. *See* A.R.S. § 41-1062(A)(4). The statute provides that if the witness cannot be  
10 subpoenaed *or* is unable to attend, and the party seeking the discovery has reasonable need of the  
11 deposition, the officer presiding at the hearing may order the deposition. *Id.*

12 Stout Sr. is on the Division's list of witnesses. The Division has made efforts to serve a  
13 subpoena for testimony upon Respondent previously, but was unable to effect service. Stout Sr.  
14 has apparently closed the office for Reserve Oil & Gas, Inc. and left the state. Moreover, Mr.  
15 Roshka has refused to accept service of a subpoena on his client's behalf.

16 Stout Sr.'s absence from the scheduled hearing in November demonstrates that he did not  
17 attend and most likely will not attend in the future. A deposition may provide testimony  
18 concerning the allegations, or if the witness asserts the privilege against self-incrimination at the  
19 deposition, a prejudicial inference may be drawn from the response. *See, Fross v. Wotton*, 3 Cal.  
20 2d 384, 44 P.2d 350 (1935). In fact, a claim of the privilege may even be used to support an  
21 inference of fraud. *Id.* Given Stout Sr.'s participation in the activities that form the basis for the  
22 allegations of the Division's complaint, the Division reasonably needs the deposition.

## 23 24 **III. CONCLUSION**

25 Stout Sr. filed a response to these proceedings, requested a hearing before this tribunal,  
26 and has submitted to the jurisdiction of this court. To order Stout Sr. to appear for a deposition is

1 simply an exercise of the authority this court has over this Respondent pursuant to statute.  
2 Moreover, this court has already exercised its authority to order a deposition when it ordered the  
3 deposition of Mr. Smith. Fairness dictates that this court grant the Division the deposition of  
4 Allen C. Stout – Stout Sr. Wherefore, the Division respectfully requests this motion be granted.

5  
6 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of November, 2006.

7  
8 By   
9 Shoshana O. Epstein  
10 Staff Attorney, Arizona Corporation  
Commission - Securities Division

11 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
12 filed this 30<sup>th</sup> day of November, 2006, with

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, AZ 85007

17 COPY of the foregoing hand-delivered this  
18 30<sup>th</sup> day of November, 2006, to:

19 ALJ Marc Stern  
20 Arizona Corporation Commission/Hearing Division  
21 1200 West Washington  
22 Phoenix, AZ 85007

23 COPY of the foregoing faxed/mailed  
24 this 30<sup>th</sup> day of November, 2006 to:

25 Paul J. Roshka, Jr., Esq.  
26 ROSHKA, DEWULF & PATTEN, P.L.C.  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004  
Attorneys for Respondents

By: 