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BEFORE THE ARIZONA CORPORATION COMMISSION

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

2007 JAN -9 P 2: 05
AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:

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

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.

Docket No. S-20437A-05-0925

**RESPONDENT ALLEN C. STOUT'S
REPLY IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER**

Arizona Corporation Commission
DOCKETED

JAN -9 2007

DOCKETED BY nr

Respondent Allen C. Stout hereby respectfully requests the Administrative Law Judge (the "ALJ") to deny the Securities Division's (the "Division") motion to depose him and to issue a protective order. This Reply in Support of Motion for Protective Order is based upon the Memorandum of Points and Authorities attached hereto and incorporated herein by reference, as well as the Memorandum of Points and Authorities contained in Respondent Allen C. Stout's Response to the Securities Division's Motion to Depose Allen C. Stout and Motion for Protective Order, filed December 19, 2006, which is hereby incorporated herein by reference.

BACKGROUND

On November 30, 2007, the Division filed its Motion to Depose Allen C. Stout (the "Motion"). Importantly, the Division waited until *eleven (11) months* after the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing was issued, and more than *three weeks* after the hearing for this action was scheduled to commence, before it sought Respondent Stout's deposition. The chronology of events leads to one conclusion: The Division's Motion is designed to harass Respondent Stout, and to subject him to an undue burden and expense.

1 On December 19, 2006, Respondent Stout filed a Response to the Securities Division's
2 Motion to Depose Allen C. Stout and Motion for Protective Order pursuant to, without limitation,
3 Rule 26(c) of the Arizona Rules of Civil Procedure (the "Response").

4 The Division filed its Reply to Respondent Allen C. Stout's Response on December 29,
5 2006 ("Reply"). Simply put, the Division failed in both its Motion and Reply to satisfy its burden
6 of establishing a reasonable need for the deposition testimony of Respondent Stout. Furthermore,
7 in the Reply,¹ the Division inaccurately argued that Respondents failed to provide a factual or legal
8 basis in support of the Respondent's Motion for Protective Order—prompting this Reply in
9 Support of Motion for Protective Order.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **1. The Division Failed to Satisfy its Burden**

12 The only legal basis pursuant to which the Division moves to conduct the deposition of
13 Respondent Stout is A.R.S. § 41-1062(A)(4).² As admitted by the Division, this section imposes a
14 burden on a party seeking pre-hearing deposition testimony.³ Specifically, A.R.S. § 41-1062(A)(4)
15 requires the Division establish a reasonable need for the deposition of Respondent Stout. The
16 Division has failed to satisfy this burden.

17 Indeed, the Division meagerly offers that a deposition of Respondent Stout "*may*" provide
18 testimony concerning allegations.⁴ The Division never stated in the Motion or Reply that the
19 deposition of Respondent Stout was necessary or material to its case and, indeed, such an assertion
20 would be diametrically opposed to prior admissions by the Division to the ALJ that this is a simple
21 action and that the Division had all of the evidence needed to prove its case.

22
23 ¹ See the Division's Reply at pp. 3-4.

24 ² See the Division's Motion at pp. 1-2.

25 ³ *Id.* at p. 2, lines 9-11 ("The statute [A.R.S. § 41-1062(A)(4)] provides that if the witness
26 cannot be subpoenaed or is unable to attend, **and the party seeking the discovery has reasonable
27 need of the deposition**, the officer presiding at the hearing *may* order the deposition.") (Emphasis
supplied).

⁴ *Id.* at p. 2, lines 16-19; *see also* Division's Reply at p. 2, lines 3-4 and 24-25 (Emphasis
supplied).

1 The Division noted that Respondent Stout did not attend the hearing on November 7, 2006.⁵
2 However, the Division never affirmatively alleged in either the Motion or the Reply that
3 Respondent Stout's absence from the November 7, 2006 hearing had, or would have, an impact on
4 the Division's case. Again, such a contention would be contrary to prior assertions by the Division
5 that it had all the evidence it needed to put on its case. Apparently, the Division wants the ALJ to
6 infer that it has a reasonable need for the deposition. However, such an inference by the ALJ
7 would be inappropriate because it would necessarily ignore the *Division's* affirmative obligation to
8 establish a reasonable need for the requested deposition testimony. Equally important, such an
9 inference is contradicted by the fact that the Division neglected to request the deposition of
10 Respondent Stout from the ALJ at the November 7 hearing, when it first noticed Mr. Stout's
11 absence, or during the eleven (11) months preceding the originally-scheduled hearing date. Thus,
12 the Division has not established a reasonable need for the deposition of Respondent Stout.

13 **2. The Respondent Provided an Adequate Legal and Factual Basis in Support of**
14 **the Protective Order**

15 The Division argued in the Reply that "Respondent has not cited any applicable rule or
16 statute for the protective order [he] requests, nor does he cite any factual basis for such relief."⁶
17 Every aspect of this statement is inaccurate.

18 The Respondent moved for the Protective Order pursuant to, without limitation, Rule 26(c)
19 of the Arizona Rules of Civil Procedure ("Rule 26(c)").⁷ Rule 26(c) is fully applicable and
20 relevant in this matter because R14-3-109 of the Rules of Practice and Procedure Before the
21 Corporation Commission ("RPPBCC") provides that "[t]he Commission, a Commissioner, or any
22 party to any proceeding before it may cause the depositions of witnesses to be taken in the manner
23 prescribed by law *and of the civil procedure for the Superior Court of the [S]tate of Arizona.*"⁸
24

25 _____
⁵ Motion at p. 2; Reply at p. 2.

26 ⁶ Reply at p. 4, lines 8-11.

27 ⁷ Response at pp. 2-3.

⁸ See R 14-3-109(P)(emphasis supplied).

1 Thus, an ALJ must evaluate whether a deposition is appropriate under A.R.S. § 41-1062(A)(4), but
2 also must look to the Arizona Rules of Civil Procedure to determine whether a Protective Order
3 should issue where a deposition or discovery is sought for an improper purpose. As noted in the
4 Response, Rule 26(c) provides that the trier of fact may make any order that justice requires to
5 protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.⁹
6 Thus, the Respondent has provided a sufficient legal basis for the issuance of a Protective Order.

7 After misrepresenting that the Respondent offered no cited legal basis in support of the
8 request for a protective order, which argument ignores the Respondent's reliance on Rule 26(c), the
9 Division criticizes three cases cited by the Respondent in the Response.¹⁰ The Division's
10 criticisms can be boiled down into the unmeritorious contention that Respondent's *case* authority
11 does not support the proposition that an Administrative Law Judge can issue a Protective Order.
12 As discussed above, Rule 26(c) provides the mechanism for a trier of fact to issue a Protective
13 Order. This rule is relevant and applicable in this proceeding through RPPBCC. The
14 Respondent's case authority simply evidenced that the trier of fact, here the ALJ, has the ability to
15 issue a Protective Order, where circumstances warrant, barring or limiting improper discovery—
16 such as the Division's Motion to Depose Respondent Stout.

17 Moreover, the Respondent established a factual basis that supports the issuance of a
18 Protective Order. Specifically, the Respondent has established: (a) the Division represented that
19 the case was a simple matter and that it already possessed the evidence it needed to prove its case
20 *before the Motion was conceived or filed*; (b) the Division never requested, up to and including the
21 November 7 hearing date, the deposition of Respondent Stout—including a failure to request the
22 deposition at the hearing *when it first noticed Respondent Stout was absent*; and (c) the Division's
23 Motion, filed twenty-three (23) days after the original hearing date and after the ALJ granted the
24 Respondent's request to depose Bill Smith, was a disingenuous tactic designed to annoy, embarrass
25 and oppress the Respondent and to subject same to an undue burden and expense. Thus, the

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27 ⁹ Response at pp. 2-3.

¹⁰ Reply a pp. 3-4.

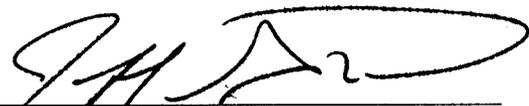
1 Respondent has provided an adequate factual and legal basis for the issuance of a Protective Order.

2 CONCLUSION

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

5 RESPECTFULLY SUBMITTED this 9th day of January, 2007.

6 ROSHKA DeWULF & PATTEN, PLC

7
8 By 

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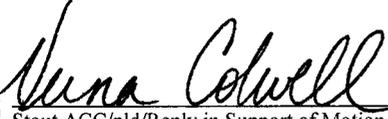
17 ORIGINAL and thirteen copies of the foregoing
18 filed this 9th day of January, 2007 with:

19 Docket Control
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 Copy of the foregoing hand-delivered
24 this 9th day of January, 2007 to:

25 Marc E. Stern, Administrative Law Judge
26 Hearing Division
27 Arizona Corporation Commission
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4 1300 West Washington Street, 3rd Floor
5 Phoenix, Arizona 85007

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