



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBOTTI & COMPANY, LLC,)
)
Plaintiff Individually And)
On Behalf Of All Other)
Similarly Situated And)
Derivatively On Behalf Of)
Gulfport Energy)
Corporation,)

Civil Action No. 3128-VCN

v.)

MIKE LIDDELL, ROBERT E. BROOKS,)
DAVID L. HOUSTON, MICKEY LIDDELL and)
DAN NOLES and CD HOLDINGS, L.L.C.)

Defendants,)

v.)

GULFPORT ENERGY CORPORATION,)

Nominal Defendant.)

**SECOND AMENDED VERIFIED CLASS ACTION AND
DERIVATIVE COMPLAINT**

Plaintiffs by and through its attorneys for its Complaint alleges as follows:

PARTIES AND OTHER ENTITIES AND RELATIONSHIPS

1. Robotti & Company, LLC (“Robotti”) is and at all times relevant hereto has been a shareholder of defendant Gulfport Energy Corporation (“Gulfport” or the “Company”). Robotti has continuously owned shares of Gulfport since July 1, 2003. Robotti is successor in interest to a Gulfport shareholder who, until Robotti became its successor, owned shares continuously since June 15, 2003.

2. Nominal Defendant, Gulfport, is a Delaware corporation with its principal place of business at 14313 North May, Suite 100, Oklahoma City, OK 73134. Gulfport is an

independent oil and gas exploration and production company with properties located along the Louisiana gulf coast.

3. Defendant Mike Liddell has served as a Director of the Company since July 11, 1997, as Chief Executive Officer (“CEO”) since 1998, as Chairman of the Board since July 28, 1998, and as President since July 15, 2000. He is still a Director and Chairman and was CEO and President until December 2000. The Company currently identifies no President.

4. Defendant Robert E. Brooks has served as a Director of Gulfport from at least July 11, 1997 until October 29, 2007.

5. Defendant David L. Houston served as a Director of the Company since July 1998 and still is on the Board.

6. Defendant Mickey Liddell served as a Director of the Company from January 1999 until April, 2007.

7. Defendant Dan Noles served as a Director of the Company from January 2000 until April, 2007.

8. The Individual defendants were the Board of Directors at the time of the wrongs alleged herein. At the time of the wrongs alleged herein, the Company did not have a majority of Directors identified by it as “independent”. Each Individual Defendant was either an option-holder and/or a warrant-holder, therefore was interested in and conflicted with respect to the challenged transaction.

9. CD Holding, L.L.C. (“CD Holding”) was controlling stockholder and is the entity through which control as alleged herein was exercised by Charles Davidson (“Davidson”) who directly or indirectly controlled CD Holding including through Wexford Capital LLC and related

entities (“Wexford”). Through the exercise of reasonable diligence Plaintiff has been unable to discover the location of CD Holding at this time.

CLASS ALLEGATIONS

10. Plaintiff brings this action pursuant to Chancery Rule 23 on behalf of all persons who held shares as of August 20, 2004, the date the closing of the transaction challenged herein, except for the Defendants, the Company’s directors, the Company’s controlling shareholder, their immediate family members and entities owned or controlled by such persons and pursuant to Chancery Rule 23.1, derivatives on behalf of the Company.

11. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impractical. There are approximately two million common shares of Gulfport common stock in the Class that were not owned, directly or indirectly, by defendants. At the time of the wrongs alleged, such shares were not traded on a national exchange (but now are) and Class members are believed to be situated throughout the United States.

b. There are questions of law and fact common to the Class, including, *inter alia*: whether defendants owed and breached their fiduciary duties to the Class as alleged herein.

c. Plaintiff’s claims are typical of the claims of other members of the Class and plaintiff has the same interests as other members of the Class.

d. Plaintiff is committed to the prosecution of this action and has retained competent counsel experienced in litigation of this nature. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

e. The questions of law or fact common class members predominate over any question affecting only individual members and a class action is superior to other available

methods for fair and efficient adjudication of the controversy because individual members of the Class have little or no interest in controlling or prosecuting separate actions, there is no other litigation of which plaintiff is aware concerning this controversy already commenced, it is desirable to concentrate the litigation in this particular forum and there are no unusual difficulties likely to be encountered in the maintenance of this action as a class action.

12. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class and could establish incompatible standards of conduct for the defendants. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of certain interests of other members of the Class not parties to the adjudications and might substantially impede or impair their ability to protect their own interests.

DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

13. To the extent the Court determines the claims asserted herein are derivative in nature, this action is also brought derivatively on behalf of Gulfport.

14. This action is properly maintained as a derivative action and Plaintiff is an appropriate derivative representative. Plaintiff currently owns shares of the Company, owned shares at the time of the wrongs alleged herein and has continuously owned such shares throughout that period. Plaintiff satisfies the requirements of 8 Del. C. §327.

15. The Prospectus for transaction challenged herein was filed publicly on July 27, 2004 and the transaction occurred on August 20, 2004. At the times the transaction was announced and closed the directors of the Company were Defendants Mike Liddell, Robert Brooks, David Houston, Mickey Liddell and Dan Noles. Each of these directors was interested in the transaction in that each received a benefit not received by and not available to other

shareholders. Further, the Prospectus for the rights offering specifically acknowledged that the control of the Company was in the hands of the officers, directors and controlling stockholder “acting together”. Specifically, each was interested as follows:

a. At the time of the offering Mike Liddell held 457,270 options to purchase common stock at an exercise price of \$2.00 per share. By selecting an offering price of \$1.20 per share Defendants triggered anti-dilution provisions applicable to those options hereby increasing the number of shares Liddell could receive at the same total price and decreasing his net cost per share of acquiring stock. As a result of the transaction he received a personal benefit not generally available to all stockholders. In July, 2007 he sold 150,000 shares at \$22 per share as part of an offering whereby the Company sold 1,000,000 shares at the same price.

b. The remaining directors at the time of the transaction, Brooks, Houston, Mickey Liddell and Noles, each held options on 20,000 shares to purchase common stock, also at an exercise price of \$2.00 per share. By selecting an offering price of \$1.20 per share Defendants triggered the anti-dilution provisions related to these options. The anti-dilution provisions permitted them to purchase additional shares at the same total price and decreased the net cost of acquiring stock for each. As a result of the transaction each of them received a personal benefit not available to all stockholders generally.

16. Thus, at the time the transaction was first disclosed and approved each of the directors was interested in the transaction. There was no need for nor purpose in selecting a price for the rights offering below \$2 per share, except to trigger the options anti-dilution provisions. As a result demand on any of the Individual Defendants is excused.

17. This action was commenced on July 27, 2007. This action has been pending continuously since it was initially commenced. At the time of the commencement of the action,

Defendants Mickey Liddell and Dan Noles had resigned as directors effective April 30, 2007. James Palm was added as director in February 2006. In August 2006, Scott Streller was also added to the Board.

18. Thus, as of the time of the commencement of the action, directors who were interested in the challenged transaction, Mike Liddell, Brooks and Houston constituted the majority of the Board. Thus, demand was excused on this basis alone.

19. In addition, James Palm as Chief Executive Officer was and is under the direct supervision control of the Board of Directors, a majority of whom were interested in the transaction. At the time the action was commenced and since December 2005 Mr. Palm has served as Chief Executive Officer of the Company. He still continues to hold that office. Mr. Palm was not and could not be considered independent of the Board and the Company's controlling stockholder. In 2006, Mr. Palm received total compensation of \$585,178. This compensation was material to him. The majority of Mr. Palm's compensation was in form of bonuses and option awards. Mike Liddell exercised direct and sole control over Mr. Palm's compensation as the Company's Compensation Committee was and has been inactive. At the time this action was commenced CD Holding controlled approximately 41.3% of the common stock. CD Holding with Mike Liddell exercised *de facto* control over the Company. Thus, Mr. Palm cannot and could not exercise independence with respect to demand and demand is excused as to him.

20. Demand is excused as to Mr. Streller for the reasons set forth in paragraphs 22, 28, 32 and 34-55.

21. Demand is also excused on the basis that the challenged transaction is not the product of a valid exercise of business judgment. As more fully alleged herein decision was

made without taking even the most minimal steps to inform the Board that the challenged transaction was in the best interest of the Company or fair to the public stockholders and, in particular whether alternatives, not involving special benefits to the Defendants which would have been less costly and more beneficial to the Company and less injurious to the Company's public stockholders were available.

22. The directors of Gulfport and controlling stockholder have numerous other inter relationships, including: (a) Davidson and Mike Liddell have a long standing history of engaging in business together and acting together as stockholders. For example, they acted together as stockholders pursuant to a joint agreement in connection with an investment in DLB Oil & Gas, Inc. in the 1990's; (b) Mr. Streller is a nominee for the Board of Directors of a company called Diamondback Energy Services, Inc. for which Mike Liddell is Chairman of the Board and a director. Diamondback is 100% owned by Wexford. Wexford is currently planning a public offering of Diamondback Energy Services, Inc. Diamondback Energy intends to compensate its directors at \$12,000 per year, plus \$500 per meeting plus 6,667 shares of stock in 2008. Diamondback Energy Services Inc. from its inception in 2005 has been provided services by Gulfport, which it describes as an "affiliate"; (c) Mike Liddell also has served since May 2005 as President, Chief Executive Officer of Winsor Energy Group. Winsor is 50% owned by Wexford; (d) Donald Dillingham is also a director nominee for Diamondback Energy Services, Inc. Mike Liddell is also Chairman of the Board and director Winsor Energy Resources, Inc.; (f) Gulfport Energy provided management and administrative to Winsor in 2003 through the first three months of 2006. Winsor has an affiliate Winsor Energy Group, LLC of which Mike Liddell also serves as President and Chief Executive Officer since December 2005. Wexford is the sole manager of Winsor Energy Holdings, LLC ("Winsor") and along with Mike Liddell owns the

membership interest in it. Until April of this year the owners contemplated initial public offering for Winsor; and (g) David Houston was contemplated as a director nominee of Windsor and anticipated receiving compensation and stock awards in that capacity.

23. As of the filing of this amendment, the Company's Board of Directors consists of Mike Liddell, Dillingham, Houston, Palm and Streller.

24. Even were the necessity of demand to be considered as of the time of the filing of this amendment, demand would still be excused.

25. Demand would be excused as the Defendants Liddell and Houston because they were interested in the transaction being challenged.

26. In addition to the reasons in paragraph 24, Mr. Palm, Chief Executive Office of the Company cannot act independently as of this amendment to consider a demand potentials to the financial detriment of Mike Liddell, the Company's long standing Chairman, and the person who determines this compensation or to the Company's controlling stockholder. In 2007 Mr. Palm's compensation was \$590,398. This compensation was material to Mr. Palm.

27. Even were Mr. Houston not interested in the transaction in question he would not be independent. Mr. Houston received compensation in the last two years of approximately \$100,000 each year as a result of his director compensation for Gulfport Company and a company named Bronco Drilling Company, Incorporated ("Board"). Wexford, owner of CD Holding the Company's controlling stockholder, is also the second largest stockholder of Bronco owning 13% of the stock. Wexford is also a major customer/supplier for Bronco transacting \$5.6 million in business with Bronco in 2007 which had 2007 profits of about \$37 million. As a result Wexford has substantial influence over Bronco's board, including who is nominated to sit on the board. Mr. Houston's compensation from Gulfport for the years 2006 and 2007 was

\$19,559 and \$20,559 respectively and from Bronco was \$81,484 and \$70,267 respectively. This annual compensation of approximately \$100,000 per year are material to Mr. Houston preclude him from acting independently of Mr. Liddell and the company respective controlling stockholder who were and are responsible for his being on the Board and who could terminate his Board membership. Mr. Houston has acquired beneficial ownership of 32,000 shares as a result of serving on Gulfport Board. Mr. Houston's other professional activities are serving on boards of directors or executive committee's of not-for-profit organizations and as the principal of Houston & Associates, a firm selling insurance with a staff of two people.

28. Mr. Streller in 2007 received \$40,231 and in 2006 received \$15,638 (for service for part of the year) in compensation from the Company. Mr. Streller currently operates an agency for Farmer's Insurance and Farmer's Financial Solutions. Thus his principal income from the sale of insurance. As a result these director fees as well as the directors fees he anticipates receiving for serving a director of Diamond Back Energy Services and other affiliates of Gulfport and businesses affiliated with Mike Liddell, CD Holding and Wexford are material to him. As of April of this year, CD Holding owned 35.7% of the Company and was by far its largest stockholder.

29. Mr. Dillingham also has substantial other ties to Mike Liddell and Wexford which renders him not independent. The Company's proxy of 2008 lists Mr. Dillingham's employment as Senior Portfolio Manager for Avondale Investments and Merit Advisors, Inc. He is stated to be the portfolio manager for two mutual funds run by Merit Advisors, Inc. There are two investment trusts identified with the SEC's EDGAR system, Merit Advisors Investment Trust and Merit Advisors Investment Trust II. Merit has only \$5.4 million under management. Merit Advisors Investment Trust is in liquidation and Merit Advisors Investment Trust II is

deregistered (or in the process of deregistering and is not shown as owning any shares for which it has cast any votes). Therefore it appears that both of these trusts are defunct. Thus, Mr. Dillingham's compensation as a member of the board of directors as well as his nomination for Diamond Back Energy's board of directors and his potential compensation from there are material to him given that his other employment no longer exists. Avondale Investments apparently has only approximately \$70 million under management and, as Senior Portfolio Advisor Mr. Dillingham's compensation would be expected to be upmost \$100,000 per year.

30. Further Streller and Houston have by their conduct shown themselves as Board Members to be torpid if not supine. They serve on the Compensation Committee and have served on the Compensation Committee since its formation on February 14, 1006 a period of over two years.

31. The Compensation Committee is obliged *inter alia* to oversee and administer executive compensation policies, plans and practices, to make recommendation with respect to incentive compensation, to assist the Board in discharging its responsibility relating to executive compensation and to conduct an annual performance evaluation of the committee. However, as is openly admitted by the Company as late as April 29, 2008, the Compensation Committee in fact has not determined the compensation for the Company's Chief Executive Officer and Chief Financial Officer. Instead, the Committee had abrogated its responsibility and deferred exclusively to defendant Mike Liddell. Therefore these two individuals have failed to demonstrate any independence from Mike Liddell or any ability to discharge their responsibilities as "independent" directors of a public company. In fact their conduct demonstrates that they have abrogated their role as directors and defer to Mike Liddell in matters involving his self-interest and his control of the Company.

32. As a result of the foregoing even were requirements of the excusal of demand to be assessed in terms of the Company's Board as of the filing of this amendment, demand would be excused because Defendants Liddell and Houston are interested in the challenge transaction (and in any event Houston is not independent), and Messrs Palm, Streller and Dillingham are not independent.

SUBSTANTIVE ALLEGATIONS

33. By prospectus dated July 22, 2004 (the "Prospectus") filed with the Security and Exchange Commission and first available to shareholders only on July 27, 2004, the Company first announced a rights offering (the "Offering"). The terms of the Prospectus are incorporated herein by reference, not for the truth of all the matters asserted herein, but for the purpose of identifying the disclosures of the Company related to the transactions and certain admissions of the defendants. Until the transaction was closed, the Board reserved the right, in its sole discretion, to amend the terms and conditions of the Offering or to terminate the transaction entirely. The closing occurred on August 20, 2004.

34. The Offering described a transaction whereby a single transferable subscription right at a price of \$1.20 per share would be issued for every 1.0146 shares as common stock owned. Gulfport's shares were trading at \$3.10 on the "bulletin board", a thinly traded and illiquid market. Thus their fair value exceeded the traded price. To the extent that the offering was undersubscribed, other shareholders could subscribe to any remaining shares if they fully exercised the initial subscription privilege.

35. The Company is in the business of oil and gas exploration and production. As a result its oil and gas reserves constituted its most significant asset and therefore are an important determinant of its equity value. In valuing oil and gas reserves, a common practice is to consider

the “PV-10”. PV-10 is an SEC defined term that represents the present value, discounted at 10% per annum, of estimated future net revenue before income tax of estimated proven reserves. In its Form 10-K filing for the 2005 year Gulfport acknowledged on page 11 of that filing, “Management believes that the presentation of the non-GAAP financial measure of PV-10 provides useful information to investors because it is widely used by professional analysts and sophisticated investors in evaluating oil and gas companies. At the time of the Prospectus, Company’s net asset value adjusted for the PV-10 of its reserves, gave the Company’s common stock a value of at least \$14.00 per share. Thus, the rights offering was priced well below both the trading value of the stock and a tiny fraction of the Company’s apparent value per share.

36. At the time of the offering, Robotti held approximately 90,000 shares. Robotti exercised its full subscription rights and purchased on the market additional subscription rights.

37. At the time of the offering, the Company’s indirect controlling stockholder, Charles Davidson (“Davidson”) who through various entities principally CD Holding and Wexford was reported to have beneficial ownership of approximately 2/3’s of the Company stock. Michael Liddell at the time of the offering was reported as beneficial was approximately 11% of the Company stock. Collectively CD Holding, Davidson and management owned about 80% of the stock. As controlling stockholder CD Holding owed a fiduciary duty to the Class and violated that duty in the self-dealing transactions, as more fully alleged herein.

38. Gulfport disclosed in its offering Prospectus that the purpose of the offering was to fund “a portion of our currently proposed seismic and drilling programs.” At that time, Gulfport reported that it had only \$580,000 in cash available for investment. Gulfport was then engaged in a significant expansion of its drilling portfolio. Gulfport’s 10-Q for the quarter ending September 30, 2004, disclosed that CD Holding had applied toward its exercise of

subscription rights a \$500,000 balance Gulfport owed it under a prior credit facility, that \$11.1 million of net proceeds from the offering had been used to fund ongoing operations in the WCCB and East Hackberry oil fields, and that \$2.2 million of the proceeds would be applied to an outstanding balance with the Bank of Oklahoma.

39. At the time of the Offering, Gulfport had 2.4 million warrants and 627,000 options outstanding. The options were management-owned and board-owned, while Gulfport's controlling shareholder beneficially owned the majority of the warrants. The strike price for the warrants was \$4.00 and the strike price on the options was \$2.00. Due to the low offering price for the subscription right, anti-dilution provisions protecting the holders of the warrants and options were triggered by the Offering that gave them additional share rights to maintain their positions after the Offering, without their having to purchase additional shares in the offering. Thus, the shares distributed under the anti-dilution provisions raised no capital for Gulfport, but decreased the relative value of shares for other shareholders.

40. Because of the anti-dilution provisions, the Offering price caused Gulfport to issue approximately 16.2 million shares (on a fully-diluted basis) to raise only approximately \$12 million in capital, effectively equating to a share price of approximately \$.70 per share. That share price is an average measure of the actual cost of raising the capital to the Company. Thus the offering raised money by selling extremely inexpensive shares and it worked to the benefit of management, board members and Gulfport's controlling stockholder because their net cost was well below the net cost to the Class.

41. The disclosures in the Prospectus of the reasons for selecting the \$1.20 per share price are vague and did not actually inform why a price which would trigger the insider friendly anti-dilution provisions was necessary. These disclosed reasons could just as easily justify any

price below the prevailing market price of the stock \$3.10 per share. The Prospectus reveals simply that the subscription price “was determined by the Board of Directors in its sole discretion” as the justification for the subscription price of \$1.20 the Prospectus stated only that “consideration was given to *such factors as* the current market price of our common stock, the availability of financing alternatives and the level, volatility of commodity prices and the ability to secure an agreement from CD Holdings to backstop this rights offering.” (emphasis added).

42. No attempt was made to appoint or retain any “independent” representative to determine as evaluate the fairness of this transaction. No fairness opinion was obtained for any aspect of this transaction nor for the transaction as a whole.

43. Plaintiff made a series of demands for inspection of documents pursuant to 8 Del. C. § 220. Plaintiff made demands on August 16, 2004, May 25, 2005 and November 17, 2005. On July 18, 2006 the Court held a trial on defendants’ refusal to produce documents in response to Plaintiff’s November 17, 2005 demand. By opinion of July 3, 2007, the Court directed the Company to produce certain documents. Plaintiff’s §220 demand was prompted by the rights offering.

44. The records of Board of Director, however, reveal there were no such considerations. The minutes of the meetings and the documents considered by the Board in approving the transaction contain absolutely no information received by the Board regarding current market price of the common stock, the availability of financing alternatives, the level or volatility of commodity prices or the ability to secure a backstop agreement. In fact, the records of the Company are totally devoid of anything which would show the Board had any level of participation obtaining or considering the backstop agreement, or financing alternatives. Neither the minutes of the Board of Directors’ meetings nor any document which any Board member

considered in connection with approving this transaction reveals a single basis for selecting the subscription price of \$1.20 per share. In short, there is absolutely no justification or analysis relating to this price and no consideration of any alternatives.

45. The sole basis on which the Board determined that the offering was fair was that the rights were registered with the Securities and Exchange Commission and thus were freely tradable. In other words, in considering the fairness to public shareholders and the Company, no consideration was given to *inter alia* the offering price, the triggering of the anti-dilution rights, the net cost per share of raising capital through the Offering.

46. The documents relating to the Offering and the factors which Plaintiff challenges in this Complaint, reveal that the transaction received a perfunctory approval. There is no indication of any serious discussion of any of the factors challenged by Plaintiff. Critically, Plaintiff also demanded, and the Court also ordered that the Defendants produce the documents considered by members of the Board in approving the transaction. The Company has conceded that no such documents exist beyond several documents which do nothing to justify the transaction or its \$1.20 price.

47. In short, the documents before the Board and the minutes show that: no consideration was given to selecting an offering price which would not have triggered the anti-dilution provisions of the warrants and options; no consideration was given to the impact on the Company's shareholders of raising money for a subscription at a \$1.20 per share; and no consideration was given to alternatives. In fact, all evidence shows that the Board, fully aware of the existence of the anti-dilution provisions of the options and warrants, deliberately selected a price which would trigger these anti-dilution provisions knowing full well the improper benefit to the Company's controlling stockholder and themselves and without exploring any alternatives

to the financing. The records produced by the Company are devoid of a single alternative considered. The records produced by the Company are devoid of a single analysis considered by any Board member as to the impact on shareholders. The records produced by the Company are devoid of any report to the Board as to the need for funds and the alternatives for financing. The records produced by the Company are devoid of a single document showing any review by the Board of the status of the Company's drilling program and any need for financing at the time the offering was closed.

48. In fact, the records produced by the Company do not even show that the Board authorized management to explore or come up with funding alternatives *ab initio*. In other words, there is nothing produced by the Company which shows that the Board was the slightest bit concerned about the funding situation of the Company.

49. Instead, apparently without Board authorization, management and the Company's controlling stockholder came up with the scheme to have the subscription rights offering for the purpose of triggering the anti-dilution provisions of their options and warrants. The clear effect (and only rational purpose) of the plan was to allow the exercise of the options at far less than the \$2.00 per share option price and to allow the exercise of warrants at a price far below the \$4.00 per share price which, at the time was under water.

50. Absent from any record produced by the Company is the slightest indication of any need for this financing, any benefit to the Company of the financing compared to any alternative (particularly in the context of the benefit to Individual Defendants and the Company's controlling stockholder) any reason why the \$1.20 per share price was selected, or any investigation of any alternative for raising funds.

51. The overall effect of the rights offering was that Gulfport's pre-offering shares were diluted generally because of the trigger of the anti-dilution provisions negatively impacts the Class. Taken as a whole, the facts relating to the rights offering, without legitimate reasons for having selected the price, constitute a breach of fiduciary duty. These facts: (1) the structural advantage to the controlling stockholder, its board members and management of the anti-dilution provisions, (2) the low price of the offering, low enough to trigger the anti-dilution provisions (rather than higher than the strike prices), (3) the absence of any factors showing why the price could not have been at a discount yet above the anti-dilution prices, (4) that CD Holdings was given a backstop agreement which turned out to be unnecessary and (given the exceedingly low price of the offering and controlling stockholder's intent to exercise its rights and over subscription rights foreseeably was not be necessary), (5) the absence of consideration and exploration of alternatives, and (6) the questionable need for the funds, establish that the rights offering and "related" interested party financings and backstop were proposed and completed in breach of fiduciary duties. These decisions, viewed collectively, as the defendants were obliged to do, demonstrate a violation of fiduciary duty owed to minority stockholders.

52. This action seeks no damages as a result of improper disclosure. However, the disclosures reveal an effort by defendants to conceal their improper actions and purpose. The Prospectus contains material false and misleading statements or omitted material information. Including the following:

a. The first page of the Prospectus states the purpose of the Offering was "to help find a portion of our capital expenditure requirements and original corporate purposes." However the documents produced in Section 220 action does not reveal the Board considered any analysis of capital expenditure requirements. Indeed, reviewing the minutes and documents

produced it is impossible to ascertain that any member of the Board was even aware of the nature or extent of any capital expenditure requirements. From the Section 220 Action, it is clear that the Board did not even have before it either the Rights Offering or the Prospectus relating to it.

b. Page 3 of the Prospectus states “the net proceeds will be used primarily to fund a portion of our currently proposed seismic and drilling programs.” The records of the corporation revealed absolutely no evidence that the Board received any analysis of the proposed seismic and drilling programs and/or their funding needs. Further, there is no Board resolution to any of the seismic and drilling programs as the principal purpose for funds from the Offering.

c. Page 8 of the Prospectus states “in determining the Subscription Price, consideration was given to such factors as the current market price of our common stock, the availability of financing alternatives and a level, volatility of commodity prices and the ability to secure an agreement from CD Holdings to back-stop this Rights Offering.” The actual records of the company demonstrate that absolutely no validity to this assertion. Indeed, there is no meeting in which there is any indication the Board did anything other than rubberstamp management and the controlling stockholder’s predetermined Subscription Price. There was absolutely no consideration of alternative subscription prices or even a discussion of what the subscription price ought to be. There is no evidence that the Board had before it any analysis of the current market price of the stock, the availability of financing alternatives or the level, volatility of commodity prices. In short, not one single written record of the company shows the Board considered any of these matters. Further, there is no analysis of, consideration of or discussion of why a back-stop agreement was needed or, the ability to obtain a back-stop from someone other than a related party. In addition there was not a single document which indicated the Board discussed or even considered any alternative to the Rights Offering or any alternative

to the \$1.20 Subscription Price. There was no consideration of any alternative financing. There was no consideration of the need for the back-stop agreement. The Board was given no analysis and their records show no evidence of any effort to obtain financing from any other source, nor any analysis or consideration of the feasibility of pricing the Subscription Rights Offering at a price which did not trigger the anti-dilution requirements.

d. While the Prospectus at page 9 states “non participants in the Offering will suffer substantial dilution.” There was no discussion or consideration of any analysis of the dilution which would result from selecting a Rights Offering price which triggered the anti-dilution requirements in the stock options and warrants. The Board was presented no analysis showing the actual cost of raising capital on a per-share issue basis under the proposed Subscription Rights plan.

e. The Prospectus states at page 30 “in connection with this Rights Offering, on April 30, 2004, the Company entered into a \$3 million revolving credit facility with CD Holding, LLC, the principle stockholder of the company.” The record is devoid of any consideration by the Board of the terms of that facility, alternatives to that facility, the need for that facility and, indeed the agreement was apparently approved by the Board without the Board having even seen either credit facility itself or a term sheet setting forth the material terms of the credit facility.

f. Similarly the Prospectus notes at page 30 that the company entered into a revolving line of credit with Gulfport Funding LLC, an affiliate. Again, the records of the company are devoid of any consideration by the Board of alternatives, of the terms of the facility, or even that the contract itself was ever made available to the Board, should any Board member have chosen to look at it.

g. At page 31 the Prospectus states the Board had hired Petrie Parkman & Co. to assist in the sale of one of its fields. It further states “it is the Board of Directors’ determination that if a sale of the West Cote Blanche Bay Field (the “WCBB field”) is not consummated that it is in the best interest of the company to undertake this Rights Offering.” The records of the company are totally devoid of any such determination by the Board, of any consideration by the Board of the possibility or likelihood of a sale of WCBB field or the Board’s consideration of the status of any such sale or potential such sale in approving the Rights Offering or in closing

53. Defendants put together the Rights Offering on terms advantageous to themselves and the Company’s controlling stockholder exploiting the structural advantage of the anti-dilution provisions in the warrants and stock options by setting a deliberately low price for the Offering to trigger the anti-dilution provisions. There was no consideration of alternatives, and no consideration of the consequences of or need to trigger these anti-dilution provisions. There was no consideration of: Why the price of the Offering could not have been at a discount to market price that still would have been sufficient to allow it to be higher than the anti-dilution strike prices? Why was it necessary to give CD Holdings a back-stop agreement? Whether the circumstances confronting the company necessitated even pursuing the Offering in the first instance, or even if it had that been a prudent decision when initiated, why it was appropriate to close the Offering given the company’s apparent lack of need for the funds? Whether it was appropriate to proceed with the Offering at the price the Company was going to be paying (or more specifically, the price the minority stockholders would be paying through the issuance of what was essentially watered stock.)

54. The Company's financial statements attached to the Prospectus in note 11 under "subsequent events" state that the Board was continuing to consider a possible sale of the WCBB field and that given the Rights Offering and the back-stop which was purportedly necessary to guarantee the closing of the Rights Offering "the company shall have the required liquidity either through the sale of the property or the proceeds from the Rights Offering." The records produced by the company show that the Board received absolutely no report regarding the status of the proposed sale of the WCBB property and made no analysis of any alleged liquidity requirements in closing the Offering.

55. The effect of the anti-dilution provisions for the warrants and options was that although the exercise of the warrants and options raised the same amount of money which would have been raised had the anti-dilutions provisions not been triggered, the number of shares issued against the warrants and the options greatly increased. In the case of the warrants it increased more than 3 fold and the number of shares issued against the options almost doubled. Indeed, by the time the anti-dilution provisions were fully effective the Company in essence issued a fully diluted 16.2 million shares to raise about \$12 million in capital, essentially the price of about 70 cents per share. This is because the exercise of the options and warrants raised no more money than that exercise would have raised had there been no anti-dilution consequences.

56. Pricing a rights offering at such a deep discount to book and trading prices is unusual. The rights offering was at a 60% discount to market and that is unusual. Had the rights been priced at a more usual discount, the anti-dilutive effects of the options would not have existed and the anti-dilutive effect of the warrants would have been greatly minimized. Management, the Defendants and the Company's controlling stockholder were the principal

beneficiaries of the decision to price the rights offering well below the book value and market trading value of the Company.

57. Also, by the time the rights offering closed, the Company's drilling program, which the proceeds of the rights offering were purportedly needed to finance, were well on their way if not virtually completed. The results of that program were so successful that rather than drill 12 wells, the Company decided to drill just eight. Thus, not only was less money needed but, based on the success of those wells the Company had available to it alternative means of financing the program as, given the increase in its assets it had increased borrowing capacity.

58. The success of the drilling program was also known to the Defendants prior to the closing of the rights offering financing. So at the time their investment, the Defendants were aware of that success unlike the non-affiliated investors.

59. The Company entered into a \$3 million dollar line of credit with CD Holdings, an affiliate of the controlling stockholder. In addition, there was a backstop agreement with CD Holdings. While backstop agreements are not uncommon, there is a real question as to why a backstop agreement was needed in connection with this transaction. Not only was the stock trading at \$3.10 per share but, the discounted cash flow figures provided by the Company would indicate a value of approximately \$14 per share. The backstop agreement provided additional compensation to the Company's controlling stockholder for what turned out to be, and predictably was, no actual effort. Because the backstop agreement was not used the controlling stockholder profited \$240,000 for having put up nothing.

60. Given the status of the Company's drilling program there was a real question as to whether the funds raised by the rights offering were needed at all as opposed to other more conventional forms of financing which would not have provided disproportionate benefits to the

controlling stockholder. In addition, at the time the rights offering closed, the Company had engaged an investment advisor for the purpose of soliciting offers for certain of the assets of the Company. Based on the publicly available information it would appear that this effort would have established the value of the Company's stock far in excess of the \$1.20 per share. The Company's investment banker was Petrie Parkman although the Company has not disclosed anything related to the values indicated by the effort.

COUNT I

Breach of Fiduciary Duty Against All Defendants

61. Plaintiff incorporates paragraphs 1 through 63 hereof as is fully set forth herein.

62. The cumulative effect of all the actions taken by the defendants was to breach their duties. In particular, the setting of the rights offering at \$1.20 in light of the other circumstances facing the Company, including the existing warrants and stock options, the Company's financing alternatives and the value of the Company was unreasonably and inappropriately low, either deliberately triggering and benefiting themselves and the Company's controlling stockholders or triggering them without having giving consideration of the consequences of such action, and without providing any benefit to the Company by selecting an exercise price so unreasonably low.

63. The foregoing damaged plaintiff and the members of the Class in devaluing their shares at the expense of the controlling stockholder and management for an amount to be determined at trial.

COUNT II

Derivatively On Behalf Of Gulfport

64. Plaintiff incorporates paragraphs 1 through 66 hereof as is full set forth herein.

65. By selecting an rights offering price of a \$1.20 and triggering the anti-dilution provisions applicable for the warrants and options the Defendants caused the Company to issue stock to the warrant holders and option holders, which including the Defendants, at a price far below the trading price and at a fraction of the true value of the stock. In addition, the price available to the warrant and option holders, including Defendants, was below the price available to all other stockholders generally as a result of the Offering. Thus, effect of the Offering was to dilute the interest of the public stockholders. Even were a shareholder to have purchased additional rights sufficient to maintain that shareholder's relative voting control, the price of maintaining that would have been at a minimum \$1.20 per share (for the exercise of subscription rights issued directly to the stockholder) and, to the extent the stockholder needed to go into the market and purchase additional subscription rights, the price would have been \$1.20 per share plus the cost of those subscription rights.

66. In any event, all the public stockholders experienced a dilution in the value of their stock because, regardless of how many rights they exercised either as a result of direct distribution or through purchase in the market, they were acquiring stock at a price of \$1.20 per share or greater when, in fact, the Offering itself was raising money at a average price of \$.70 per share. Thus, even to the extent a stockholder did not experience a decrease in voting power the result was a decrease in the asset value for the public stockholders' shares relative to purchasers by defendants.

67. In addition, Gulfport was injured because the Defendants' actions resulted in Gulfport failing to raise the full amount of capital which could have been raised through the issuance of the shares issued in the transaction. Had the shares been issued and sold at a price

