

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE §
COMMISSION, §

Plaintiff, §

vs. §

CHRISTOPHER A. FAULKNER, et al., §

Defendants. §

Civil Action No. 3:16-CV-1735-D

**RECEIVER’S MOTION TO PLACE DEFENDANT CRUDE ENERGY, LLC AND
NON-PARTY CRUDE ROYALTIES, LLC INTO RECEIVERSHIP**

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Thomas L. Taylor III (“Receiver”), appointed as temporary receiver pursuant to Orders¹ of this Court in the above-styled action (the “Enforcement Action”), respectfully files this Motion² (“Motion”) renewing his previous request to place Defendant Crude Energy, LLC (“Crude Energy”) into receivership³, and further requesting that the Court place non-party Crude Royalties, LLC (“Crude Royalties,” and together with Crude Energy, “Crude”) into receivership. Defendants Crude Energy and Parker Hallam (“Hallam”) previously opposed such relief (*see* Dkt. 292), but they and non-party Crude Royalties are not now opposed to this relief. Placing Crude into receivership will enable the Receiver to most effectively marshal and ultimately distribute Receivership Assets⁴ to defrauded investors in the Breitling fraudulent scheme.⁵

I. SUMMARY

This Court previously held that the uncontested evidentiary record was sufficient to place Crude Energy into receivership -- defendant Patriot was placed into receivership upon similar evidentiary and factual bases. *SEC v. Faulkner*, No. 16-CV-1735-D, 2018 WL 4362729, at *3-4 (N.D. Tex. Sept. 12, 2018) (“*Faulkner IP*”). The Court declined to place Crude Energy into

¹ Dkt. 108, as amended by Dkt. 142, as amended by Dkt. 320 (collectively referred to as the “Receivership Order”). Unless otherwise specified, citations to the Receivership Order refer to pages and paragraphs in Dkt. 320.

² The Receiver has filed an appendix concurrently herewith, the contents of which are incorporated by reference herein (cited to as “R_APP”).

³ The Receiver incorporates by reference herein his previous Motion to Expand the Receivership Estate and Brief in Support with respect to Crude Energy (Dkt. 281 at pp. 1 – 9) and Appendix in support of same (Dkt. 282) (“Motion to Expand”).

⁴ Receivership Assets means “[a]ll assets—in any form or of any kind whatsoever—owned, controlled, managed, or possessed by defendants Christopher A. Faulkner [“Faulkner”], Breitling Oil & Gas Corporation (“BOG”), Breitling Energy Corporation (“BECC”), and Patriot Energy, Inc. (“Patriot”), and non-parties Breitling Royalties Corporation (“BRC”), Breitling Ventures Corporation (“BVC”), Breitling Holdings Corporation (“BHC”), Breitling Operating Corporation (“Breitling Ops”), Inwood Investments, Inc. (“Inwood”) and Grand Mesa Investments, Inc. (“Grand Mesa”), directly or indirectly.” Receivership Order, at 1. This term also would include any assets of any person or entity placed into receivership by this Court in the future, as the Receiver requests herein with respect to Crude.

⁵ This Motion is filed concurrently with the Receiver’s Motion seeking the Court’s approval of his proposed plan for the ultimate distribution of Receivership Assets (as further defined therein, the “Plan”), and in furtherance of that Plan.

receivership, however, upon balancing the burdens asserted by Defendants Crude Energy and Hallam with respect to ongoing legal fees resulting from that course of action, with the benefits of receivership, in light of Crude Energy not currently possessing tangible assets. *Id.* The Court's determination was made without prejudice to the Receiver renewing his requested relief in the future should the Receiver present additional evidence of Crude Energy assets. *Id.*, at *4. Hallam and Crude Energy do not now oppose the relief sought herein (nor does Crude Royalties).

Defendant Crude Energy and non-party Crude Royalties were integral to the fraudulent scheme underlying this Enforcement Action. In addition to the evidence previously presented to this Court in support of placing Crude Energy into receivership (*see* Dkts. 281, 282), Crude Energy currently is in possession of significant assets -- choses in action⁶, *inter alia*, under the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE §24.001 *et seq.* ("TUFTA"). These TUFTA claims only have value in the hands of the Receiver. *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("*DSCC*") ("once freed of [t]his coercion by the court's appointment of a receiver, the corporations in receivership, through the receiver, may recover assets or funds that the principal fraudulently diverted to third parties..."). Without limitation, Crude Energy transferred over \$275,000 in sales commissions to persons and entities that promoted the fraudulent scheme and brought public investors into the fraudulent scheme. These salespersons cannot establish the TUFTA affirmative defense that they received the transfers in exchange for reasonably equivalent value, and with objective good faith. TEX. BUS. & COM. CODE § 24.009(a). With Crude Energy in receivership, the Receiver will be able to move the Court for leave to sue transferees of funds fraudulently transferred from Crude Energy to which

⁶ "The right to bring an action to recover a debt, money, or thing." BLACK'S LAW DICTIONARY (10th ed. 2014).

they are not entitled under TUFTA, which recovery will benefit all investors who suffered a net out-of-pocket loss from the Breitling fraudulent scheme.

Crude Royalties also was integral to the fraudulent scheme at issue. Significant funds of Crude Royalties and its investors were comingled and transferred to other entities in the scheme. Moreover, Crude Royalties possesses numerous oil and gas royalty and overriding royalty interests (“royalty interests”), many of which are traceable to investors in BECC subsidiary BRC, and others which were purchased with proceeds of Crude Royalty offerings. Title to these royalty interests is significantly clouded by defective conveyance instruments which were executed by Crude Royalty principals, including Defendants Hallam and Michael Miller (“Miller”), purportedly in favor of certain investors in the Breitling fraudulent scheme (“Conveyance Investors”). However, these conveyances virtually universally conveyed more royalty interests than Crude Royalties owned, in effect conveying no interests at all. With Crude Royalties in receivership, the Receiver will be able to move the Court to invalidate these defective conveyance instruments, eliminating the title issues and returning clean title to Crude Royalties, thus permitting the Receiver to liquidate these assets under the Court’s supervision for the benefit all investors who suffered a net out-of-pocket loss from the Breitling fraudulent scheme.

II. LEGAL AUTHORITY

“It is often appropriate to appoint a receiver over an entity that has defrauded the public, in violation of SEC regulations.” *Faulkner II*, at *2 (citing *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-cv-1188-D, 2007 WL 2192632, at *3 (N.D. Tex. July 31, 2007) (Fitzwater, J.); *SEC v. First Fin. Grp. of Tex.*, 645 F.2d 429, 438 (5th Cir. Unit A May 1981); *Netsphere, Inc. v. Baron*, 703 F.3d 296, 306 (5th Cir. 2012)). “[O]nce the ‘equity jurisdiction of the district court has been properly invoked by a showing of a securities law violation,’ the court has ‘broad discretion’ to

fashion an appropriate remedy.” *Id.* (quoting *SEC v. Posner*, 16 F.3d 520, 521 (2d Cir. 1994)); see also *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372-73 (5th Cir. 1982) (“It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.”) (quoting *SEC v. Lincoln Thrift Ass’n*, 577 F.2d 600, 606 (9th Cir. 1978)); accord *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citing *Safety Fin. Serv., Inc.*). As the U.S. Court of Appeals for the Fifth Circuit explained in *First Financial Group of Texas*:

[t]he district court’s exercise of its equity power in this respect is particularly necessary in instances in which the corporate defendant, through its management, has allegedly defrauded members of the investing public; in such cases, it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme and for whose benefit, in some measure, the SEC injunctive action was brought.

645 F.2d at 438 (footnote omitted).

A district court may extend an equitable receivership over related entities. *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 236 (D. Nev. 1985), *aff’d*, 805 F.2d 1039 (9th Cir. 1986) (ordering the expansion of receivership to include third-party entities where a party seeking expansion establishes a commingling of funds, intertwined business operations, utilization of an identical business address or office, co-identity of officers, or co-identity of directors and principals); *see also Elliott*, 953 F.2d at 1565 n.1 (where defendants had commingled funds between various companies, the district court treated the various companies as one entity for the purpose of the receivership proceeding). The granting of equitable relief may be appropriate against an entity that has not been charged with wrongdoing because it “possesses illegally obtained profits but has no legitimate claim to them.” *SEC v. Cherif*, 933 F.2d 403, 414, n.11 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 966 (1992).

“Federal analysis gives less respect to the corporate form than does the strict common-law alter ego doctrine.” *Elmas Trading Corp.*, 620 F. Supp. at 234. “Under federal law, a corporate entity may be disregarded in the interests of public convenience, fairness, and equity, and in applying this rule the federal courts will look closely at the purpose of the federal statute involved to determine whether it places importance on the corporate form.” *Id.* (citing *Town of Brookline v. Gorsuch*, 667 F.2d 215, 220 (1st Cir. 1981); *Capital Telephone Comp. Inc. v. F.C.C.*, 498 F.2d 734, 738 (D.C. Cir. 1974)). Like this case, *Elmas Trading Corp.* “arose under the Securities and Exchange Act and was brought by the [SEC], the principal watchdog of those violating the securities[] laws. The government has a keen interest in preventing the unlawful manipulation and use of securities.” *Id.* Like that case, “the Receiver's primary objective in this [Breitling] case is to ensure that all available assets are brought within the Receivership and may then be properly distributed to creditors.” *Id.* This Court should “apply a more flexible approach in determining whether the corporate entity should be disregarded.” *Id.*

With respect to comingled funds among Crude and the Receivership entities, courts across the country recognize that, due to the fungibility of money, *any* commingling is enough to warrant treating all funds as commingled. *SEC v. Byers*, 637 F.Supp. 2d 166, 177 (S.D.N.Y. 2009).⁷

As detailed below, the granting of equitable relief against Crude Energy and Crude Royalties and any assets owned, controlled, managed, or possessed by them is appropriate -- even without charging these entities with wrong-doing -- on multiple grounds. Faulkner and his

⁷ *Accord U.S. v. Garcia*, 37 F.3d 1359, 1365 (9th Cir. 1994) (“it is unnecessary to attempt to segregate in some manner the tainted funds from the commingled account...The presence of some tainted funds...is sufficient to taint [all]”); *SEC v. Better Life Club of Am., Inc.*, 995 F.Supp. 167, 181 (D.D.C. 1998) (“When assets are commingled such that the assets cannot be separated out, a constructive trust may extend over the entire asset pool.”); *U.S. v. Ward*, 197 F.3d 1076, 1083 (11th Cir. 1999) (because money is fungible once tainted proceeds were commingled with other funds all money is tainted and once tainted, proceeds cannot become untainted); *U.S. v. Moore*, 27 F.3d 969, 976-77 (4th Cir. 1994) (When money is commingled it cannot be distinguished); *SEC v. Lancer Mangmt. Group, LLC*, No. 03-80612-Civ, 2009 U.S. Dist. LEXIS 23510, at *15 (S.D. Fla. Mar. 25, 2009); *U.S. v. Tencer*, 107 F.3d 1120, 1131 (5th Cir. 1997); *U.S. v. Cancelliere*, 69 F.3d 1116, 1120 (11th Cir. 1995); *U.S. v. Jackson*, 935 F.2d 832, 840 (7th Cir. 1991).

codefendants have “redistributed either BOG’s or BECC’s investors’ assets” to Crude, *SEC v. Faulkner*, No. 16-CV-1735-D, 2018 WL 4238705, at *4 (N.D. Tex. Sept. 25, 2017) (“*Faulkner I*”), comingled such investor proceeds, and have intertwined business operations and corporate control. Crude shared a business address with BECC. Crude and its assets should be expressly included within the scope of the Order Appointing Receiver.

III. ARGUMENT

A. Crude Energy should be placed in receivership to permit the Receiver to assert its choses in action against third parties for the benefit of the Receivership estate

Crude Energy was previously found to have “played a central role in Faulkner’s alleged securities violations.” *Faulkner II*, at *3. The Court found that Crude Energy sold oil and gas interests to investors, misrepresented the use of investor proceeds, transferred most of its funds to BECC, and received over one million dollars in transfers from BOG, BECC, and BRC. *Id.* The Court further found that Faulkner controlled Crude Energy and had final authority over its business activities and financial affairs, and diverted much of the funds transferred by Crude Energy to BECC for his personal benefit. *Id.* The Court previously declined to place Crude Energy into receivership, without prejudice to the Receiver renewing his requested relief in the future should the Receiver present additional evidence of Crude Energy assets. *Id.*, at *4. The Receiver renews his request to place Crude Energy into receivership upon evidence of substantial intangible assets of Crude Energy in the form of choses in action. *SEC v. Stanford Int’l Bank Ltd.*, No. 3:09-CV-00298-N, 2017 WL 9989250, at *3 (N.D. Tex. Aug. 23, 2017) (quoting *SEC v. Parish*, No. 2:07-CV-00919-DCN, 2010 WL 8347143, at *5 (D.S.C. Feb. 10, 2010)) (identifying estate’s choses in action as encompassed by receivership order over all assets of the receivership estate).

Crude Energy’s choses in action include (without limitation) the right to avoid transfers made from Crude Energy, *inter alia*, “with actual intent to hinder, delay or defraud” creditors,

TEX. BUS. & COM. CODE § 24.005(a)(1), with respect to transferees who did not both provide “reasonably equivalent value” and receive such transfers with objective “good faith.” *Id.*, at §24.009(a). These specific choses in action only have value in the hands of the Receiver. In this regard, TUFTA grants “creditors” the right to avoid transfers fraudulently made by “debtors.” *See* TEX. BUS. & COM. CODE §§ 24.005(a); 24.006. Crude Energy is a “debtor” with respect to the transfers made from it. Moreover, the knowledge and effects of the fraud alleged against Crude Energy principals (Defendants Faulkner, Hallam, and Miller) would trigger the defense of *in pari delicto*. Each of these obstacles is removed with respect to entities in the hands of a receiver. As the Fifth Circuit articulated in *DSCC*:

the knowledge and effects of the fraud of the principal of a [fraudulent] scheme in making fraudulent conveyances of the funds of the corporations under his evil coercion are not imputed to his captive corporations. Thus, once freed of his coercion by the court's appointment of a receiver, the corporations in receivership, through the receiver, may recover assets or funds that the principal fraudulently diverted to third parties without receiving reasonably equivalent value.

712 F.3d at 190 (citing *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995), *cert. denied sub nom. African Enter., Inc. v. Scholes*, 516 U.S. 1028, 116 S.Ct. 673, 133 L.Ed.2d 522 (1995)); *accord. Klein v. King & King & Jones*, 571 Fed. Appx. 702, 704 (10th Cir. 2014) (citing *DSCC*). Crude Energy must be placed in receivership to permit the Receiver to assert these TUFTA claims on its behalf, and for the benefit of all defrauded investors.

Crude Energy, *inter alia*, transferred substantial sales commissions to persons that were responsible for recruiting victims into the Breitling fraudulent scheme.⁸ These transfers were made with actual intent to defraud the creditor-investors from whose investment the commissions were

⁸ *See, e.g., In re Baker, et al.*, SEC Administrative Proceeding No. 3-17716, Order Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (Release No. 33-10471). R_APP 004-012.

paid. In this regard, Crude Energy offering materials presented to investors represented that “Units will be offered and sold by officers of the Company, who will not receive transaction-based compensation for sales of Units,” R_APP 324, and that “[t]he Company will sell all Units through its officers, who will not receive transaction-based compensation for sales of Units.” R_APP 337. However, as shown below, sales persons sold millions of dollars in Units to investors. Moreover, these salespersons received a specific percentage of dollars ultimately invested by persons recruited into the fraudulent scheme. Accordingly, the payment of sales commissions by the Receivership entities, including Crude Energy, was concealed from creditor-investors.⁹ For these reasons, among others, these commissions were paid “with actual intent to hinder, delay, or defraud” Receivership entities’ creditors, and are recoverable by the Receiver under TUFTA.

Without limitation, the Receiver has discovered nine individuals and entities that received transfers of sales commissions from the Breitling fraudulent scheme (the “Commission Transferees”) in excess of \$1.9 million -- in addition to those named in multiple SEC Administrative Proceedings. *See In Re Baker, et al., supra* (R_APP 004-012); *see also In re Teran*, Admin. Proceeding No. 3-18098, Order Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order, Release No. 34-81308. R_APP 013-020. The table below summarizes certain amounts transferred to Commission Transferees from Crude Energy and other Receivership entities:

⁹ *See* TEX. BUS. & COM. CODE § 24.005(b)(3) (“[i]n determining actual intent under Subsection (a)(1) of this section, consideration may be given, among other factors, to whether: ... the transfer ... was concealed.”).

Transferee	Crude Energy Transfers¹⁰	Other Entity Transfers¹¹	Total Transfers
Flores, Jonathan	\$41,400.00	\$164,063.00	\$205,463.00
Kim, Chol	\$7,500.00	\$107,470.25	\$114,970.25
Madu, Nathan	\$25,475.00	\$194,446.00	\$219,921.00
Morgan, Robert or R. Morgan Group	\$121,380.76	\$492,604.87	\$613,985.63
Oberbeck, Jonathan	\$54,700.00	\$254,730.50	\$309,430.50
Okpo, Okoto	\$24,050.00	\$180,108.25	\$204,158.25
Trevino, Rey or Eagle Rio Energy	\$2,000.00	\$235,868.50	\$237,868.50
Totals	\$276,505.76	\$1,629,291.37	\$1,905,797.13

R_APP 021-075. Commissions transferred from Crude Energy represent over 14% of these commissions transferred from the Breitling fraudulent scheme to the Commission Transferees.

The Receiver would assert TUFTA choses in action against third parties in an effort to recover assets transferred away from Crude Energy and other damages, for the ultimate benefit of all claimants against the Receivership estate.¹² Importantly, the Receiver may also recover costs and reasonable attorney's fees in actions under TUFTA, TEX. BUS. & COM. CODE § 24.013,

¹⁰ Transfers from Crude Energy Operating Account at Compass Bank, account number ending in 7370 (highlighted in green). R_APP 021-075.

¹¹ Transfers from BOG Operating Account at Compass Bank, account number ending in 1734; BOG Account at Wells Fargo Bank, account number ending in 0318; BRC Operating Account at Compass Bank, account number ending in 1742; BRC Account at Wells Fargo Bank, account number ending in 8434; Grand Mesa Account at Wells Fargo Bank, account number ending in 9141; Grand Mesa Account at Wells Fargo Bank, account number ending in 4179; Grand Mesa Account at Compass Bank, account number ending in 5683; Grand Mesa Account at Compass Bank, account number ending in 1601; Simple Solutions, Inc. Account at Compass Bank, account number ending in 8991; Simple Solutions Inc. dba Crude Energy Resources Company or Patriot Energy or Crude Energy Blue Wolf or Crude Blue Wolf Account at JP Morgan Chase, account number ending in 6195. R_APP 021-075.

¹² The Receiver would move this Court for leave to assert these causes of action, pursuant to the Receivership Order. (Dkt. 320 at ¶¶, 32-34, 42.)

potentially reducing the administrative costs of such suits and ultimately benefitting defrauded investors.

The Receiver continues to investigate other potential choses in action of Crude Energy and the other Receivership entities. Such actions could include TUFTA claims against “net winner” investors (who experienced a net gain with respect to their investment(s) in the Breitling fraudulent scheme), and other potential tort liability inuring to the benefit of Crude Energy. However, the Receiver submits that the liability of sales persons who received commission payments from Crude Energy -- exceeding \$275,000 -- is sufficient to place Crude Energy into receivership. Recovery on Crude Energy’s choses in action would inure to the benefit of all claimants against the Receivership estate, and be available for the distribution to Investor Claimants as proposed in the Receiver’s Motion to Approve Plan of Distribution, filed concurrently herewith.

B. Crude Royalties should be placed into receivership because it placed a similar role in Faulkner’s fraudulent scheme as BRC, and it retains title to assets traceable to investor proceeds

The Receiver previously detailed to the Court how BRC was used by Faulkner and others to carry out the fraudulent scheme at the heart of the Enforcement Action, and the Court has held in several opinions that the assets of BRC are part of the receivership estate. *Faulkner II*, at *5 (citing *Faulkner I*, at *4; *SEC v. Faulkner*, No. 16-CV-1735-D, 2018 WL 888910, at *5 (N.D. Tex. Feb. 13, 2018)). Crude Royalties played a similar role as BRC in the fraudulent scheme and should also be placed into receivership.

1. *Crude Royalties was under common ownership and control with other Receivership entities, its funds were comingled with other Receivership entities’ funds, and it was an integral piece of Faulkner’s fraudulent scheme*

Crude Royalties was integral to Faulkner’s fraudulent scheme -- essentially a continuation of the BRC business after the formation of the public entity BECC -- and regularly comingled and

redistributed its investors' assets among the other entities in the scheme. R_APP 076-083. Moreover, many of Crude Royalties current assets are royalty interests that were transferred from, and derive from investor proceeds in, BRC. R_APP 164-174, 183, 192, 199-200.

Crude Royalties, like Crude Energy, was nominally formed and operated by Defendants Hallam and Miller. R_APP 084-086. It shared offices with other entities used in the Breitling fraud. R_APP 179. Like Crude Energy, and Patriot, Faulkner exerted actual control. *See Faulkner II*, at *5. Like BRC before it, Crude Royalties offered and sold securities related to oil and gas royalty interests to investors. In this regard, Crude Royalties was a "pooling" entity, which raised investor funds, pooled them together, and purchased royalty interests on behalf of all investors. R_APP 087-163. Like other offerings from entities in receivership, Crude Royalties made material misrepresentations and omissions to investors. *See Faulkner II*, at *3, 4-5. For example, while it claimed it would hold investor funds in trust in Crude Royalties' name, (*see, e.g.*, R_APP 091), this did not occur -- investor funds were comingled. R_APP 076-083. Crude Royalties also misled investors by omitting to disclose in offering memoranda the control and influence Faulkner possessed over the company. R_APP 087-163.

Moreover, in public filings, BECC misrepresented its relationship with Crude Royalties, portraying it as a strategic, arms-length industry partner but failing to accurately disclose the companies' real relationship. In this regard, Crude Royalties was a party to the same sham Administrative Services Agreements ("ASA") with BECC as Crude Energy (R_APP 359-369), which BECC also entered into with Patriot. R_APP 380-86. Like Crude Energy, Crude Royalties was actually consolidated with Receivership Entity BECC for accounting purposes. R_APP 239, 263-64, 269, 282, 305, 316, 377, 400-403. BECC's own auditors and consultants determined that from Crude's inception (December 2013) through its demise (March 2015) that, among other

things: (1) BECC would lose its revenue stream if Crude failed; (2) BECC makes the most impactful decisions for Crude; (3) BECC benefits economically because the Crude offerings were done in a way that Crude only broke even; (4) Crude transferred cash to cover BECC's bills and vice versa such that Crude "is so intertwined with [BECC] that it is near impossible for Crude to act as a standalone and separate entity." R_APP 400-403. BECC auditors recommended that Crude Royalties, along with Crude Energy, be consolidated into BECC's financial records because of their close relationship. R_APP 400 ("it appears Crude Energy and Crude Royalties might be a [variable interest entity] of Breitling Energy (public company) and need to be consolidated.").

In summary, Crude Royalties -- like BRC before it, Crude Energy contemporaneously with it, and later Patriot -- was under common ownership and control as the other Receivership entities through Faulkner. These entities were integral to Faulkner's fraudulent scheme. Crude Royalties raised money from public investors. It transferred substantially all of these funds to BECC. Investor funds were extensively comingled. Few of these funds were used as represented to investors -- millions of dollars transferred from Crude Royalties were misappropriated by Faulkner and BECC. Therefore, the Court should expressly include Crude Royalties within the scope of the Order Appointing Receiver.

- 2. It is necessary to place Crude Royalties into receivership in order to clear title issues for numerous royalty interests in Crude Royalties' name, for the eventual liquidation of these interests by the Receiver*

In fulfilling his mandates under the Receivership Order, the Receiver intends to liquidate Receivership Assets for the benefit of the Investor Claimants. In order to do so, Crude Royalties must be placed into receivership and control of Crude Royalties assets placed in the hands of the Receiver. In this regard, title to numerous oil and gas-related interests are recorded in Crude Royalties' name in official county real property records. *See, e.g.,* R_APP 164-174. Many of these

assets were acquired by BRC and later conveyed to Crude Royalties. *See, e.g.*, R_APP 164-174, 183. Crude Royalties executed conveyances regarding these oil and gas assets to Conveyance Investors. *See, e.g.*, R_APP 180-183. However, these conveyances are fundamentally flawed in that they over-convey the interests that Crude Royalties actually owned, essentially transferring no assets to the Conveyance Investors. *See, e.g.*, R_APP 176, 185. Additionally, and without limitation, these conveyance contracts never came into existence because (1) there was no mutual assent (meeting of the minds) with respect to the terms of the offering documents underlying the conveyances;¹³ (2) the Offering Entity principals lacked authority to execute these documents because they were acting adversely to the interests of the Offering Entities;¹⁴ (3) the subscription agreements through which the Conveyance Investors invested were *ultra vires* because relevant laws prohibited the Offering Entities use of investor proceeds as part of an illegal fraudulent scheme;¹⁵ and (4) as a matter of public policy, purported investment contracts underlying fraudulent schemes are treated as sham instruments, regardless of the culpability (or innocence) of the party seeking enforcement of a contractual provision -- if the subject matter of the contract (the fraudulent offering) is illegal, a valid, enforceable contract does not exist.¹⁶

Placing Crude Royalties under the Receiver's control is necessary for the Receiver to seek and obtain the invalidation of these conveyances from Crude Royalties to Conveyance Investors,

¹³ *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 289 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 164 (1979)).

¹⁴ An agent may only act for the benefit of the principal. Restatement (Second) of Agency § 396(b); *Apollo Techs. Corp. v. Centrosphere Indus. Corp.*, 805 F. Supp. 1157, 1195 (D.N.J. 1992).

¹⁵ An act by an entity that is "beyond the scope of power allowed or granted by a corporate charter or by law" is *ultra vires*. BLACK'S LAW DICTIONARY (10th ed. 2014). A purported contract that is made *ultra vires* "is not voidable only, but wholly void, and of no legal effect." *California Nat'l Bank v. Kennedy*, 167 U.S. 362, 367 (1897) (citation omitted).

¹⁶ *See, e.g., Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir. 2011) (rejecting "form over substance rule in fraudulent transfer actions" that "ignore[s] the realities of how [fraudulent] schemes operate"); *In re Randy*, 189 B.R. 425, 441 (Bankr. N.D. Ill. 1995) ("the interest of the public, rather than the equitable standing of individual parties, is of determining importance").

and to liquidate these interests thereafter under the Court's supervision. In order to implement the Plan proposed in the Receiver's concurrently filed motion, the Receiver will seek the invalidation of these conveyances executed by Crude Royalties. Placing Crude Royalties into receivership will facilitate the Receiver's proposed Plan of distribution.

As the Receiver has demonstrated herein, Crude Royalties was an integral piece of Faulkner's fraudulent scheme, which currently holds title to numerous Receivership Assets traceable to investors and other Receivership entities. Crude Royalties principals attempted to convey these assets to certain Conveyance Investors, but the conveyance instruments are defective, clouding title to these assets. Placing Crude Royalties in Receivership is necessary for the Receiver to liquidate these Receivership Assets and distribute the proceeds on behalf of all Investor Claimants.

IV. CONCLUSION

Crude Energy and Crude Royalties played a central role in Faulkner's fraudulent scheme. Each of them sold securities to investors, misrepresented the use of investor proceeds, and comingled investor funds. Faulkner controlled Crude Energy and Crude Royalties, had final authority over their business activities and financial affairs, and diverted much of the funds raised by them to BECC for his personal benefit. BRC royalty assets traceable to investors also were transferred to Crude Royalties. Both Crude Energy and Crude Royalties are currently in possession of significant assets. They should be placed in receivership, and their assets marshaled and liquidated for the benefit of all defrauded investors in the Breitling scheme.

Dated: February 25, 2019

Respectfully submitted,

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COUNSEL FOR RECEIVER

CERTIFICATE OF CONFERENCE

I certify that I conferred regarding the relief sought by this Motion with counsel for Plaintiff Securities and Exchange Commission, who do not oppose the relief sought herein.

I further certify that I conferred regarding the relief sought by this Motion with Karen Cook and S. Michael McColloch, counsel for Defendants Parker Hallam and Crude Energy, LLC and non-party Crude Royalties, LLC, who do not oppose the relief sought herein.

 /s/ Andrew M. Goforth
Andrew M. Goforth

CERTIFICATE OF SERVICE

I certify that on February 25, 2019 I served the foregoing document pursuant to FED. R. CIV. P. 5(b)(2)(E) by filing it through the Court's CM/ECF filing system, and by sending a true and correct copy via electronic mail to those parties listed below, with written consent:

Jeremy S. Wagers
2400 Augusta Drive, Suite 453
Houston, TX 77057
jwagers@wagerslaw.com

PRO SE DEFENDANT

/s/ Andrew M. Goforth
Andrew M. Goforth

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

CHRISTOPHER A. FAULKNER, et al.,

Defendants.

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Case No.: 3:16-cv-01735-D

FIRSTSECOND AMENDED ORDER APPOINTING RECEIVER

The court finds, based on the record in these proceedings, that the appointment of a temporary receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets—in any form or of any kind whatsoever—owned, controlled, managed, or possessed by defendants Christopher A. Faulkner, Breitling Oil & Gas Corporation (“BOG”), Breitling Energy Corporation (“BECC”), Crude Energy, LLC (“Crude Energy”) and Patriot Energy, Inc. (“Patriot”), and non-parties Breitling Royalties Corporation (“BRC”), Breitling Ventures Corporation (“BVC”), Breitling Holdings Corporation (“BHC”), Breitling Operating Corporation (“Breitling Ops”), Crude Royalties, LLC (“Crude Royalties”), Inwood Investments, Inc. (“Inwood”) and Grand Mesa Investments, Inc. (“Grand Mesa”) (collectively, the “Receivership Entities”), directly or indirectly (“Receivership Assets”).

The court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The court hereby takes exclusive jurisdiction and possession of the Receivership Assets, of whatever kind and wherever situated.

EXHIBIT 1

2. Until further order of the court, Thomas L. Taylor is appointed to serve without bond as temporary receiver (the “Receiver”) for the estates of the Receivership Entities and the Receivership Assets.

I. Asset Freeze

3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of this court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such assets. All persons and entities with direct or indirect control over any Receivership Assets are ordered to relinquish such control to the Receiver. This freeze includes, but is not limited to, Receivership Assets that are (a) in the possession or control of oil and gas operators; or (b) on deposit with financial institutions such as banks, brokerage firms, and mutual funds.

II. General Powers and Duties of Receiver

4. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements, in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys, and other agents of the entity Receivership Entities are hereby dismissed, and the powers of any general partners, directors, and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the entity Receivership Entities’

operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the entity Receivership Entities and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with the entity Receivership Entities shall possess any authority to act by, or on behalf of, the entity Receivership Entities.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location, and value of all Receivership Assets, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, that the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly (collectively, the “Receivership Estate”);
- B. To take custody, control, and possession of all Receivership Assets and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive, and take into possession from third parties all Receivership Assets and records relevant thereto;
- C. To manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets, pending further order of the court;
- D. To use Receivership Assets for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action that, prior to the entry of this order, could have been taken by the officers, directors, partners, managers, trustees, and agents of the entity Receivership Entities;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders, or auctioneers;

- G. To take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets;
- H. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist, and defend all suits, actions, claims, and demands that may now be pending or that may be brought by or asserted against the Receivership Estate; and,
- K. To take such other action as may be approved by the court.

III. Access to Information

8. Faulkner and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the entity Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Assets; such information shall include, but not be limited to, books, records, documents, accounts, and all other instruments and papers.

9. Within fourteen (14) days of the entry of this order, the Receivership Entities ~~Patriot, BRC, BVC, BHC, Breitling Ops, Inwood and Grand Mesa~~ Crude Energy and Crude Royalties shall file with the court, and serve upon the Receiver and the U.S. Securities and Exchange Commission (“SEC” or “Plaintiff”) a sworn statement, listing: (a) the identity, location, and estimated value of all Receivership Assets; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of these Receivership Entities; and (c) the names, addresses, and amounts of claims of all known creditors of these Receivership Entities.

10. Within thirty (30) days of the entry of this order, the Receivership Entities ~~Patriot, BRC, BVC, BHC, Breitling Ops, Inwood and Grand Mesa~~Crude Energy and Crude Royalties shall file with the court and serve upon the Receiver and the SEC a sworn statement and accounting, with complete documentation, covering the period from January 1, 2011 to the present:

- A. of all Receivership Assets, wherever located, held by, or in the name of, these Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any oil and gas operator or with any bank, brokerage, or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. identifying every account at every bank, brokerage, or other financial institution: (a) over which these Receivership Entities have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, these Receivership Entities;
- C. identifying all credit, bank, charge, debit, or other deferred payment card issued to, or used by, each of these Receivership Entities, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve (12) months;
- D. of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. of all funds received by these Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the SEC's first amended complaint (Doc. 22) or in the SEC's brief in support of plaintiff's *ex parte* emergency motion for temporary restraining order, asset freeze, appointment of receiver, and other ancillary relief ("Brief") (Doc. 103). The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;

G. of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and

H. of all transfers of assets made by any of them.

11. Unless the court, on motion of a Receivership Entity, orders otherwise, within thirty (30) days of the entry of this order, the Receivership Entities ~~Patriot, BRC, BVC, BHC, Breitling Ops, Inwood and Grand Mesa~~ Crude Energy and Crude Royalties shall provide to the Receiver and the SEC copies of these Receivership Entities' federal income tax returns for 2010 through 2016, with all relevant and necessary underlying documentation.

12. Subject to any applicable rights under the Fifth Amendment to the United States Constitution, Faulkner and the entity Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions that the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. If the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make his discovery requests in accordance with the Federal Rules of Civil Procedure.

13. The Receivership Entities are required to assist the Receiver in fulfilling his duties and obligations. As such, subject to any applicable rights under the Fifth Amendment to the United States Constitution, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

IV. Access to Books, Records and Accounts

14. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books, and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody, or possession of any Receivership Assets are hereby directed to turn over such property to the Receiver.

15. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this order by personal service, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, his agents, and/or employees.

16. All oil and gas operators and all banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entities that receive actual notice of this order by personal service, facsimile transmission, or otherwise shall:

- A. not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of, or for the benefit of, the Receivership Entities, except upon instructions from the Receiver;
- B. not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control, without the permission of the court;
- C. within seven (7) days of receipt of that notice, file with the court and serve on the Receiver and counsel for the SEC a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver, or at the direction of the Receiver.

17. Paragraph 16 notwithstanding, the Receiver shall permit XL Specialty Insurance Company to process the Receivership Entities' claims under Directors and Officers Insurance Policy Number ELU137222-14, pursuant to order of the court (Doc. 278).

V. Access to Real and Personal Property

18. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to, electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

19. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including, but not limited to, all ownership and leasehold interests and fixtures. Upon receiving actual notice of this order by personal service, facsimile transmission, or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or (c) destroying, concealing, or erasing anything on such premises.

20. In order to execute the express and implied terms of this order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have such keys in their possession during the term of the receivership.

21. The Receiver is authorized to open all mail directed to, or received by, or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this order, to determine whether items or information therein fall within the mandates of this order.

22. Upon the request of the Receiver, the United States Marshals Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody, and control of, or to identify the location of, any assets, records, or other materials belonging to the Receivership Estate.

VI. Notice to Third Parties

23. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

24. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entity shall, until further ordered by the court, pay all such obligations in accordance with the terms thereof to the Receiver, and his receipt for such payments shall have the same force and effect as if the Receivership Entities had received such payment.

25. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and serve this order on, any person, entity, or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estate. All government offices that maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this order upon the request of the Receiver or the SEC.

26. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail that is related, directly or indirectly, to the business, operations, or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of Faulkner, and/or any mail appearing to contain privileged information related to Faulkner, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business, or service, or mail courier or delivery service, hired, rented, or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this order, whether through the U.S. mail, a private mail depository, or courier service.

27. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver, unless instructed to the contrary by the Receiver.

28. Subject to paragraph 17 of this order, the Receiver is authorized to assert, prosecute, and/or negotiate any claim under any insurance policy held by or issued on behalf of the Receivership Entities, or their officers, directors, agents, employees or trustees, and to take any and all appropriate steps in connection with such policies.

VII. Injunction Against Interference with Receiver

29. The Receivership Entities and all persons receiving notice of this order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, that would:

- A. interfere with the Receiver's efforts to take control, possession, or management of any Receivership Assets; such prohibited actions include, but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of, or interfering with or creating or enforcing a lien upon, any Receivership Assets;
- B. hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include, but are not limited to, concealing, destroying, or altering records or information;
- C. dissipate or otherwise diminish the value of any Receivership Assets; such prohibited actions include, but are not limited to, releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Assets, enforcing judgments, assessments, or claims against any Receivership Assets or any Receivership Entity, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or that otherwise affects any Receivership Assets; or,
- D. interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this court over the Receivership Estate.

30. The Receivership Entities shall cooperate with and assist the Receiver in the performance of his duties.

31. The Receiver shall promptly notify the court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this order.

VIII. Stay of Litigation

32. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the SEC related to the above-captioned enforcement action, are stayed until further order of the court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Assets, wherever located; (c) the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

34. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further order of this court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

IX. Managing Assets

35. For the Receivership Estate, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Assets (the "Receivership Fund").

36. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Christopher A. Faulkner, Breitling Energy Corporation, and Breitling Oil & Gas Corporation, et al." together with the name of the action.

37. The Receiver may, without further order of this court, transfer, compromise, or otherwise dispose of any Receivership Assets, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Assets.

38. Subject to paragraph 39, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

39. Upon further order of this court, pursuant to such procedures as may be required by this court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver is authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

40. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estate and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

41. The Receiver shall take all necessary steps to enable the Receivership Fund to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of section 468B

of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary, or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” The Receivership Entities shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. § 1.468B-2.

X. Investigate and Prosecute Claims

42. Subject to the requirement, in Section VIII above, that leave of this court is required to resume or commence certain litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and/or adjust actions in any state, federal, or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Assets.

43. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of the court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts,

disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from the court as may be necessary to enforce this order. Where appropriate, the Receiver should provide prior notice to SEC counsel before commencing investigations and/or actions.

44. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by the entity Receivership Entities. This paragraph does not apply to any applicable rights under the Fifth Amendment to the United States Constitution.

45. The Receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

XI. Bankruptcy Filing

46. The Receiver may seek authorization of the court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for the entity Receivership Entities. If an entity Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estate as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to paragraph 4 above, the Receiver is vested with management authority for the entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

47. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing the entity Receivership Entities in bankruptcy proceedings.

XII. Liability of Receiver

48. Until further order of the court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

49. The Receiver and his agents, acting within scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and orders of this court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

50. This court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

51. In the event the Receiver decides to resign, the Receiver shall first give written notice to the SEC’s counsel of record and the court of his intention, and the resignation shall not be effective until the court appoints a successor. The Receiver shall then follow such instructions as the court may provide.

XIII. Recommendations and Reports

52. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Assets (the “Liquidation Plan”).

53. Within the first day of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the “Quarterly Status Report”), reflecting (to the best of the Receiver’s knowledge as of the period covered by the report) the existence, value, and location of all Receivership Assets, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

54. The Quarterly Status Report shall contain the following:

- A. a summary of the operations of the Receiver;
- B. the amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. a schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. a description of all known Receivership Assets, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. a description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
- F. a list of all known creditors with their addresses and the amounts of their claims;
- G. the status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. the Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

55. On the request of the SEC, the Receiver shall provide the SEC with any documentation that the SEC deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the SEC's mission.

XIV. Fees, Expenses and Accountings

56. Subject to paragraphs 57 through 63 immediately below, the Receiver need not obtain court approval prior to the disbursement of cash in the Receivership Fund for expenses in the ordinary course of the administration and operation of the receivership. Further, prior court approval is not required for payments of applicable federal, state, or local taxes.

57. Subject to paragraph 58 immediately below, the Receiver is authorized to solicit persons and entities to be Retained Personnel to assist him in carrying out the duties and responsibilities described in this Order. The Receiver may engage Retained Personnel without obtaining an order of the court authorizing such engagement.

58. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the court.

59. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the court for compensation and expense reimbursement from the Receivership Estate (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the court, the Receiver shall serve upon SEC counsel a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

60. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver shall file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

61. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the court. The total amounts held back during the course of the receivership will be paid out at the discretion of the court as part of the final fee application submitted at the close of the receivership.

62. Each Quarterly Fee Application shall:
- A. comply with the terms of the Billing Instructions agreed to by the Receiver; and,
 - B. contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

63. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

SO ORDERED.

_____, ~~2018~~2019.

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

CHRISTOPHER A. FAULKNER, et al.,

Defendants.

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Case No.: 3:16-cv-01735-D

SECOND AMENDED ORDER APPOINTING RECEIVER

The court finds, based on the record in these proceedings, that the appointment of a temporary receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets—in any form or of any kind whatsoever—owned, controlled, managed, or possessed by defendants Christopher A. Faulkner, Breitling Oil & Gas Corporation (“BOG”), Breitling Energy Corporation (“BECC”), Crude Energy, LLC (“Crude Energy”) and Patriot Energy, Inc. (“Patriot”), and non-parties Breitling Royalties Corporation (“BRC”), Breitling Ventures Corporation (“BVC”), Breitling Holdings Corporation (“BHC”), Breitling Operating Corporation (“Breitling Ops”), Crude Royalties, LLC (“Crude Royalties”), Inwood Investments, Inc. (“Inwood”) and Grand Mesa Investments, Inc. (“Grand Mesa”) (collectively, the “Receivership Entities”), directly or indirectly (“Receivership Assets”).

The court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The court hereby takes exclusive jurisdiction and possession of the Receivership Assets, of whatever kind and wherever situated.

2. Until further order of the court, Thomas L. Taylor is appointed to serve without bond as temporary receiver (the “Receiver”) for the estates of the Receivership Entities and the Receivership Assets.

I. Asset Freeze

3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of this court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such assets. All persons and entities with direct or indirect control over any Receivership Assets are ordered to relinquish such control to the Receiver. This freeze includes, but is not limited to, Receivership Assets that are (a) in the possession or control of oil and gas operators; or (b) on deposit with financial institutions such as banks, brokerage firms, and mutual funds.

II. General Powers and Duties of Receiver

4. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements, in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys, and other agents of the entity Receivership Entities are hereby dismissed, and the powers of any general partners, directors, and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the entity Receivership Entities’

operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the entity Receivership Entities and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with the entity Receivership Entities shall possess any authority to act by, or on behalf of, the entity Receivership Entities.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location, and value of all Receivership Assets, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, that the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly (collectively, the “Receivership Estate”);
- B. To take custody, control, and possession of all Receivership Assets and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive, and take into possession from third parties all Receivership Assets and records relevant thereto;
- C. To manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets, pending further order of the court;
- D. To use Receivership Assets for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action that, prior to the entry of this order, could have been taken by the officers, directors, partners, managers, trustees, and agents of the entity Receivership Entities;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders, or auctioneers;

- G. To take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets;
- H. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist, and defend all suits, actions, claims, and demands that may now be pending or that may be brought by or asserted against the Receivership Estate; and,
- K. To take such other action as may be approved by the court.

III. Access to Information

8. Faulkner and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the entity Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Assets; such information shall include, but not be limited to, books, records, documents, accounts, and all other instruments and papers.

9. Within fourteen (14) days of the entry of this order, the Receivership Entities Crude Energy and Crude Royalties shall file with the court, and serve upon the Receiver and the U.S. Securities and Exchange Commission (“SEC” or “Plaintiff”) a sworn statement, listing: (a) the identity, location, and estimated value of all Receivership Assets; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of these Receivership Entities; and (c) the names, addresses, and amounts of claims of all known creditors of these Receivership Entities.

10. Within thirty (30) days of the entry of this order, the Receivership Entities Crude Energy and Crude Royalties shall file with the court and serve upon the Receiver and the SEC a sworn statement and accounting, with complete documentation, covering the period from January 1, 2011 to the present:

- A. of all Receivership Assets, wherever located, held by, or in the name of, these Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any oil and gas operator or with any bank, brokerage, or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. identifying every account at every bank, brokerage, or other financial institution: (a) over which these Receivership Entities have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, these Receivership Entities;
- C. identifying all credit, bank, charge, debit, or other deferred payment card issued to, or used by, each of these Receivership Entities, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve (12) months;
- D. of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. of all funds received by these Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the SEC's first amended complaint (Doc. 22) or in the SEC's brief in support of plaintiff's *ex parte* emergency motion for temporary restraining order, asset freeze, appointment of receiver, and other ancillary relief ("Brief") (Doc. 103). The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;

G. of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and

H. of all transfers of assets made by any of them.

11. Unless the court, on motion of a Receivership Entity, orders otherwise, within thirty (30) days of the entry of this order, the Receivership Entities Crude Energy and Crude Royalties shall provide to the Receiver and the SEC copies of these Receivership Entities' federal income tax returns for 2010 through 2016, with all relevant and necessary underlying documentation.

12. Subject to any applicable rights under the Fifth Amendment to the United States Constitution, Faulkner and the entity Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions that the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. If the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make his discovery requests in accordance with the Federal Rules of Civil Procedure.

13. The Receivership Entities are required to assist the Receiver in fulfilling his duties and obligations. As such, subject to any applicable rights under the Fifth Amendment to the United States Constitution, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

IV. Access to Books, Records and Accounts

14. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books, and records and all other documents or instruments

relating to the Receivership Entities. All persons and entities having control, custody, or possession of any Receivership Assets are hereby directed to turn over such property to the Receiver.

15. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this order by personal service, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, his agents, and/or employees.

16. All oil and gas operators and all banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entities that receive actual notice of this order by personal service, facsimile transmission, or otherwise shall:

- A. not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of, or for the benefit of, the Receivership Entities, except upon instructions from the Receiver;
- B. not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control, without the permission of the court;
- C. within seven (7) days of receipt of that notice, file with the court and serve on the Receiver and counsel for the SEC a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver, or at the direction of the Receiver.

17. Paragraph 16 notwithstanding, the Receiver shall permit XL Specialty Insurance Company to process the Receivership Entities' claims under Directors and Officers Insurance Policy Number ELU137222-14, pursuant to order of the court (Doc. 278).

V. Access to Real and Personal Property

18. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to, electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

19. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including, but not limited to, all ownership and leasehold interests and fixtures. Upon receiving actual notice of this order by personal service, facsimile transmission, or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or (c) destroying, concealing, or erasing anything on such premises.

20. In order to execute the express and implied terms of this order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have such keys in their possession during the term of the receivership.

21. The Receiver is authorized to open all mail directed to, or received by, or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this order, to determine whether items or information therein fall within the mandates of this order.

22. Upon the request of the Receiver, the United States Marshals Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody, and control of, or to identify the location of, any assets, records, or other materials belonging to the Receivership Estate.

VI. Notice to Third Parties

23. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

24. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entity shall, until further ordered by the court, pay all such obligations in accordance with the terms thereof to the Receiver, and his receipt for such payments shall have the same force and effect as if the Receivership Entities had received such payment.

25. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and serve this order on, any person, entity, or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estate. All government offices that maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this order upon the request of the Receiver or the SEC.

26. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail that is related, directly or indirectly, to the business, operations, or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report

to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of Faulkner, and/or any mail appearing to contain privileged information related to Faulkner, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business, or service, or mail courier or delivery service, hired, rented, or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this order, whether through the U.S. mail, a private mail depository, or courier service.

27. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver, unless instructed to the contrary by the Receiver.

28. Subject to paragraph 17 of this order, the Receiver is authorized to assert, prosecute, and/or negotiate any claim under any insurance policy held by or issued on behalf of the Receivership Entities, or their officers, directors, agents, employees or trustees, and to take any and all appropriate steps in connection with such policies.

VII. Injunction Against Interference with Receiver

29. The Receivership Entities and all persons receiving notice of this order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, that would:

- A. interfere with the Receiver's efforts to take control, possession, or management of any Receivership Assets; such prohibited actions include, but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of, or interfering with or creating or enforcing a lien upon, any Receivership Assets;
- B. hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include, but are not limited to, concealing, destroying, or altering records or information;
- C. dissipate or otherwise diminish the value of any Receivership Assets; such prohibited actions include, but are not limited to, releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Assets, enforcing judgments, assessments, or claims against any Receivership Assets or any Receivership Entity, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or that otherwise affects any Receivership Assets; or,
- D. interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this court over the Receivership Estate.

30. The Receivership Entities shall cooperate with and assist the Receiver in the performance of his duties.

31. The Receiver shall promptly notify the court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this order.

VIII. Stay of Litigation

32. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the SEC related to the above-captioned enforcement action, are stayed until further order of the court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Assets, wherever located; (c) the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in

connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).

33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

34. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further order of this court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

IX. Managing Assets

35. For the Receivership Estate, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Assets (the “Receivership Fund”).

36. The Receiver’s deposit account shall be entitled “Receiver’s Account, Estate of Christopher A. Faulkner, Breitling Energy Corporation, and Breitling Oil & Gas Corporation, et al.” together with the name of the action.

37. The Receiver may, without further order of this court, transfer, compromise, or otherwise dispose of any Receivership Assets, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Assets.

38. Subject to paragraph 39, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

39. Upon further order of this court, pursuant to such procedures as may be required by this court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver is authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

40. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estate, including making legally required payments to creditors, employees, and agents of the Receivership Estate and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

41. The Receiver shall take all necessary steps to enable the Receivership Fund to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary, or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall

cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” The Receivership Entities shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. § 1.468B-2.

X. Investigate and Prosecute Claims

42. Subject to the requirement, in Section VIII above, that leave of this court is required to resume or commence certain litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and/or adjust actions in any state, federal, or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Assets.

43. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of the court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from the court as may be necessary to enforce this order. Where appropriate, the Receiver should provide prior notice to SEC counsel before commencing investigations and/or actions.

44. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by the entity Receivership Entities. This paragraph does not apply to any applicable rights under the Fifth Amendment to the United States Constitution.

45. The Receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

XI. Bankruptcy Filing

46. The Receiver may seek authorization of the court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for the entity Receivership Entities. If an entity Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estate as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to paragraph 4 above, the Receiver is vested with management authority for the entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

47. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing the entity Receivership Entities in bankruptcy proceedings.

XII. Liability of Receiver

48. Until further order of the court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

49. The Receiver and his agents, acting within scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and orders of this court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

50. This court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

51. In the event the Receiver decides to resign, the Receiver shall first give written notice to the SEC's counsel of record and the court of his intention, and the resignation shall not be effective until the court appoints a successor. The Receiver shall then follow such instructions as the court may provide.

XIII. Recommendations and Reports

52. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Assets (the "Liquidation Plan").

53. Within the first day of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Assets, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

54. The Quarterly Status Report shall contain the following:

- A. a summary of the operations of the Receiver;
- B. the amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. a schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. a description of all known Receivership Assets, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. a description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of

enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);

- F. a list of all known creditors with their addresses and the amounts of their claims;
- G. the status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. the Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

55. On the request of the SEC, the Receiver shall provide the SEC with any documentation that the SEC deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the SEC's mission.

XIV. Fees, Expenses and Accountings

56. Subject to paragraphs 57 through 63 immediately below, the Receiver need not obtain court approval prior to the disbursement of cash in the Receivership Fund for expenses in the ordinary course of the administration and operation of the receivership. Further, prior court approval is not required for payments of applicable federal, state, or local taxes.

57. Subject to paragraph 58 immediately below, the Receiver is authorized to solicit persons and entities to be Retained Personnel to assist him in carrying out the duties and responsibilities described in this Order. The Receiver may engage Retained Personnel without obtaining an order of the court authorizing such engagement.

58. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the court.

59. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the court for compensation and expense reimbursement from the Receivership Estate (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the court, the Receiver shall serve upon SEC counsel a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

60. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver shall file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

61. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the court. The total amounts held back during the course of the receivership will be paid out at the discretion of the court as part of the final fee application submitted at the close of the receivership.

62. Each Quarterly Fee Application shall:

- A. comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

63. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver’s final application for compensation and expense reimbursement.

SO ORDERED.

_____, 2019.

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE