

and (3) for Approval of Sales Procedures (“Motion”). The Receiver seeks leave to sell the portfolio of oil and gas interests included within the Receivership Assets², employing EnergyNet.com, LLC (“EnergyNet”) -- a reputable and professional, internet-based oil and gas marketing firm in Amarillo, Texas -- to assist the Receiver in marketing and selling these assets pursuant to prescribed procedures (including procedures for Court review and confirmation of each sale).

The Receiver requests approval to sell through EnergyNet all oil and gas-related Receivership Assets which presently are in, or which -- pursuant to further proceedings -- will be in, the Receivership Estate (the “Breitling Portfolio”). Accordingly, the proposed agreement with EnergyNet would subsume all working interests, royalty interests and any other oil and gas-related assets which are presently within the Estate or which will be in the future pursuant to further proceedings before this Court. The proposed procedures for the sale and confirmation of these assets would apply to the same extent. At this juncture, the Receiver would make the Court aware that only working interests in the Breitling Portfolio and a limited number of royalty interests in the Breitling Portfolio are ready to be presented for sale.

As the Receiver described for the Court in some detail in the Receiver’s Motion to Approve Proposed Plan of Distribution and to Establish Procedures to Determine and Disallow Final Claims (ECF No. 406) (the “Plan of Distribution Motion”), many of the royalty interests, which properly should be included within the Receivership Estate, were purportedly conveyed to investors through materially defective instruments. Pursuant to the Plan of Distribution Motion, the Receiver will

² As defined in the Receivership Order, 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”), 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[Investments]”) and Grand Mesa Investments, Inc. (“Grand Mesa”) (collectively, the “Receivership Entities”), directly or indirectly.” Receivership Order, at 1.

seek to invalidate the conveyance of those royalty interests from the Estate. Material discrepancies exist in conveyance instruments executed by the Receivership entities in favor of Investors. In many instances, these defective conveyances were recorded in official real property records in various counties of several States. Specifically, Receivership Entities “over-conveyed” royalty interests, creating an anomalous situation in which investors collectively received -- sometimes of record -- more than 100% of the interests which the Receivership entity purported to own. In all of these instances, title to the royalty interests conveyed is clouded. As a result of these title defects, (i) many oil and gas operators have suspended royalty payments under the Texas Natural Resources Code, Section 91.402(b); and (ii) these royalty interests are unmarketable for resale. These circumstances are further complicated by the fact that there is, in many cases, no definitive evidence of the nature and scope of the assets initially acquired by the Offering Entities.

In support of this Motion, the Receiver would respectfully show the Court as follows:

I. BACKGROUND

On March 26, 2019, this Court granted (subject to a notice and objection period) Receiver’s Plan of Distribution Motion in which he advised this Court that he would subsequently propose a detailed plan for the marketing and disposition of the Breitling Portfolio. The proposed procedure for sale of assets is presented upon this Motion.

The Receiver has determined that the best-situated marketing organization for present purposes is EnergyNet. By the present motion, the Receiver presents a proposed sales and marketing agreement with EnergyNet and asks this Court’s leave to execute it and to initiate the offer for sale of the Breitling Portfolio through EnergyNet’s online auction process. Upon conclusion of each successful auction, the Receiver would present any sales agreements to this Court for confirmation.

II. PROPOSED SALES AND MARKETING AGREEMENT

EnergyNet is a widely known, reputable firm based in Amarillo, Texas that specializes in oil and gas divestitures. To the best of the Receiver's knowledge, EnergyNet does not hold or represent an interest adverse to the Receivership Estate and is disinterested for the purpose of assisting the Receiver in this process. EnergyNet is an upstream oil & gas property transaction advisory firm specializing in the preparation, evaluation, analysis, marketing, negotiation, and closing of oil and gas property transactions. EnergyNet conducts efficient oil and gas auctions, sealed bid and negotiated sale services that facilitate transactions in producing working interests (operated and non-operated), overrides, royalties, mineral interests, and non-producing leaseholds. The Receivership's oil and gas assets are primarily royalty interests and working interests. Accordingly, it is necessary to engage a firm with competence in the offer and sale of both types of interest.

EnergyNet offers a continuous oil and gas property marketplace with due diligence and bidding available 24 hours a day, 7 days a week, 365 days a year. Transactions close weekly. EnergyNet has demonstrated that it is capable of and willing to market properties ranging from \$1,000 to \$200,000,000. This flexibility is essential given the varied properties and potential packages of properties in the Breitling Portfolio. Using an internet platform, EnergyNet allows buyers the flexibility and convenience of conducting their acquisition and divestment activities online. The Receiver has been advised that since its inception in 1999, EnergyNet has sold over 60,000 individual properties for over \$6.75 billion. EnergyNet advises that its sellers include ExxonMobil, Chevron, Shell, Apache, Devon, EOG, Bank of America, Wells Fargo, FDIC, the State of Colorado, the State of Utah, the State of North Dakota, and others. EnergyNet has over

25,000 registered, accredited and qualified bidders. EnergyNet has successfully assisted a number of Court-appointed Receivers in the disposition of oil and gas assets.³

A copy of EnergyNet's standard sales agreement is attached hereto as **Exhibit 1** (the "Sales and Marketing Agreement"). The Sales and Marketing Agreement provides that EnergyNet will market the oil and gas interests for an initial term of approximately ninety (90) days, which may be and likely will be extended by mutual consent of EnergyNet and the Receiver. Certain modifications to the Sales and Marketing Agreement are noted below and embodied in the Receiver's Proposed Order, and would be incorporated into any agreement executed by the Receiver should the Court grant this Motion.

A. Services to be Provided

Pursuant to the Sales and Marketing Agreement, EnergyNet would provide the following services:

- a. Review and analyze the asset characteristics of the Breitling Portfolio and assess which of the assets could be packaged to advantage and which might be more beneficially sold separately;
- b. Recommend transaction structure, determine valuation parameters and establish a timeline for presentation of the properties;
- c. In conjunction with the Receiver and personnel already engaged in the valuation of the assets, accumulate, organize, validate and present data leading to an efficient and accurate valuation process;

³ EnergyNet was engaged by this Court's Receiver in an unrelated case [*SEC v. Robert Helms, Janniece Kaelin, Deven Seller, Roland Barrera, Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P.*, Defendants, and William L. Barlow and Global Capital Ventures, LLC, Relief Defendants, Case No. 1:13-cv-01036-LY (W.D. Tex. 2013)]. EnergyNet assisted the Receiver in disposing of substantially all of the oil and gas assets of that Receivership Estate.

- d. Develop a comprehensive summary of assets for review by potential purchasers and construct a virtual data room and documentary presentation for prospective buyers;
- e. Publish the proposed offering of the assets, distribute notification of the proposed transactions to a broad audience of potential individuals and institutional purchasers and respond to inquiries;
- f. Assist the Receiver in successfully negotiating the terms of a final transaction and facilitation of due diligence requests; and
- g. Provide the Receiver with the support necessary to successfully close any proposed sale.

B. Commissions/Fee Structure

The fee structure proposed by EnergyNet and embodied in the Sales and Marketing Agreement is particularly beneficial in the circumstances of this Receivership. Unlike virtually all other organizations, out of pocket expenses for preparation of the Breitling Portfolio for sale, maintenance of the virtual data room and other associated sales costs are subsumed within a success fee applied at the point of sale. Accordingly, the Receivership Estate will not be burdened with these costs prior to disposition of any of the assets. Such costs might otherwise be insurmountable. The success fee to be charged by EnergyNet is a 3% flat fee on sales successfully concluded and confirmed by this Court. *See* Exhibit 1, p. 12 (Exhibit D thereto).

C. Indemnification

EnergyNet typically obtains an indemnity from its clients regarding information supplied to it in connection with the offer and sale of assets. *See* Exhibit 1, ¶12. For reasons set forth in previous reports to this Court, the Receiver cannot definitively represent that the Receivership Estate files regarding the oil and gas interests to be sold are completely accurate. Accordingly, the

Receiver cannot provide an indemnity to EnergyNet, as typically would be required. Pursuant to negotiations between the Receiver and EnergyNet, it has agreed to proceed without the customary indemnification agreement which is embodied in the standard Sales and Marketing Agreement. Pursuant to the Proposed Order, EnergyNet would be afforded the same protection against liability in connection with the offer and sale of the assets as is afforded to the Receiver and the Receiver's Retained Personnel pursuant to ¶49 of the Receivership Order. Receiver requests that the same liability protections currently afforded to the Receiver and Retained Personnel also be afforded to EnergyNet pursuant to the Proposed Order.

All sales will be conducted "AS IS – WHERE IS", and no warranties of any kind will be provided, except that whatever interest is owned by the Receivership Estate shall be transferred to the purchaser.

D. Cash Only Bidding

Although the Receiver, through the EnergyNet engagement, will not place any restrictions on who may bid on the oil and gas interests (other than having sufficient financing to close the transaction within the prescribed time) EnergyNet will undertake to assure the availability of funds of any successful bidder. Although bidders may be backed by investors, any such bidder -- like all others -- will be required to bid in cash and will not be allowed to credit bid.

III. ARGUMENT

A. The Receiver's Authority to Sell Receivership Assets through EnergyNet as Proposed Herein

By the present Motion, the Receiver requests that the Court authorize the sale of the Breitling Portfolio pursuant to EnergyNet's online auction process with the broadest possible base

of potential bidders. Rule 66 of the Federal Rules of Civil Procedure embodies the modern practice for the appointment of an equity receiver by a United States District Court. Title 28 of the United States Code (the Judicial Procedure Code) enumerates certain powers and procedures governing a receiver's actions, including the sale of property by a receiver under order or decree of any court of the United States. In particular, a common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver "should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors." *Id.* A receiver's liquidation of real property is governed by 28 U.S.C. §§ 2001 and 2002.

Federal Courts have broad powers and wide discretion to determine relief in an equity receivership, including the authority to authorize the sale of real property within a receivership estate. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citing *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)) (additional citations omitted). "[T]his power is limited by 28 U.S.C. § 2001." *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 WL 706846, at *2 (N.D. Tex. March 11, 2008) (Fitzwater, J.) (citing *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1137 (9th Cir. 1996), *abrogated in part by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998); *Kirkland v. Sunset Bay Club, Inc.*, 2006 WL 3627557, at *2 (M.D. Fla. Dec. 11, 2006)).

The most likely way for the Receiver to realize the highest price for the Breitling Portfolio is through the commercially reasonable and customary method of listing the properties with a marketing firm that specializes in mineral rights divestitures. Furthermore, the Receiver believes that listing and selling the Breitling Portfolio through EnergyNet for the highest price offered

above the expected value, is the best method to obtain the highest and best price for the oil and gas interests. As noted above, the sale of the Breitling Portfolio and its components in this manner will also shift the payment of costs associated with the sale of the oil and gas interests to the time of closing, enabling the Receivership Estate to avoid the burden of these costs prior to disposition of the assets.

The Receiver's request to sell the Breitling Portfolio through EnergyNet is authorized by the statutory language of Section 2001(a) which reads, in pertinent part, that "[p]roperty in the possession of a receiver ... appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed...." *Id.*⁴ The Receiver was appointed by this Court in the Northern District of Texas.⁵

The sale of the assets in the Breitling Portfolio through EnergyNet will enable the Receiver to conduct these asset auctions through an efficient, uniform, and cost-effective process, and do so while accessing potential bidders around the world to view and bid on these properties. EnergyNet's marketing efforts (detailed below) and reach will ensure that the Receivership Estate receives the highest possible sales price for its oil and gas portfolio.

B. Proposed Notice of the Public Sale of the Breitling Portfolio Pursuant to 28 U.S.C. § 2002

Section 2002 governs the requirements for the notice of the public sale of realty pursuant to Section 2001. Section 2002 states that notice of a public sale of realty located in a single district

⁴ The statute alternatively permits such public sales to take place "at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located" or "on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts." *Id.*

⁵ Moreover, EnergyNet is a Texas domestic, for-profit entity with its primary place of business located in the Northern District of Texas, in Amarillo.

must be made by publication “once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.” *Id.* However, when “realty is situated in more than one county, state, district or circuit,” as the Breitling Portfolio is, “such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs.” *Id.*

The thousands of underlying oil and gas interest assets comprising the Breitling Portfolio are located across numerous Texas counties and approximately six other states. The Receiver respectfully requests that the Court exercise its statutory authority and discretion to direct the publication notice of the public sale of the Breitling Portfolio by EnergyNet as follows:

- The Receiver will publish an advertisement in Hart Energy’s “A&D Watch” weekly electronic newsletter describing the Breitling Portfolio substantially in the form described herein, and directing potential purchasers to EnergyNet for additional information. This advertisement will be published for four consecutive weeks following the entry of an Order by this Court granting the relief sought herein, and the Receiver will not commence any auctions prior to the four-week run of this advertisement;
- Pursuant to the Sales and Marketing Agreement, EnergyNet will publish information related to the sale of the Breitling Portfolio on its website and distribute notification of the proposed auctions to a broad audience of potential individuals and institutional purchasers; and
- The Receiver will conspicuously place notice of the sale of the Breitling Portfolio on the Receivership Estate’s website, www.breitlingreceivership.com, following the entry of an Order by this Court granting the relief sought herein, and with respect to each auction prior to the auction taking place.

Directing notice of the sale of the Breitling Portfolio pursuant to the foregoing procedures will provide the most cost-efficient manner through which to give notice of the sales to the largest number of parties likely to bid through EnergyNet. Publishing notice of the sale in Hart Energy’s “A&D Watch” newsletter will direct the notice to industry sources in a manner more likely to

reach the appropriate audience of potential buyers than publication locally or in a national newspaper of general circulation -- and at a significantly lower cost to the Receivership Estate.

C. Confirmation of Sales of All Assets

Upon the successful conclusion of an auction of any parcel or package of the Breitling Portfolio through the EnergyNet auction process, the Receiver proposes to return to this Court to obtain confirmation of the sales' final terms. Any motion by the Receiver for confirmation would be upon twenty-one (21) days notice to the parties and to any known creditor asserting or purporting to have a perfected security interest in such property, who would then have an opportunity to object and/or assert such interest. Having given notice as proposed, the Receiver would request that this Court confirm any such final sale free and clear of all liens, claims and encumbrances.

IV. CONCLUSION

For the foregoing reasons, the Receiver requests that this Court enter an Order in the form proposed granting his motion (1) for authority to sell oil and gas interests; (2) for authority to retain a sales and marketing firm; and (3) for approval of sales procedures.

Dated: May 30, 2019

Respectfully submitted,

THE TAYLOR LAW OFFICES, PC

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RECEIVER

CERTIFICATE OF CONFERENCE

I certify that I have provided the Staff of the SEC with the present Motion and they have stated that they have no objection to the Court's granting the Motion as presented.

I further certify that I conferred regarding the relief sought by this Motion with Karen Cook, counsel for Defendant Parker Hallam, who does not oppose the relief sought herein.

/s/ Thomas L. Taylor III
Thomas L. Taylor III

CERTIFICATE OF SERVICE

I certify that on May 30, 2019 I filed the foregoing document through the Court's CM/ECF filing system, which satisfies service requirements under FED. R. CIV. P. 5(b)(2)(E).

/s/ Thomas L. Taylor III
Thomas L. Taylor III