CAUSE NO. CV 49081

KINDEE OIL AND GAS TEXAS, LLC, AND CATHIE ENERGY TEXAS, LLC. Plaintiffs,	§	IN THE DISTRICT COURT OF
VS.	§	MIDLAND COUNTY, T E X A S
PAUL PAGE and PETRO-RAIDER, LLC Defendants.	§	142ND JUDICIAL DISTRICT

Defendants Paul Page and Petro-Raider, LLC's
Motion for Traditional and No-Evidence Summary Judgment

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Regulations and Regulatory Rulings and Report

To the Honorable George D. "Jody" Gilles:

Paul Page and Petro-Raider, LLC ("Petro-Raider" or "Defendants") move for traditional and no-evidence summary judgment against Plaintiffs Kindee Oil & Gas, Texas LLC and Cathie Energy Texas LLC (collectively, "Kindee" or "Plaintiffs"). Petro-Raider respectfully shows the Court as follows:

I. Overview

Plaintiffs filed this tortious-interference and breach-of-contract lawsuit one day after Petro-Raider filed a Complaint (Ex. 1 herein) with the Texas Railroad Commission (the "RRC" or "Commission"). This is not the first case between the parties; Defendants sued Plaintiffs in Reagan County in 2010 for breach of contract and fraud because Plaintiffs here allegedly defrauded Paul Page out of profit interests and monthly management payments when Plaintiffs, along with their successors, acquired their Permian Basin mineral interests. *See* Ex. 2 (Petro-Raider's 3rd Am. Pet'n).

In the RRC Complaint that led to the lawsuit here, Petro-Raider protested Plaintiffs' permit application to drill a well in acreage that the Commission assigned to Petro-Raider's predecessor in title more than 30 years ago. Plaintiffs contend in this Court that Petro-Raider's RRC Complaint injured them and that Plaintiffs are entitled to a judgment in money damages for those alleged injuries.

Petro-Raider discussed issues relating to the RRC Complaint with representatives of Petro-Raider's lessor of the well at issue. That lessor, the Scottish Rite Hospital for Crippled Children ("the Hospital"), leased different depths of the same acreage to Plaintiffs and to Petro-Raider. As this Motion describes in detail, the Hospital's "horizontal severance" of shallow rights and deep rights in the same acreage lies at the center of this dispute.

Defendants contend, among other things, that the doctrines of absolute privilege and justification defeat Plaintiffs' claims as a matter of law. Defendants also contend that Plaintiffs have no evidence of any damages and that their damages claims fail as a matter of law.

In this Court, Plaintiffs have accused Petro-Raider (and Paul Page, individually) of breach of contract and tortious interference with respect to three issues:

- Petro-Raider's filing of its RRC Complaint;
- communicating with the Hospital about issues relating to the Complaint; and
- somehow causing Plaintiffs – a penny-stock company subject that has never earned a dime in profits – to lose funding as a result of the filing of the RRC Complaint and communications with the Hospital.

Plaintiffs are wrong on all three claims. Petro-Raider's RRC Complaint was absolutely privileged, justified, and correct; Defendants' communication with the Hospital was justified, truthful, and did not harm Plaintiffs in any way. Plaintiffs' damages claims amount to nothing more than a speculative and hypothetical claim of lost profits which itself depends on a speculative and hypothetical claim of lost financing.

The summary-judgment evidence reveals that Plaintiffs have lost money year after year for more than a decade; Plaintiffs survived by finding unwitting investors to give them cold, hard cash in exchange for "penny stock" (that currently trades for a sixth of a penny per share).

Here, Plaintiffs have accused Defendants for interference with another form of their low-grade corporate financing: Plaintiffs' so-called "convertible notes," for which investors paid Plaintiffs cash but for which Plaintiffs had the right to pay principal and interest, and appear always to have paid principal and interest, with their ever-declining common stock. (Of course, much of the investors' cash for the notes went into the pockets of Plaintiffs' directors and officers.) Plaintiffs' questionable financing, along with their mismanagement, if not outright

fraud, sparked a proxy contest by activist shareholders who, by late 2012, had wised up to Plaintiffs' shenanigans and misrepresentations.

Plaintiffs have no evidence of lost profits or any other damages, and their speculative damages claims fail as a matter of law as well. Plaintiffs have only themselves, and their incompetent, if not dishonest, management to blame for their demise.

II. Summary of Motion

The Court should grant this motion for three main reasons.

First, the Court should dismiss Plaintiffs' claims with respect to Petro-Raider's filing of the RRC Complaint because that filing was absolutely privileged, justified, and correct.

Second, the Court should dismiss Plaintiffs' claims with respect to Paul Page's communications with the Hospital because no evidence exists that any of those communications tortiously interfered with their operations in any way and because those communications were justified as a matter of law.

Third, the Court should dismiss Plaintiffs' damages claims on traditional and no-evidence grounds because Plaintiffs' speculative and hypothetical lost-financing claim is only a part of an even more speculative and hypothetical claim for lost profits by a company that in its many years of operations has never earned a dime. Plaintiffs' allegation that Defendants interfered with Plaintiffs' sleazy "convertible notes" offering is laughable given that a dissident group of Plaintiffs' own shareholders attempted a boardroom coup based in part on how this offering diluted their rights along with other incompetent, if not fraudulent, conduct by Golden Gate's directors and officers.

III. Facts

A. The Reagan County Suit: Golden Gate and its Predecessor Refuse to Honor Page's Rights in the Wolfberry Formation

1. Who are Paul Page and Petro-Raider?

Paul Page has worked in the oil and gas business in West Texas for more than three decades. Page is Manager of Petro-Raider LLC. *See* Page Aff. ¶ 1-2 (Ex. 3). By assignment, Petro-Raider acquired certain "shallow rights" in the oil-and-gas leases from the Hospital in 2010. Page also has a binding agreement (called the "Option Agreement," attached hereto as Ex. 4 and discussed in detail herein) to participate in the "deep rights" in the same acreage of which Golden Gate now owns leaseholds. That "deep rights" agreement binds Kindee; it binds Cathie; and it binds their parent, Golden Gate Petroleum, Ltd. ("Golden Gate"). Page has sued Golden Gate in a lawsuit in Reagan County to enforce those rights. *See* Ex. 2.

2. Who are Kindee, Cathie, and Golden Gate?

Golden Gate controls Kindee and Cathie. Kindee operates the wells; Cathie holds the lease rights. Golden Gate trades on the Australian Stock exchange although it recently changed its name to "OGI Group" and rarely trades at all anymore. Golden Gate is a penny-stock company. For the past year or so, its stock traded (when it traded at all) at $0.001 per share (1/10 of a penny) per share. Ex. 14. Along with its name change to "OGI Group," Golden Gate has "consolidated" its 4.7 billion+ shares into about 191 million. Ex. 21, at 000014. Those 191 million shares now trade for $0.006 per share (Ex. 23), although the overall value of the company continues to plummet. *See generally* www.asx.com.au (ASX Code: formerly "GGP," now "OGI"). Golden Gate apparently has never made a profit (at least from 2002 onward, based on readily available public filings). *See generally* Ex. 13 (summary and backup of "Financial Reports" and "Annual Reports").

Golden Gate acquired its leases with the Hospital from a wholly-owned subsidiary of Arturus Capital Limited. Arturus was, at the time, another Australian penny-stock company that later transferred the leases at issue to Golden Gate. (Arturus is insolvent and in the hands of an Australian liquidator. An overlap of officers and directors existed between the two companies.)

3. What are Golden Gate's obligations to Page?

Before Golden Gate took over as lessee from Arturus, Arturus acquired the leases with Paul Page's help. In exchange for Page's help, Arturus agreed – in the event Arturus acquired the leases from the Hospital – to grant a net-profits interest, a back-in working interest, and a management fee to Page. Arturus and Page put this promise in a binding written contract – the "Option Agreement" described above (Ex. 4). Arturus and Page agreed that the Agreement "binds and inures to the benefit of the Parties, and their respective successors, assigns, and legal representatives." *Id.* at 000005.

Arturus, through a nominee, did in fact acquire the leases from the Hospital two months after signing the Option Agreement. *E.g.*, Ex. 8, Subpart A at 000006 (4/1/2010) (attached as Ex. 1 to RRC submission of 12/6/2012). However, Arturus breached the Option Agreement because it failed to convey Page's interests upon its acquisition of the leases from the Hospital. Arturus instead sold the Hospital leases to its fellow Australian penny-stock company, Golden Gate. Arturus and Golden Gate have repudiated any obligations to Page under the Option Agreement. *See generally* Ex. 2 at 18, 21-22. (Third Am. Pet'n).

Page (and Petro-Raider, his assignee) therefore brought suit in Reagan County against Arturus, Golden Gate, and their respective subsidiaries, for breach of contract, fraud, conspiracy, declaratory judgment, and constructive trust. *See generally id.*

After Judge Gomez denied both parties' motions for summary judgment (Ex. 5), Arturus went into its liquidation in Australia. Based on Arturus's liquidation, Judge Gomez has stayed that litigation.

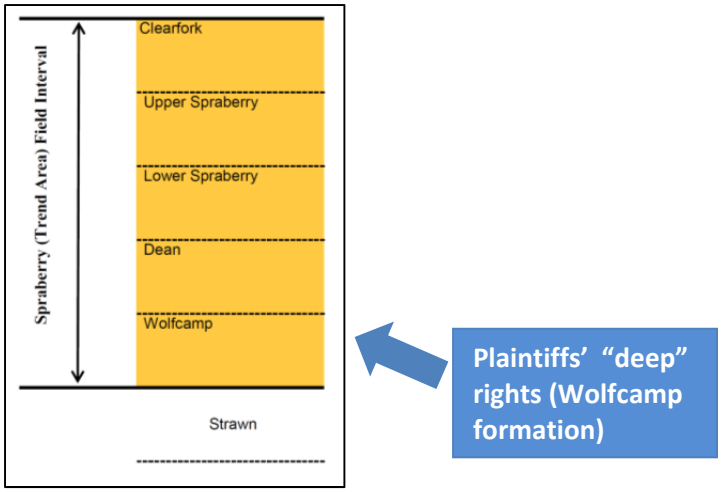
B. Petro-Raider's RRC Complaint: Kindee Violated the Commission's One-Well-Per-Proration-Unit Rule

1. "Horizontal severance": Petro-Raider holds the shallow rights and Kindee holds the deep rights – in the same 160-acre tract

Petro-Raider filed its RRC Complaint (Ex. 1) against Kindee in October 2012. Petro-Raider's RRC Complaint arises out of what has become a common problem in the Permian Basin: the so-called "horizontal severance" of "shallow rights" and "deep rights" in same proration unit in the Spraberry (Trend Area) Field. *See generally* Examiner's Report and Recommendation, Oil & Gas Docket No. 7C-0283443, *In re the Application of Pioneer Nat. Res. USA, Inc. to Amend Field Rules for the Spraberry (Trend Area) Field*, at 8 (Ex. 6).

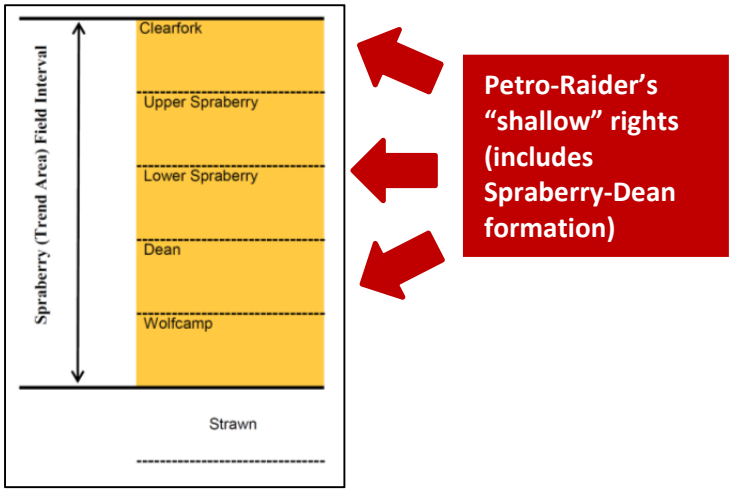
Arturus, and later Golden Gate, originally told Page that they wanted to acquire all the interests in the Hospital leases – both the "deep rights" and the "shallow rights" – based on Page's several discussions with them. Page Aff. ¶¶ 5, 7-11 (Ex. 3). However, neither Arturus nor Golden Gate had enough funding to lease all the rights. *E.g.*, Chang Depo. at 55:17-22 ("we [Arturus] did not have funding to basically go forward with the assets") (Ex. 19); GGP Market Eye/Market Report, 10/31/2012, at 2 (Ex. 7) ("At that time [in 2010] GGP was attempting to purchase the rights to all depths but was not able to under the final agreement.").

As a result, Golden Gate ended up acquiring only the "deep rights" in the 160-acre tract at issue in this case:



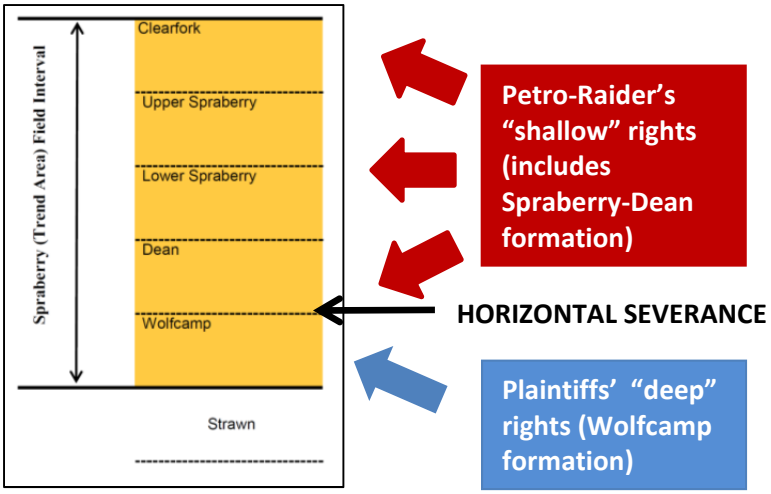
E.g., Oil and Gas Lease, 4/1/2010, at 000037 (property description) & 000049 (plat) (Ex. 8-B).

Page/Petro-Raider, having wished to acquire the leases in both the shallow rights and the deep rights all along, obtained an assignment of leases with the Hospital on November 1, 2010 for, among others, the shallow rights of the 160-acre tract at issue in this case:



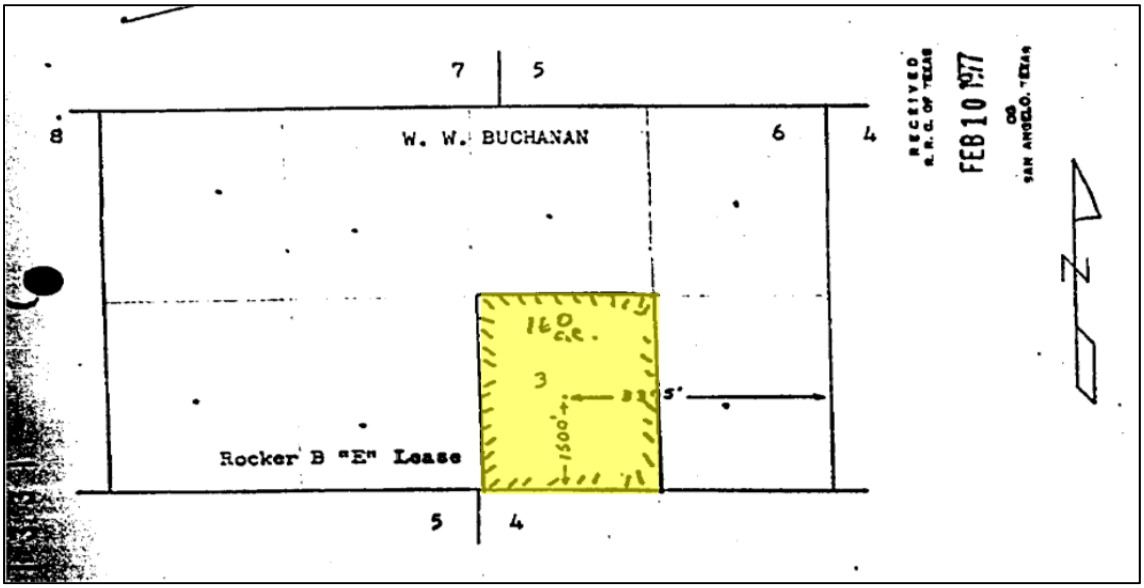
E.g., Assignment and Bill of Sale, 11/2/2010, at 000005, 000009 (Ex. 9) (certified copies filed in Reagan and Irion counties).

The Hospital thus "horizontally severed" the shallow rights from the deep rights as to the 160-acre tract at issue in this case (as well as for other acreages not at issue):



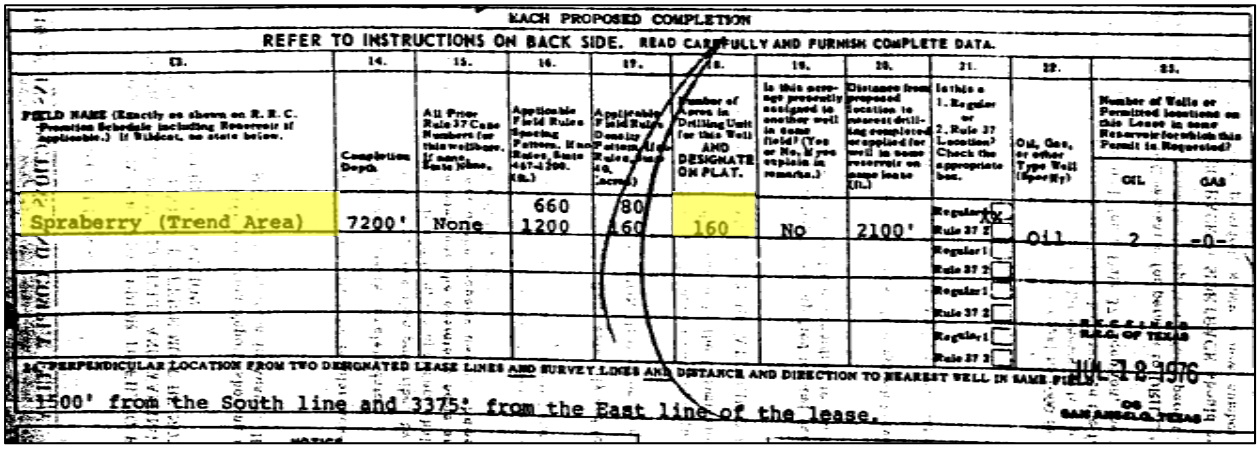
2. The Commission allows only one well per proration unit, and <u>that one well belongs to Petro-Raider</u>

When Petro-Raider obtained the leasehold of the 160-acre tract at issue in this case, it acquired the rights over the one and only well that the Commission allowed on that acreage. That acreage formed a "proration unit" within the Spraberry (Trend Area) Field. The highlighted plat below shows the 160-acre proration unit as "Tract 3":



Ex. 1 at 000013 (attached as Ex. B to 10/29/2012 RRC Complaint) (highlight added).

The 1976 permit application confirms the 160-acre "Tract 3" proration unit for Well No. 3 (also known as the "3E Well") as part of the Spraberry (Trend Area) Field:



EACH PROPOSED COMPLETION

REFER TO INSTRUCTIONS ON BACK SIDE. READ CAREFULLY AND FURNISH COMPLETE DATA.

13. FIELD NAME (Exactly as shown on R. R. C. Proration Schedule including Reservoir if applicable.) If Wildcat, so state below.	14. Completion Depth	15. All Prior Rule 37 Case Numbers (or this wellbore, if none, so state below.)	16. Applicable Field Rules Spacing Pattern, If none, State Rule 467-d 330 (Sq. Ft.)	17. Applicable Field Rules Density Pattern, If no Rules, State (Acres)	18. Number of Acres in Drilling Unit for this Well AND DESIGNATE ON PLAT.	19. Is this acreage presently assigned to another well in same field? (Yes or No. If yes explain in remarks.)	20. Distance from proposed location to nearest drilling completed or applied for well in same reservoir on same lease (Ft.)	21. Is this a 1. Regular or 2. Rule 37 Location? Check the appropriate box.	22. Oil, Gas, or other Type Well (Specify)	23. Number of Wells on this Lease in same Reservoir for which this Permit is Requested? OIL	GAS
Spraberry (Trend Area)	7200'	None	660 1200	80 160	160	No	2100'	Regular Rule 37 2 [X]	Oil	2	-0-
								Regular Rule 37 2 [ ]			
								Regular Rule 37 2 [ ]			
								Regular Rule 37 2 [ ]			

24. PERPENDICULAR LOCATION FROM TWO DESIGNATED LEASE LINES AND SURVEY LINES AND DISTANCE AND DIRECTION TO NEAREST WELL IN SAME FIELD

1500' from the South line and 3375' from the East line of the lease.

RECEIVED R.R.C. OF TEXAS JUL 19 1976 SAN ANGELO, TEXAS

Id. at 000014.

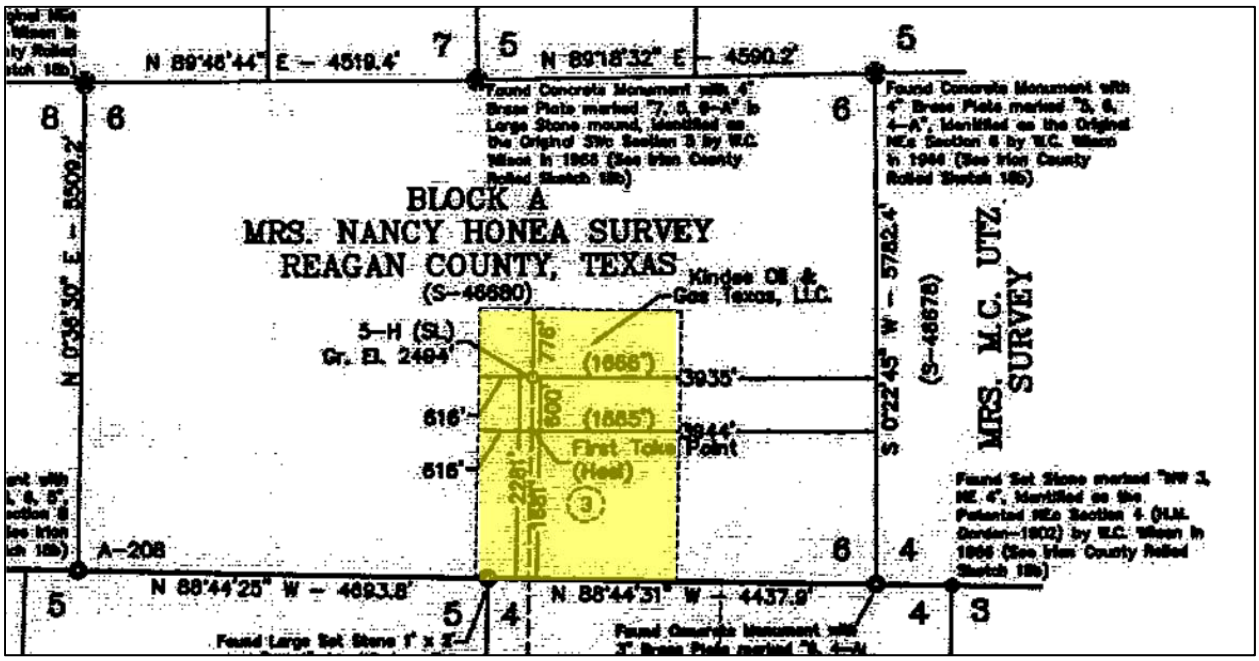
The Commission's Statewide Rule 40(d) forbids "duplicate assignment of acreage." *See* Tex. Admin. Code, Title 16, Part 1, Chapter 3, Rule § 3.40(d) (Ex. 10); *see also* Examiner's Report, at 2-3, 7-8 (Ex. 6) (explaining application of Rule 40(d)'s one-well-per-acreage rule in Spraberry (Trend Area) Field).

With respect to the 160-acre "Tract 3" proration unit here, this means that from 1976 onward, the Commission had no authority to assign any "duplicate" wells to this acreage without "an exception to Statewide Rule 40(d) or other remedy, such as negotiating [an] operating agreement[] with [the] vertically adjacent mineral owner[]" – here, Petro-Raider. *See generally* Examiner's Report, at 8 (Ex. 6).

Kindee neither sought an exception to Statewide Rule 40(d) nor an operating agreement with Petro-Raider. Instead, it filed a false permit, as shown below.

3. Kindee's false permit violates the one-well-per-proration-unit rule

The plat in Kindee's own permit application showed that it targeted its 5H well for the same 160-acre "Tract 3" proration unit as Petro-Raider's decades-old 3E well:



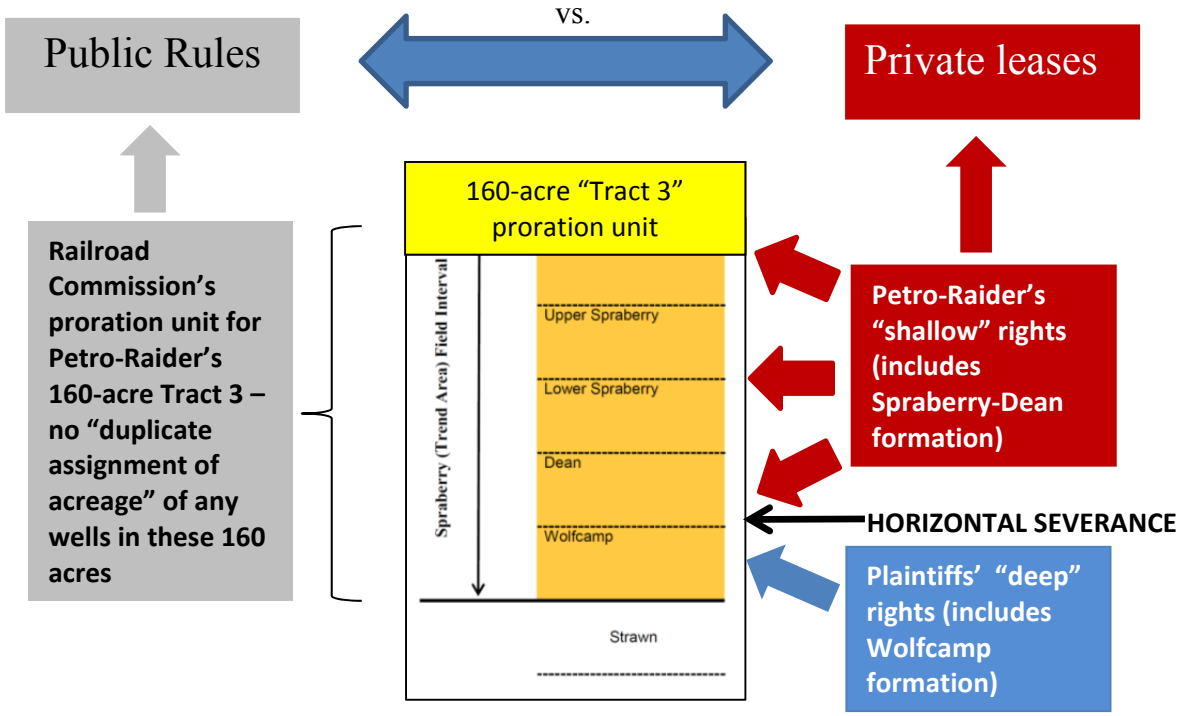
Ex. 1, at 000009 (highlight added).

As noted above, Commission Rule 40(d) forbids "duplicate assignment of acreage"; in other words, the Commission allows only one well per proration unit. In addition, Kindee subverted the Commission's one-well-per-acreage rule by falsely – if not fraudulently – listing the wrong field in its application – the Lin (Wolfcamp) Field instead of the Spraberry (Trend Area) Field. The Commission routinely rejected this type of assignment (Examiner's Report, Ex. 6, at 000008) ("Commission staff has rejected these applications…."), but somehow Kindee's permit evaded Commission detection.

In other words, nothing about the Hospital's horizontal severance of private property rights (that is, leasing shallow rights to Petro-Raider and deep rights to Plaintiffs) changed the Commission's rules. *E.g.*, Examiner's Report, Ex. 6, at 000015 ("horizontal severances are

caused by the action of private contracts, transfers and agreements that are outside of Commission jurisdiction"). Kindee's well was a "duplicate well" that violated Rule 40(d).

The following diagram illustrates the relationship of private and public rights as to the 160-acre Tract 3 proration unit:



Under the Commission's rules at the time of Petro-Raider's RRC Complaint, Petro-Raider's contention that Kindee violated the rules was not only in good faith, it was 100% correct.

What is more, the Commission amended the Field Rules for the Spraberry (Trend Area) Field governing the 160-acre "Tract 3" proration unit at issue in this case, effective December 18, 2013. *See* Final Order Amending Field Rules for the Spraberry (Trend Area) Field, Dec. 18, 2013, at 000006, 000010 (Ex. 11). Those amended rules, for the first time, allow a horizontally severed deep-rights holder such as Kindee to apply for a permit to allow recovery of oil and gas

from those deep rights. *Id.* at 6. Kindee has failed to apply for such a permit; to this day it has an invalid permit. The amended rules leave no doubt about two facts central to this case: *first*, that Kindee's permit violated the rules in place at time Kindee filed it; and *second*, that Petro-Raider's Complaint alleging that violation was completely correct.

4. Petro-Raider files its RRC Complaint and Kindee sues the next day

Despite the absolute correctness of Petro-Raider's RRC Complaint, *the day after* Petro-Raider filed it, Plaintiffs filed this suit.

Kindee contends that Petro-Raider filed its RRC Complaint in bad faith. 2nd Am. Pet'n ¶ 14, at 4. Yet to this day, Kindee has failed to obtain a dismissal of Petro-Raider's Complaint, let alone a finding by the Commission that Petro-Raider acted in bad faith.

Kindee also complains that Paul Page's communications with the Hospital about the RRC Complaint tortiously interfered with Kindee's existing and prospective contracts, including:

- Kindee's existing leases with the Hospital;
- Kindee's contracts (actually, Golden Gate's contracts) with its existing creditors who hold "convertible notes"; and
- Kindee/Golden Gate's prospective investors in convertible notes.

Id. ¶ 13, at 4. However, Plaintiffs concede that nothing in the communications that occurred contained anything injurious. As Plaintiffs' Executive Director stated in his deposition:

> A: . . . . There seemed to be other issues that seemed to be going on that I didn't understand. They weren't – you know, it appeared that there may have been discussions going on about our leases with Paul Page and the hospital but I was not –
>
> Q: What makes you think that?
>
> A. Because the hospital advised us that there were discussions, that they were having discussions.
>
> Q. What was said?

A. They didn't describe those discussions. They just said there was discussions going on between Paul Page and the hospital.

See Graves Depo. at 89:5-18 (Ex. 12).

Additionally, Graves admitted that Page could have talked to the Hospital about leases that Page or Petro-Raider owned individually. *Id.* at 91:18–92:2.

C. Plaintiffs' Alleged Damages: Supposed Lost Financing in the Face of a Decade of Losses and Shareholder Claims of Fraud and Mismanagement

Plaintiffs not only have no evidence of any communications with the Hospital that hurt them (or that its investors ever heard), nothing in Plaintiffs' pleadings or the summary-judgment evidence shows any out-of-pocket losses as a result of anything Page or Petro-Raider said or did. Instead, Plaintiffs' only claim for money damages arises out of their supposed "ability to raise capital" and the supposed "reasonable probability that Plaintiffs would have entered into a business relationship with additional investors." 2nd Am. Pet'n ¶¶ 14, 15. These allegations amount to nothing more than speculative events ("adversely impacts Plaintiffs' ability to raise capital") that are only a part of an even more speculative lost-profits claim.

But Plaintiffs have no evidence of lost-profits, or any other damages.

1. Plaintiffs' twelve years of continual losses

Plaintiffs' parent, Golden Gate, appears never to have made a profit in any of the past 12 years, according to Plaintiffs' own corporate records:

Year	Consolidated	Source
2002	($139,735)	Annual Report, Year ended June 30, 2003 Ex. 13 - 000002-3
2003	($2,430,347)	Annual Report, Year ended June 30, 2003 Ex. 13 – 000002-3
2004	($1,276,137)	Annual Report, Year ended 30 June 2004 Ex. 13 – 000004-5
2005	($4,650,261)	Annual Report, Year ended 30 June 2005 Ex. 13 – 000006-7
2006	($792,915)	Annual Report, Year ended 30 June 2006 Ex. 13 – 000008-9

Year	Consolidated	Source
2007	($14,852,232)	Annual Report, Year ended 30 June 2007 Ex. 13 – 000010-11
2008	($23,962,999)	Annual Report, Year ended 30 June 2008 Ex. 13 – 000012-13
2009	($7,468,915)	Annual Report, Year ended 30 June 2009 Ex. 13 – 000014-15
2010	($14,988,043)	Annual Report, Year ended 30 June 2010 Ex. 13 – 000016-17
2011	($7,256,120)	Annual Report, Year ended 30 June 2011 Ex.13 – 000018-19
2012	($4,766,272)	Annual Report, Year ended 30 June 2012 Ex. 13 – 000020-25
2013	($5,528,461)	Annual Report, Year ended 30 June 2013 Ex. 13 – 000026-34

See Ex. 13 (summary and backup). To date, Plaintiffs' accumulated losses total more than $89 million. Annual Report, Year Ended 30 June 2013, at 31. *Id*. at 000030. Plaintiffs' "contributed equity" (money taken in from shareholders) totals at least $111,809,740, *id.* at 000030, yet Golden Gate/OGI's most recent market capitalization (assuming all of its 191 million shares could be sold at one-sixth of a penny) is only about $1.15 million. *Id.* at 000032 ($0.006 x 191 million shares); *see also* Exs. 22, 23 (reporting 191 million shares and pricing of $0.006 per share as of 6/9/2014). Golden Gate's stock currently sells for about a penny for every dollar invested. The following chart shows the precipitous decline in its stock:

Ex. 14 (screen shot from asx.com.au) (4/30/2014). In short, Golden Gate ranks near the bottom of all-time bad investments. For all practical purposes, Golden Gate's directors and officers have left their shareholders holding an empty bag.

2. Plaintiffs' shareholders accuse Golden Gate's directors and officers of fraud and mismanagement

Golden Gate's shareholders began complaining about this performance before Petro-Raider filed its RRC Complaint. By mid-October 2012, a group of dissident and activist Golden Gate shareholders had communicated, organized, and delivered a notice of a "Requisitioning Statement" (the Australian version of a proxy contest) demanding to replace two board members. *See generally* Ex. 15, at 000005 (Notice of General Meeting). Among other things, Golden Gate's shareholders accused its directors and officers of (a) continuing to dilute existing shareholders, while losses mounted, by issuing new stock and "convertible notes"; (b) failing to disclose the full truth about Page and Petro-Raider's Reagan County litigation; (c) exaggerating the extent of Golden Gate's oil-and-gas reserves; and (d) making dubious payments to Golden Gate's directors despite the company's continuous losses and need for cash. A summary of each of these four complaints follows:

a. Shareholder Complaint #1:

> "CONTINUAL DILUTIONARY FUNDING" – noting that Golden Gate has suffered "9 continuous years of losses" amounting to "$82 MILLION raised and $80 million of losses" [Ex. 15, at 000010]

The activist shareholders had become aware of, and objected to, Golden Gate's continued dilution of existing shareholders in the face of the massive "continuous" losses that Golden Gate incurred year after year.

As Golden Gate's losses mounted, Golden Gate continuously diluted the value of its shares by issuing new stock and "convertible notes." Plaintiffs here complain that Page and

Petro-Raider interfered with their ability to sell more "convertible notes," 2nd Am. Pet'n ¶¶ 13, 14, but Plaintiffs omit the "dilutionary" nature of these "convertible notes." Golden Gate paid interest on the "convertible notes" with newly issued Golden Gate stock – not cash – at Golden Gate's election. Ex. 16, at 2 (8/13/2012 Market Release). Golden Gate also redeemed the "convertible notes" with newly issued Golden Gate stock – not cash – at Golden Gate's election. *Id*. Nothing in Golden Gate's public disclosures indicates that Golden Gate ever paid its convertible-note holders in anything but more Golden Gate shares – wampum that in reality was hardly worth the paper they were printed on. Meanwhile, Golden Gate's directors and officers always drew their salaries in cash. Ex. 13 at 000022 (reporting $907,041 paid to six "key employees" in 2011 and $754,790 in 2012); *see also* 000027 (reporting the *total* of six full-time employees in 2012 and 2013).

The activist shareholders had thus realized, well before the RRC Complaint, that Golden Gate's directors and officers used the "convertible notes," as well as Golden Gate's stock and other securities, to line their pockets with cash and leave their investors with nothing.

b. Shareholder Complaint #2:

> "MULTIPLE 'PENDING' LEGAL ISSUES" " – noting that
> "A plaintiff [Paul Page and Petro-Raider] is seeking a right to 25% of the Permian Basin lease. . . . [Directors and management] are in conflict as to the cost and severity of the action" [Ex. 15, at 000010]

The activist shareholders had become aware of Page and Petro-Raider's Reagan County lawsuit over Golden Gate's failure to honor Page's Option Agreement. Again, as alleged in that case, Page and Petro-Raider are entitled to a 5% net profits interest, a 20% back-in working interest after payout, and a $20,000 per month management fee.

Plaintiffs have all but admitted the merits of Page and Petro-Raider's case. On April 11, 2014, Golden Gate's "Notice of General Meeting" announced a sale of its Permian Basin assets

to another company for $5.35 million. As part of that transaction, Golden Gate will receive a $500,000 "Litigation Holdback" if and only if Golden Gate "eliminate[s]" the Reagan County lawsuit. Ex. 20, at 000010. Furthermore, Judge Gomez's denial of Golden Gate's motion for summary judgment further confirms that Page and Petro-Raider's Reagan County lawsuit raises genuine issues of material fact. Ex. 5 (11/07/2011 order denying summary judgment).

Plaintiffs thus tacitly concede that whatever interference that the Reagan County case may have caused, it was not improper, tortious, or otherwise actionable for damages.

c. Shareholder Complaint #3:

> "DISAPPEARING P1 RESERVES" – noting that
> "In an ASX announcement 29th July 2010 the purchase of the Permian Assets including P1 reserves of 4.348 million barrels plus gas was announced. In a market briefing on 9th October 2012 the market was advised [by Executive Director Steve Graves] that the company's Permian lease unfortunately does not cover the intervals that are included in our company's [Kindee's] lease.
>
> "We believe the company's Geologist, Mr. Brophy, should/may have been aware of this simple oversight of what depths the company had the rights to and what depths were included in the P1 reserve report. There are still questions with the laws of continuous disclosure. He [has] yet to buy one share in the company." [Ex. 15, at 000010]

Here, the activist shareholders uncovered another instance of Golden Gate's dubious representations to its shareholders: its overstatement of reserves. Golden Gate negligently, if not fraudulently, gave its investors exaggerated estimates of the extent of Golden Gate's assets. Golden Gate based these reserve figures on a report that Page commissioned, paid for, and discussed with Golden Gate's then-Executive Director and Managing Director, Steve Graves. Page Aff. ¶¶ 6, 10 (Ex. 3). That report included the production estimated from the so-called "shallow rights" that Petro-Raider currently controls as well as the "deep rights" that Golden Gate controlled. *Id.* Page discussed these aspects of the report with Graves. *Id*. ¶ 11.

Golden Gate never leased the "shallow rights," yet Golden Gate – with Graves in charge – continued to represent its reserves to its investors as if it did. Only in its October 9, 2012 "Market Eye/Market Briefing" did Graves confess his omission. Ex. 17, at 4 ("The Joe Neal Reserve Report prepared some time ago was not commissioned by GGP, and unfortunately it does not cover the intervals that are included in our Company's leases."). Even that statement was inaccurate; the Neal report covered not only Golden Gate's leases, but also Petro-Raider's leases, which Golden Gate tried but failed to lease. Graves corrected this error three weeks later in another "Market Eye/Market Briefing." Ex. 7, at 2 (10/31/2012) (noting that the Neal report "includes mineral rights on acreage we did not fully obtain"). Graves tried to quibble over the implications of these misrepresentations, but no question exists as to the inaccuracy of Golden Gate's claimed reserves.

d. Shareholder Complaint #4:

"DUBIOUS DIRECTOR PARTY RELATED PAYMENTS"
[Ex. 15, at 000010]

The activist shareholders also called out Golden Gate for disbursements of as much as $950,000 in questionable payments to a Golden Gate director (beyond ordinary salary and fees). Golden Gate could ill afford to hemorrhage this kind of cash. This revelation, on top of the other acts of fraud and mismanagement, no doubt drove Golden Gate's stock even further into the ground and drove investors further and further away.

The activist shareholders failed to remove any directors, but their accusations in the December 2012 Golden Gate proxy statement left little question that things would end badly for Golden Gate's investors as its directors and officers walked off with their money.

3. Plaintiffs' current insolvency and likely imminent liquidation

Golden Gate's finances continued to crumble throughout 2013 as its stock continued to trade for a tenth of a penny for most of the year. Ex. 14. Particularly troubling news came in November 2013, when Halliburton Energy Services, Inc. filed an Oil and Gas Well Lien against Golden Gate's 5H Well (the well for which it filed a false, if not fraudulent, permit application). That lien asserts a claim of $632,854.01 that as of that time remained unpaid. *See* Ex. 18.

In its most recent quarterly report, Golden Gate reports cash on hand of $572,000. Ex. 21, at 000007. Based on the Halliburton lien alone, Golden Gate is not only failing to turn a profit (which it never has), it is a foreclosure auction away from liquidation.

Golden Gate has one last hope: to sell its Permian Basin assets (including the well at issue in this case) to Laredo Petroleum, Inc. (a substantially larger company) for $5.35 million. Ex. 20, at 000009. At that price, after all its liabilities are paid, Golden Gate's shareholders stand to recover something in the range of $5 million on more than $111 million in contributed equity – in other words, pennies on the dollar.

IV. Argument and Authorities

A. Page/Petro-Raider's Filing of the RRC Complaint Was Absolutely Privileged and Justified as a Matter of Law

Every aspect of Plaintiffs' claims relating to Petro-Raider's RRC Complaint is absolutely privileged because those claims relate to Petro-Raider's statements in the course of a judicial or quasi-judicial proceeding. It is black-letter law that no statement made in the course of a judicial or quasi-judicial proceeding can serve as the basis for a civil action. *See, e.g., McIntyre v. Wilson*, 50 S.W.3d 674, 683 (Tex. App.—Dallas 2001, pet. denied); *Rose v. First Am. Title Co.*, 907 S.W.2d 639, 640-41 (Tex. App.—Corpus Christi 1995, no writ).

As the Fort Worth Court of Appeals recently observed, "[t]he rationale for extending the

absolute privilege to statements made during quasi-judicial proceedings rests in the public policy that every citizen should have the unqualified right to appeal to governmental agencies for redress 'without the fear of being called to answer in damages' and that the administration of justice will be better served if witnesses are not deterred by the threat of lawsuits." *Perdue, Brackett et al. v. Linebarger Goggan et al.*, 291 S.W.3d 448, 451-52 (Tex. App.—Fort Worth 2009, no pet.).

In addition to the doctrine of absolute privilege, the doctrine of justification also precludes claims of tortious interference. Actions are legally justified when they consist of the exercise of either (1) one's own legal rights or (2) a good-faith claim to a colorable legal right, even though that claim ultimately proves to be mistaken. *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 80 (Tex. 2000); *Tex. Beef Cattle Co. v. Green*, 921 S.W.2d 203, 211 (Tex. 1996).

Petro-Raider had an absolute privilege to file its RRC Complaint and, by definition, its filing of that Complaint was justified because no genuine issue of material fact exists that Petro-Raider's Complaint was a good-faith claim of a colorable legal right. Plaintiffs' attempt to make that Complaint the basis of a civil action for tortious interference is itself frivolous and must be dismissed as a matter of law.

B. Page/Petro-Raider's "Discussions" with the Hospital Were Justified as a Matter of Law, Not "Independently Tortious," and Do Not Support a Breach of Contract Claim as a Matter of Law

Plaintiffs' remaining tortious-interference claims allege that Page/Petro-Raider's discussions with the Hospital (1) tortiously interfered with existing contracts; (2) tortiously interfered with prospective business relations; and (3) support a claim of breach of contract against Petro Raider. All three claims fail as a matter of law.

1. Justification (as to tortious interference with existing contracts)

As noted above, a defendant cannot be held liable for tortious interference with an existing contract where the actions upon which such claims are based are legally justified. As stated above, actions are legally justified when they consist of the exercise of either (1) one's own legal rights or (2) a good-faith claim of a colorable legal right, even though that claim ultimately proves to be mistaken. *Tex. Beef Cattle Co.*, 921 S.W.2d at 211.

Here, the justification defense defeats, as a matter of law, Plaintiffs' claims regarding Defendants' discussions with the Hospital and Petro-Raider's filing of the RRC Complaint. Petro-Raider holds the "shallow rights" in the same 160-acre leasehold in which Plaintiffs hold the "deep rights." No genuine issue of material fact exists that Petro-Raider had the legal right to communicate with the Hospital about the Complaint, the allegations in the Complaint, or anything else related to the Complaint. Moreover, Plaintiffs have come forward with no evidence of the content of any of Page's allegations, let alone any content that it was tortious or that it injured Plaintiffs in any way.

2. No independently tortious or unlawful act
(as to tortious interference with prospective business relations)

Plaintiffs' claim for tortious interference with prospective business relations also fails as a matter of law and for no evidence because nothing Page said, or is alleged to have said, amounts to an "independently tortious or unlawful" act by Defendants. *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 726 (Tex. 2001). To prove that an act of Defendants was "independently tortious or unlawful," Plaintiffs must prove that an action of Defendants would be actionable under a recognized tort. *Id*.

Here, Plaintiffs fail to allege, and have no evidence whatsoever of, any independently tortious or unlawful act by Defendants. Nothing about anything Petro-Raider said or did defamed, disparaged, or defrauded anyone in any way. The Court must therefore dismiss Plaintiffs' claims of tortious interference with business relations relating to any alleged "discussions" with the Hospital.

3. Plaintiffs' claim for breach of contract fails as a matter of law

Plaintiffs claim that "Defendants' actions have unreasonably interfered with Plaintiffs' developmental activities and, therefore, constitute a breach of contract" that has caused Plaintiffs damage. *Id.* Plaintiffs base this breach-of-contract claim on Petro-Raider's lease with the Hospital; Plaintiffs are not a party to this agreement. That lease provision states:

> Lessee expressly recognizes that is [sic] rights hereunder are limited to a maximum of 7500 feet from the surface throughout the acreage leased hereunder, and covenants and agrees that it will not interfere unreasonably with the activities of any Operator or Lessee holding and owning (sic) the deeper rights under this land from prospecting for minerals or developing the portions of the lease below 7500 feet from the surface. [2nd Am. Pet'n ¶ 17, at 5]

Here, Petro-Raider's RRC Complaint, and its communications with the Hospital about issues related to the RRC Complaint was "reasonable" as a matter of law because, as shown throughout this motion, its RRC Complaint correctly identified Kindee's false, if not fraudulent, misrepresentation of the field in which it planned to drill its 5H well.

C. Plaintiffs' Damages Claims Fail for No Evidence and as a Matter of Law

The Court should grant a summary judgment on Plaintiffs' damages claims for two reasons. *First*, Plaintiffs' theory is nothing but a speculative lost-profits claim by Plaintiffs with no history of profits, and as such fail under both no-evidence and traditional summary judgment standards. *Second*, Plaintiffs' claim also fails on no-evidence grounds for the additional reason

that Plaintiffs have failed to come forward with a shred of evidence of any potential investor who declined to invest.

1. Plaintiffs seek speculative lost profits for a business with a decade-long history of failure

Plaintiffs contend that but for Page and Petro-Raider's supposed interference Plaintiffs would have obtained enough financing from new investors to avert Golden Gate's collapse. 2nd Am. Pet'n ¶¶ 14, 16 at 4 (alleging that Defendants' conduct damaged Plaintiffs "by affecting their ability to raise capital, by diminishing their equity, and injuring their reputation," and that "[t]here was a reasonable probability that Plaintiffs would have entered into a business relationship with additional investors."). The Court must dismiss these claims as a speculative element of an even more speculative lost-profits claim.

The Texas Supreme Court has consistently reaffirmed that damages are not recoverable if they are "too remote, too uncertain, or purely conjectural." *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 816 (Tex. 1997); *see Kerr-McGee Corp. v. Helton*, 133 S.W.3d 245, 254, 258 (Tex. 2004) (explaining that evidence of damages must "be based upon more than mere speculation"), *abrogated on other grounds by Kerr-McGee Corp. v. Helton*, 133 S.W.3d 245 (Tex. 2004); *see generally Tex. Inst., Inc. v. Teletron Energy Mgt. Inc.*, 877 S.W.2d 278, 279-80 (Tex. 1994) (landmark lost-profits case).

The Houston Court of Appeals considered a similar case in *Ramco Oil & Gas Ltd. v. Anglo-Dutch (Tenge) LLC*, 207 S.W.3d 801, 820-25 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). *Ramco Oil* leaves no question that a failure to obtain financing is one of many links in the chain that Kindee must prove to recover money damages.

Ramco Oil involved a breach-of-contract dispute over an oil-and-gas exploration project in the former Soviet Union. The plaintiffs were a group of developers with small capital but big

dreams to develop oil-and-gas properties in a field in Kazakhstan. The plaintiffs needed financing and co-developers to help obtain financing and develop the properties. The plaintiffs alleged to have had confidentiality agreements with other potential co-developers. The plaintiffs further alleged that those co-developers withdrew tortiously and breached the confidentiality agreements by giving the plaintiffs' plans to third parties. *See generally Ramco*, 207 S.W.3d at 804-07. The plaintiffs claimed to have suffered lost profits of $640 million as a result of the contract breaches. *Id.* at 811, 823. The jury awarded a hundredth of that claim, $6.4 million. *Id.* at 803, 809.

The Houston Court of Appeals reversed the trial court's judgment on the verdict and rendered a take-nothing judgment in favor of the defendants on the basis "there is no evidence to prove with reasonable certainty what profits Plaintiffs lost as a result of the Ramco Parties' breaches of contract." *Id.* at 825; *see also id.* at 827.

The *Ramco Oil* court noted that the plaintiffs' lost-profits claim depended, in part, on the plaintiff's admissions that to realize those profits, the plaintiffs would have needed "to obtain financing from new investors." *Id.* at 811; *see also id.* at 812, 817-20. The court emphasized speculative nature not only of the availability of such future financing, but also the speculative nature of the plaintiff's claims that the terms of such hypothetical financing would have allowed the plaintiffs to commence any operations, let alone to do so profitably.

Among other things, the *Ramco Oil* court reasoned that:

(i) The plaintiffs "already had spent $16 million and '***gotten nowhere.***'" *Id*. at 816 (emphasis added).

(ii) "[I]t was speculative" for the plaintiff's expert to conclude that the plaintiffs "***would have obtained $14.22 million in financing*** to purchase the [Kazakhstan] interests and start production under [the plaintiff's expert's] plan." *Id.* at 820 (emphasis added).

(iii) It was speculative to presume that "either (1) the lending entity would not have required Plaintiffs ***to pledge their interest*** in [the Kazakhstan project] as collateral to secure the loan; or (2) if the lending entity did so require, ***no event of default would have occurred*** that would have resulted in Plaintiffs' loss of their interest and right to receive profits from [the Kazakhstan project]." *Id.* (emphasis added).

The *Ramco Oil* court rejected the plaintiffs' claim that they would have made money based on the plaintiffs' "dream" and "fervent hope" for success. *Id.* at 824. The plaintiffs' projections were "not based on a business that was already established and making a profit when the contract was breached." *Id.* The "dream" and "fervent hope" of success in the future was "not enough to warrant recovery of lost profits." *Id.*, citing *Tex. Instr.*, 877 S.W.2d at 280. The plaintiffs' "proof of lost profits [was] largely speculative, dependent on uncertain and changing market conditions, and based on risky business opportunities and the success of an unproven enterprise." *Id.* at 825. Such a claim is "insufficient for recovery." *Id.*

The *Ramco Oil* court observed that the $6.4 million judgment, if not reversed, would have given the plaintiffs "the windfall of a riskless investment in a high-risk field" in which the plaintiffs had failed again and again. *Id.* at 825, citing *Miga v. Jensen*, 96 S.W.3d 207, 216-17 (Tex. 2002); *Reardon v. Lightpath Techs., Inc.*, 183 S.W.3d 429, 442 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

Applying *Ramco*, *Texas Instruments*, and the many other cases on speculative lost profits, it is clear that, on no-evidence grounds and as a matter of law, Kindee's damages claims here are "speculative and not reasonably certain." Kindee's claim suffers from the same defects as the plaintiffs' claim in *Ramco Oil*:

a. Plaintiffs have lost $89 million and "gotten nowhere."

Here, Plaintiffs have lost more than $89 million (Ex. 13, at 000030) and, in the words of the *Ramco* court, "gotten nowhere." By December 2012, enough angry shareholders had joined forces to force a vote of confidence of Golden Gate's management. Ex. 15, at 00009-10. The

dissident shareholders' "Requisitioning Statement" – the Australian equivalent of a proxy statement – complained that management had "presided over ***9 continuous years of losses***" amounting to, at that time, ***"$80 million of losses***." *Id.* (emphasis added). Thus, Golden Gate's loss history is ***five times*** worse than that of the plaintiffs in *Ramco Oil.*

b. It is too speculative to assume Plaintiffs would have received a dime of additional financing.

Here, just as the *Ramco Oil* court concluded that it was speculative for the plaintiffs to contend they would have obtained $14.22 million in financing, so too is Kindee's claim of Defendants' "interference with Plaintiffs' ability to raise capital" speculative in this case. Again, after "9 continuous years of losses" of more than $80 million – and with angry shareholders threatening a boardroom coup – Kindee's claim of lost financing fails as a matter of law and for lack of evidence.

c. It is too speculative to assume Plaintiffs would have sold more "convertible notes" with no risk of default and no risk of foreclosure or seizure of collateral.

Here, just as in *Ramco Oil*, it is too speculative for Kindee to claim that any additional financing would have remained "convertible" – that is, that Golden Gate would retain the right to pay the interest on the notes with shares of Golden Gate stock; that Golden Gate could "convert" the "secured convertible notes" to Golden Gate shares at any time; that Plaintiffs would have deployed these hypothetical funds profitably; and that Kindee never would have defaulted and suffered a foreclosure or other seizure of real collateral. It is certainly speculative that any additional potential "convertible note" holders would have accepted interest payments on their notes in Golden Gate's ever-diluting, ever-declining common stock. Acceptance by any investors of these terms is at best a miracle of salesmanship and at worst a red flag of fraud.

Many (if not most) sophisticated lenders, as the *Ramco Oil* court noted, demand something more than the Monopoly money that Golden Gate offered. Sophisticated lenders refuse to lend a dime to a fly-by-night operation like Golden Gate without a non-convertible, first-lien, secured deed of trust or security interest in real collateral with principal and interest paid in cash, not penny stock. Plaintiffs further would need to prove the even more heroic hypothetical speculation that they would have remained current on more burdensome terms and never defaulted. Finally, Plaintiffs would have to prove that these funds would have reversed more than a decade of losses. On the record before this Court, such claims fail as a matter of law and for no evidence.

* * *

Just as the *Ramco Oil* court rejected the plaintiffs' claim that they would have made money on the plaintiffs' "dream" and "fervent hope" for success, so too should this Court reject Golden Gate's claim that it would have done anything but continue to fail as it had for more than a decade. Even worse than *Ramco Oil*, Plaintiffs here have failed to offer any projections, but as a matter of law, any projections that Plaintiff might offer would have no more "reasonable certainty" than an eight-year-old's claim that he could play quarterback in the Super Bowl.

To say that Golden Gate's damages depend on "uncertain" or "risky" opportunities overstates Golden Gate's prospects in 2012 or at any time before or since. There was no "uncertainty" or "risk"; Golden Gate was doomed for years. Golden Gate's own financial disclosures document its downward spiral into a black hole of debt. Golden Gate had one function: to serve as a vehicle for its management to suck up the dollars of its investors' dollars in exchange for nothing but some worthless scrip and a dream of oil riches. Whatever breach Plaintiffs would like to accuse Page and Petro-Raider of, the result would have been no different:

Golden Gate was destined to drown in its ever-expanding pool of losses.

For that reason, the *Ramco Oil* court's concern about a "windfall of a riskless investment" applies with even more force here than it did in that case. Again, Golden Gate was all but destined to fail. For the Court even to allow a trial of this case, let alone to sign a final judgment awarding damages, would amount to little more than Golden Gate using this Court to do something it could never do: make money. A judgment of any money damages in this case would turn a sure-to-fail business into a sure-to-win windfall.

Because Plaintiffs' requested damages are inherently speculative and incapable of being established with reasonable certainty, this Court should grant traditional and no-evidence summary judgment in favor of Defendants.

2. There is no evidence of a single investor "affected" by the conduct Plaintiffs allege

Putting aside the inherently speculative nature of Plaintiffs' claims of interference with financing, Plaintiffs have failed to identify a single investor who was willing to invest in Golden Gate but for Page or Petro-Raider's "communication with the Hospital," or anything else that Plaintiffs allege here. As noted above, investors fled from Golden Gate because, by 2012, Golden Gate's directors and officers could no longer hide their long history mismanagement and fraud – not because of reaction from potential investors about anything Page or Petro-Raider said or did at issue in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on the following counsel of record via hand delivery on this the 11th day of June, 2014.

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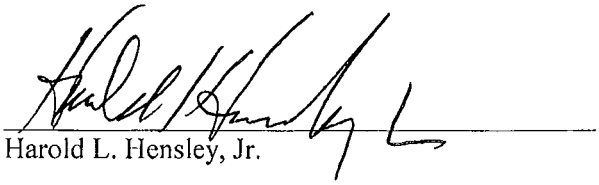

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