

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	Civil Action No. <u>1:15-cv-162</u>
v.	:	
	:	Judge Barbara Rothstein
THE ESTATE OF RICHARD B. HERZOG,	:	
DECEASED, through TIM E. HERZOG and	:	Filed Electronically
WESLEAH D. BLAIR, AS CO-EXECUTORS OF	:	
THE ESTATE OF RICHARD B. HERZOG,	:	
DECEASED	:	
	:	
Defendants.	:	
_____	:	

**CONSENT DECREE BETWEEN THE UNITED STATES
AND THE ESTATE OF RICHARD B. HERZOG, DECEASED, THROUGH
TIM E. HERZOG AND WESLEAH D. BLAIR,
AS CO-EXECUTORS OF THE ESTATE OF RICHARD B. HERZOG, DECEASED**

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I. BACKGROUND

A. The United States of America (“United States”) has filed a complaint in this matter pursuant to the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 *et seq.*, seeking reimbursement of removal costs which it alleges arose from discharges of oil and/or the substantial threat of discharges of oil into or upon the navigable waters of the United States and/or the adjoining shorelines from an abandoned oil production facility located within approximately 750 acres of land in Foster Township, McKean County, Pennsylvania (referred to, for the purposes of this Consent Decree only, as the “Facility”).

B. The United States alleges that Richard B. Herzog, now deceased, was a responsible party at the Facility pursuant to Section 1002 of OPA, 33 U.S.C. § 2702, because he was the owner and/or operator of the Facility from which oil was discharged or from which there was a substantial threat of discharge. This action is against the Estate of Richard B. Herzog, Deceased (the “Estate”) through Tim E. Herzog and Wesleah D. Blair, in their capacity as co-executors of the Estate. The United States alleges that Defendants are jointly and severally liable for all removal costs incurred and to be incurred at the Facility.

C. The United States alleges that its removal actions at the Facility have included, among other things, removal of the discharge of oil involving at least forty-six (46) of the structures, pieces of equipment, or devices comprising the Facility, and addressing the substantial threat of the discharge of oil from the Facility by taking response actions involving at least three hundred seventy-eight (378) of the structures, pieces of equipment, or devices comprising the Facility. (See Paragraphs 60-61 and Appendices A and B of the Complaint for additional details). The United States alleges that removal activities are ongoing and that, as a result, the United States has incurred, and continues to incur, removal costs at the Facility. These

costs were incurred through the designated Federal On-Scene Coordinator and were paid from, and continue to be paid from, the Oil Spill Liability Trust Fund, which is administered by the United States Coast Guard's National Pollution Funds Center.

D. Defendants do not admit any liability arising out of the transactions or occurrences alleged in the Complaint nor do Defendants admit any fact or legal conclusion alleged in the Complaint.

E. The United States has reviewed the Financial Information submitted by Defendants to determine whether there are sufficient funds within the Estate to pay removal costs incurred and to be incurred at the Facility. Based upon this Financial Information, the United States has determined that the Estate has limited financial ability to pay for removal costs. Specifically, the Financial Information indicates that, following disbursements made to beneficiaries of the Estate in 2008, the remaining assets of the Estate as of December 31, 2014, including the assets of Barry Associates, consist of approximately \$800,763 in cash and liquid assets and several non-liquid assets, including oil, gas and mineral rights in Pennsylvania, New York, Oklahoma, Illinois, and Arkansas (collectively "OGM Rights").

F. The United States and the Defendants agree, and by entering this Consent Decree the Court finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

G. In signing this Consent Decree, Defendants agree to its entry and agree to be bound by its terms.

The Court is fully advised of the reasons for the entry of this Consent Decree. And NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (Federal question) and 1345 (United States as plaintiff); and Section 1017(b) of OPA, 33 U.S.C. § 2717(b).

2. Venue is proper in the United States District Court for the Western District of Pennsylvania pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. § 1391(b) because it is the judicial district in which the alleged discharges and substantial threat of discharges that are the subject of this action occurred.

3. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

4. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties hereto for the duration of the performance of the terms and conditions of this Consent Decree solely for the purpose of enforcing those terms and conditions.

III. PARTIES BOUND

5. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

IV. DEFINITIONS

6. This Consent Decree incorporates the definitions set forth in Section 1001 of OPA, 33 U.S.C. § 2701. In addition, whenever the following terms are used in this Consent Decree, they shall have the following meanings:

a. “Barry Associates” shall mean Barry Associates, Inc., a corporation owned and operated by Richard B. Herzog, who was its sole shareholder. The Estate is now the sole shareholder and operator of Barry Associates.

b. “Coast Guard” shall mean the United States Coast Guard and any of its successor departments, agencies, or instrumentalities.

c. “Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last Day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working Day.

e. “Defendants” shall mean the Estate, including Barry Associates, and Tim E. Herzog and Wesleah D. Blair in their capacity as co-executors of the Estate.

f. “DOJ” shall mean the United States Department of Justice and any of its successor departments, agencies, or instrumentalities.

g. “Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such Order is recorded on the Court docket.

h. “Estate” shall mean the Estate of Richard B. Herzog, Deceased, including Barry Associates, and Tim E. Herzog and Wesleah D. Blair in their capacity as co-executors of the Estate.

i. “Facility” shall mean, solely for the purposes of this Consent Decree and as referenced in Paragraph A above, the group of abandoned structures, equipment, or devices used for producing, storing, handling, and/or transferring oil that is located within approximately 750 acres of land in Foster Township, McKean County, Pennsylvania which is colloquially known as the Johnston Farm leasehold and shown as generally located within the red boundaries on the map attached as Appendix B of this Consent Decree.

j. “Financial Information” shall mean those documents identified in Appendix A.

k. “Oil” shall mean any “oil” defined as such under OPA Section 1001(23), 33 U.S.C. § 2701(23).

l. “OPA” shall mean the Oil Pollution Act of 1990, as amended, 33 U.S.C. § 2701, *et seq.*

m. “OPA Fund” shall mean the Oil Spill Liability Trust Fund as defined in Section 1001 of OPA, 33 U.S.C. § 2701(11).

n. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

o. “Parties” shall mean the United States and the Defendants.

p. “Plaintiff” shall mean the United States.

q. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

r. “United States” shall mean the United States of America, acting on behalf of the Coast Guard.

V. PAYMENT OF REMOVAL COSTS

7. Payment. Within thirty (30) Days after the Effective Date, Defendants shall pay a total of \$954,400 to the United States.

8. Defendants shall make payment under Paragraph 7 by FedWire Electronic Funds Transfer (“EFT”) to DOJ for disbursement to the OPA Fund (Federal Project Number P02079) in accordance with written instructions to be provided to Defendants, following entry of the Consent Decree, by the Office of the United States Attorney for the Western District of Pennsylvania. The payment[s] shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-09646, and shall specify that the payment is to be deposited into the OPA Fund pursuant to 26 U.S.C. § 9509(b).

9. At the time of payment under Paragraph 7, Defendants shall send notice to DOJ and the Coast Guard that payment has been made to the United States in accordance with Section XI (Notices and Submissions). Such notice shall reference the civil action number of this case, Federal Project Number P02079, and DOJ Case Number 90-5-1-1-09646.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

10. Interest on Late Payments. If Defendants fail to make any payment required by Paragraph 7 (Payment) by the required due date, interest shall accrue on the unpaid balance through the date of payment at the statutory rate in accordance with 28 U.S.C. § 1961. If Defendants fail to make any payment required by Paragraph 7 (Payment), Defendants shall contact the Financial Litigation Unit (“FLU”) of the Office of the United States Attorney for the

Western District of Pennsylvania and inform the FLU of Defendants' anticipated payment date so that the FLU may calculate the appropriate interest amount to be submitted with Defendants' late payment.

11. Stipulated Penalties.

a. If any amount due under Paragraph 7 (Payment) is not paid by the required date, Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 10, \$200 per Day for each Day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) Days after the date of the demand for payment of the penalties by the Coast Guard. All payments to the Coast Guard under this Paragraph shall be identified as "stipulated penalties" and shall be made by FedWire EFT to DOJ for disbursement to the OPA Fund (Federal Project Number P02079) in accordance with written instructions to be provided to Defendants, following entry of the Consent Decree, by the Office of the United States Attorney for the Western District of Pennsylvania. The payment[s] shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-09646, and shall specify that the payment is to be deposited into the OPA Fund pursuant to 26 U.S.C. § 9509(b).

c. At the time of payment of any stipulated penalties, Defendants shall send notice to DOJ and the Coast Guard that payment has been made to the United States in accordance with Section XI (Notices and Submissions). Such notice shall reference the civil action number, Federal Project Number P02079, and DOJ Case Number 90-5-1-1-09646.

d. Penalties shall accrue as provided in this Paragraph regardless of whether the Coast Guard has notified Defendants of the violation or made a demand for payment, but

need only be paid upon demand. All penalties shall begin to accrue on the Day after payment is due or a violation of this Consent Decree occurs, and shall continue to accrue through the date of payment or the final Day of correction of the noncompliance. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. Defendants shall be liable for attorneys' fees and costs incurred by the United States in collecting any portion of the amount due under Paragraph 7 or any stipulated penalty due but not paid under Paragraph 11.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of a Defendant's failure to comply with the requirements of this Consent Decree.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Defendants from payment as required by Paragraph 7 or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF AND RESERVATION OF RIGHTS

15. Except as specifically provided in Paragraphs 16, 17 and 18, Plaintiff covenants not to sue Defendants pursuant to Section 1002 of OPA, 33 U.S.C. § 2702, for recovery of removal costs incurred and/or to be incurred in response to discharges of oil and/or the substantial threat of discharges of oil at the Facility. This covenant not to sue shall take effect upon receipt by the United States of the entire payment required by Paragraph 7 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by

Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section V (Payment of Removal Costs) and any interest or stipulated penalties due under Section VI (Failure to Comply with the Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to the United States by Defendants and the certification made by Defendants in Paragraph 28. This covenant not to sue extends only to Defendants and does not extend to any other person or entity.

16. Notwithstanding any other provision of this Consent Decree, the covenant not to sue set forth in Paragraph 15 shall not apply to any other claims, causes of action, or matters not expressly included in Paragraph 15.

17. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or commence a new action seeking relief other than as provided in this Consent Decree, if:

a. the Financial Information provided by Defendants, or the financial, insurance, or indemnity certification made by Defendants in Paragraph 28, is false or, in any material respect, inaccurate; or

b. the United States incurs future removal costs arising from a discharge and/or a substantial threat of discharge of oil from the Facility that occurs subsequent to the lodging of this Consent Decree, that is unrelated to the United States' ongoing removal activities and response actions at the Facility, and for which Defendants are responsible parties under OPA.

18. Notwithstanding any other provision of this Consent Decree, the covenant not to sue set forth in Paragraph 15 shall not apply to claims or causes of action based on a Defendant's failure to satisfy any requirement of this Consent Decree.

19. Nothing in this Consent Decree shall be construed to release Defendants or their agents, successors, or assigns from obligations to comply with any applicable federal, state, or local law, regulation, or permit. Nothing contained herein shall be construed to prevent or limit the United States' rights to obtain costs, penalties or injunctive relief under OPA or other federal statutes or regulations for other alleged violations.

VIII. COVENANTS NOT TO SUE BY DEFENDANTS

20. Defendants and all of Defendants' successors, assigns, subrogees, subrogors, and insurers hereby covenant not to sue, and agree not to assert any claims or causes of action against the United States under OPA or any other federal law or regulation or state law or regulation with respect to the discharge of oil or substantial threat of discharge of oil at the Facility, including without limitation, any direct or indirect claim for removal costs or damages under OPA or any other provision of law for events arising out of removal activities in connection with the alleged discharges at the Facility.

21. Except as provided in Paragraph 22 and Paragraph 25, Defendants' covenants not to sue shall not apply in the event that the United States brings a cause of action pursuant to the reservation set forth in Paragraph 17, but only to the extent that Defendants' claims arise from the same removal costs or damages that the United States is seeking pursuant to the reservation.

22. Defendants agree not to assert any claims for contribution, including all claims under Section 1009 of OPA, 33 U.S.C. § 2709, for removal costs incurred with respect to the discharge of oil or substantial threat of discharge of oil at the Facility. This waiver shall not

apply with respect to any defense, claim, or cause of action that a Defendant may have against any person who asserts a claim or cause of action relating to the Facility against that Defendant, but only to the extent that the Defendant's defense, claim, or cause of action arises from the same removal costs or damages sought by that person.

IX. EFFECT OF SETTLEMENT

23. Except as provided in Paragraph 22, this Consent Decree does not limit or affect the rights of Plaintiff or Defendants against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants.

24. Except as provided in Paragraph 22, this Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of removal costs, or other relief relating to the Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. RETENTION OF RECORDS

26. Until five years after the entry of this Consent Decree, Defendants shall preserve and retain all non-identical copies of records, reports, or information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") now in their possession or control, or that come into its possession or control, that relate in any

manner to removal actions taken at the Facility or the liability of any person under OPA with respect to the Facility, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the document retention period in the preceding Paragraph, Defendants shall notify the United States at least ninety (90) Days prior to the destruction of any such Records, and, upon request by the United States, Defendants shall deliver any such Records to the United States. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide Plaintiff with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to Plaintiff in redacted form to mask the privileged information only. Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

28. Defendants certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (other than identical copies) relating to the potential liability of the Defendants regarding the Facility since the notification of potential liability by the United States and that they have fully complied with all of the United States' requests for information

regarding the Facility and the Estate's and Barry Associates' financial circumstances, including but not limited to insurance and indemnity information;

b. submitted to the United States Financial Information that fairly, accurately, and materially sets forth the Estate's financial circumstances, including those of Barry Associates, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Defendants execute this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Facility, and submitted to the United States such insurance policies, indemnity agreements, and information.

XI. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Coast Guard, DOJ, and Defendants, respectively.

As to the Coast Guard:

Stephen C. Ewart
National Pollution Funds Center
U.S. Coast Guard Stop 7100
4200 Wilson Blvd., Ste. 1000
Arlington, VA 20598-7100

Chief, Office of Claims and Litigation (CG-0945)
U.S. Coast Guard Headquarters
2703 Martin Luther King Jr. Ave. S.E.

Washington, D.C. 20020

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-09646

As to Defendants:

Tim E. Herzog
276 Dudala Way
Loudon, TN 37774

Wesleah D. Blair
16 Summer Street
Bradford, PA 16701

with a copy to:

Matthew L. Wolford, Esq.
Wolford Law
638 West 6th Street
Erie, PA 16507

Russell S. Warner, Esq.
MacDonald, Illig, Jones, & Britton LLP
100 State Street, Suite 700
Erie, PA 16507

30. Notices required to be sent to the United States under this Consent Decree shall be sent to the Coast Guard and DOJ.

XII. INTEGRATION/APPENDICES

31. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement

embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” is the list of the financial documents that Defendants submitted to the United States; “Appendix B” is a map showing the general location of the Facility.

XIII. MODIFICATION

The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate.

33. Defendants consent to the entry of this Consent Decree without further notice. Defendants agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. SIGNATORIES/SERVICE

35. Each undersigned representative of Defendants and the United States certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. Defendants shall notify the DOJ and the Coast Guard of any change in the identity or address of the Defendants, their agent for service, or their counsel.

XVI. FINAL JUDGMENT

37. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2015.

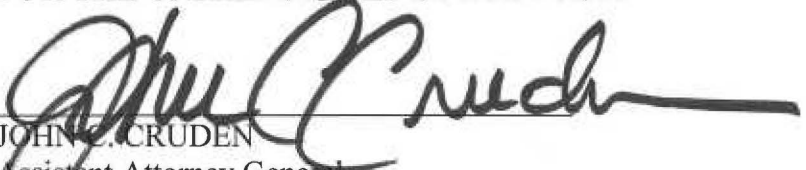
United States District Judge
Western District of Pennsylvania

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Estate of Richard B. Herzog, Deceased, through Tim E. Herzog and Wesleah D. Blair in their Capacity as Co-Executors of the Estate of Richard B. Herzog, Deceased.*

FOR THE UNITED STATES OF AMERICA:

7/2/2015

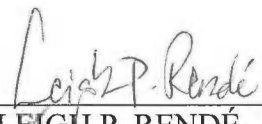
Date



JOHN E. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

5/1/2015

Date



LEIGH P. RENDÉ
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-1461
E-mail: leigh.rende@usdoj.gov
(PA ID No. 203452)

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FOR THE UNITED STATES OF AMERICA:

DAVID J. HICKTON
United States Attorney
Western District of Pennsylvania

7/2/2015

Date

s/Paul E. Skirtich

PAUL E. SKIRTICH
Assistant United States Attorney
Western District of Pennsylvania
U.S. Post Office & Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Telephone: (412) 894-7418
E-mail: paul.skirtich@usdoj.gov
(PA ID No. 30440)

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FOR DEFENDANTS THE ESTATE OF RICHARD B. HERZOG, DECEASED, and TIM E. HERZOG and WESLEAH D. BLAIR, in their capacity as CO-EXECUTORS OF THE ESTATE OF RICHARD B. HERZOG, DECEASED:

4/17/15
Date


Tim E. Herzog
Tim E. Herzog
Co-Executor
276 Dudala Way
Loudon, TN 37774

4/21/15
Date


Wesleah D. Blair
Wesleah D. Blair
Co-Executor
16 Summer Street
Bradford, PA 16701

Agents Authorized to Accept Service on Behalf of the Above-signed parties for the Estate of Richard B. Herzog, Deceased, and Tim E. Herzog and Wesleah D. Blair, in their capacity as co-executors of the Estate of Richard B. Herzog, Deceased:

3-6-15
Date


Matthew L. Wolford, Esq.
Wolford Law
638 West 6th Street
Erie, PA 16507
Telephone: (814) 459-9600
E-mail: mwolford@wolfordlaw.com

3/6/2015
Date


Russell S. Warner, Esq.
MacDonald, Illig, Jones, & Britton LLP
100 State Street, Suite 700
Erie, PA 16507
Telephone: (814) 870-7759
E-mail: rwarners@mijb.com

APPENDIX A

Financial Documents Submitted to the United States by Defendants

1. Inventory of the Estate of Richard B. Herzog, filed with the McKean County Register of Wills on January 21, 2004
2. Pennsylvania Inheritance Tax Return for the Estate of Richard B. Herzog, filed with the McKean County Register of Wills on January 21, 2004
3. Letter dated February 5, 2014 from Russell Warner, Esq., on behalf of the Estate of Richard B. Herzog and Barry Associates, Inc. to the United States Department of Justice
4. Estate Tax Closing Document dated November 29, 2006 from Aileen F. Condon, the Chief of the Estate and Gift Tax Program of the Internal Revenue Service to Richard B. Herzog Estate (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
5. "Statement of Adjustment to Your Account", as of January 15, 2007, from Department of the Treasury, Internal Revenue Service to the Richard B. Herzog Estate (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
6. Monthly Wachovia Securities Account Statements for the period from July 2008 through December 2013 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
7. PNC Bank Performance Select Statement for the "Estate of Richard B. Herzog DECD" for the period November 30, 2013 to December 31, 2013 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
8. Handwritten Check Ledgers from January 2002 through June 2011(provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
9. Handwritten Check Register for the Estate of Richard B. Herzog for the year 2011 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
10. Handwritten Check Register for the Estate of Richard B. Herzog for the year 2012 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
11. Handwritten Check Register for the Estate of Richard B. Herzog for the year 2013 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
12. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 12, 2001 – November 30, 2002 (provided to the United States in person by counsel for the Estate on April 4, 2013)
13. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2002 – November 30, 2003 (provided to the United States in person by counsel for the Estate on April 4, 2013)
14. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2003 – November 30, 2004 (provided to the United States in person by counsel for the Estate on April 4, 2013)
15. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2004 – November 30, 2005 (provided to the United States in person by counsel for the Estate on April 4, 2013)

16. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2005 – November 30, 2006 (provided to the United States in person by counsel for the Estate on April 4, 2013)
17. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2006 – November 30, 2007 (provided to the United States in person by counsel for the Estate on April 4, 2013)
18. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2007 – November 30, 2008 (provided to the United States in person by counsel for the Estate on April 4, 2013)
19. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2008 – November 30, 2009 (provided to the United States in person by counsel for the Estate on April 4, 2013)
20. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2009 – November 30, 2010 (provided to the United States in person by counsel for the Estate on April 4, 2013)
21. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2010 – November 30, 2011 (provided to the United States in person by counsel for the Estate on April 4, 2013)
22. U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2011 – November 30, 2012 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
23. Northwestern Mutual “Northwestern Access Fund Statement” for Barry Associates, Inc. dated December 31, 2013 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
24. PNC Bank Total Banking Statement for “Barry Associates, Inc.” for the period November 30, 2013 to December 31, 2013 (provided to the United States by letter from Russell Warner, Esq. dated February 5, 2014)
25. Letter dated March 21, 2014 from Russell Warner, Esq., on behalf of the Estate of Richard B. Herzog and Barry Associates, Inc., to the United States Department of Justice, and its attachments
26. Letter dated April 9, 2014 from Russell Warner, Esq., on behalf of the Estate of Richard B. Herzog and Barry Associates, Inc., to the United States Department of Justice, and its attachments – (1) the Estate’s tax forms for royalty payments (identified in the Estate’s letter as “1099s”) for the following: Lion Oil Trading & Transport (2008, 2011, 2013), Countrymark Cooperative (2008, 2011, 2013), Chaparral Energy (2008-2011), Extex Operating Co. (2008-2013), Sunoco Partners Marketing & Terminals (2008-2010, 2013), Scissortail Energy (2008-2010, 2012-2013), and Dorado Oil Co. (2009-2013), American Refining Group “Greer” interest (2008-2013), PetroNorth Partners Group (2008-2013), and Hamilton Exploration Group (2008-2013); and (2) the following insurance policies for the Estate of Richard B. Herzog: Erie Insurance Policy No. Q45 2550667 E, Greenwich Insurance Company Policy No. GL 37-000326-13, and American Safety Casualty Insurance Company Policy No. AOG2900037.
27. Letter dated July 8, 2014 and its enclosures from Russell Warner, Esq. on behalf of the Estate of Richard B. Herzog and Barry Associates, Inc. to the United States Department of Justice

28. May 27, 2014 Letter from Estate Accountant re: IRS audit (provided to the United States by letter from Russell Warner, Esq., dated July 8, 2014)
29. July 9, 2013 EPA Inspection Notice of Red Rock (provided to the United States by letter from Russell Warner, Esq., dated July 8, 2014)
30. June 20, 2014 Letter from M. Hollenbeck, Esq. to Russell Warner, Esq. regarding the plugging of Red Rock (provided to the United States by letter from Russell Warner, Esq., dated July 8, 2014)
31. Letter from McCracken Oil & Gas regarding plugging Red Rock wells (provided to the United States by letter from Russell Warner, Esq., dated July 8, 2014)
32. June 19, 2014 Letter from M. Hollenbeck, Esq. to McCracken Oil & Gas approving plugging of Red Rock wells (provided to the United States by letter from Russell Warner, Esq., dated July 8, 2014)
33. Letter dated January 27, 2015 from Russell Warner, Esq., on behalf of the Estate of Richard B. Herzog and Barry Associates, Inc., to the United States Department of Justice, and its attachments – (1) Summary of finances titled “Herzog Estate Updated Cash/Liquid Assets Values”, and (2) U.S. Income Tax Return for the Estate of Richard B. Herzog (Form 1041) for fiscal year December 1, 2012 – November 30, 2013.

APPENDIX B

