IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

SPYRIDON C. CONTOGOURIS and STEPHEN A. BALDWIN	:	CIVIL ACTION
	:	NUMBER 10-4609
WESTPAC RESOURCES, LLC, PATRICK N. SMITH, KEVIN M. COSTNER and RABOBANK, N.A.	:	SECTION
	:	JUDGE
	:	MAG. JUDGE

COMPLAINT

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA:

The Complaint of Spyridon C. Contogouris and Stephen A. Baldwin with respect respresents:

I.

This is an action for misrepresentation in connection with the sale of securities brought pursuant to 15 U.S.C. §78j, 17 C.F.R. §17.240.10b-5. Plaintiffs also seek recission of and/or damages in connection with a certain sale of membership interests in Ocean Therapy Solutions, LLC, a Louisiana limited liability company, pursuant to Articles 1949 and 1953 of the Louisiana Civil Code.

PARTIES AND JURISDICTIONAL ALLEGATIONS

II.

Plaintiff Spyridon C. Contogouris ("Contogouris") is a person of the full age of majority and a citizen of this state domiciled in Orleans Parish, Louisiana.

III.

Plaintiff Stephen A. Baldwin ("Baldwin") is a person of the full age of majority who is a citizen and domiciliary of the State of New York.

IV.

Made defendant herein is WestPac Resources, LLC ("WestPac"), which upon information and belief is a Delaware limited liability company which has its principal place of business in the State of California.

V.

Also made defendant herein is Patrick N. Smith ("Smith"), a person of the full age of majority, who, upon information and belief, is a citizen and domiciliary of the State of California.

VI.

Also made defendant herein is Kevin M. Costner ("Costner"), a person of the full age of majority, who, upon information and belief, is a citizen and domiciliary of the State of California.

VII.

Also made defendant is Rabobank, N.A., a national banking association believed to be organized and existing under the laws of a state other than Louisiana which at all times pertinent had its principal place of business in the State of California. Upon information and belief, Rabobank, N.A. had minimum contacts with the State of Louisiana and is subject to the personal jurisdiction of this Court.

VIII.

At all times pertinent herein, WestPac was owned, managed, dominated and controlled by defendants Smith and/or Costner.

IX.

This Court has jurisdiction as this action arises under the laws of the United States of America. 28 U.S.C. §1331. As there is complete diversity among plaintiffs and defendants, jurisdiction also arises under 28 U.S.C. §1332. The matter in controversy exceeds $75,000.00 exclusive of interest and costs. Plaintiffs bring state law claims under this Court's diversity and/or pendant and/or ancillary jurisdiction.

X.

Venue is proper in this district pursuant to 28 U.S.C. §1391.

FACTUAL ALLEGATIONS

XI.

In the early 1990s, defendant Costner financed and oversaw the development of an oil and water separation technology under the auspices of a corporation owned and managed by him, CINC, Inc., an acronym for "Costner in Nevada Corporation."

XII.

In the early 2000s, Contogouris was approached by persons representing Costner to market the technology and the separation device invented at Costner's direction to various customers. Contogouris entered into an agreement with CINC under which he would receive a commission on sales of units made to customers located by Contogouris.

XIII.

Contogouris and Costner remained in contact thereafter. In 2001, Contogouris escorted Costner on a business trip to Greece to attempt to sell the technology to shipping interests. Immediately prior to the events described herein, Contogouris and his family had a meal with Costner on April 17, 2010 in Biloxi, Mississippi where Costner was appearing with his band known as "Modern West."

XIV.

Costner's attempts to market the CINC oil separation system proved unsuccessful, and, upon information and belief, he sold all of his rights to the technology and his ownership in CINC to Bret Shelton, an individual domiciled in Nevada, who continued to operate the business as C.I.N.C. Industries.

XV.

On April 20, 2010, a drilling rig under charter to BP, PLC ("BP") known as the "Deepwater Horizon" exploded, caught fire, and ultimately sank.

XVI.

Although initial media reports indicated no oil was leaking from the well being drilled by the Deepwater Horizon, Contogouris learned within days from industry sources that massive amounts of oil were spewing from the well site.

XVII.

In late April, 2010, Contogouris attempted to contact Costner to discuss the possible marketing of the technology to BP for its use in cleaning up what was to become the largest oil spill in United States history. Costner could not be reached as he was filming a movie in Canada. Contogouris spoke with a friend of Costner's, Tim Hochter, who advised Contogouris that Costner had sold his interest in the technology to CINC and that Hochter was reluctant to raise the

issue with Costner because of the amounts of money Costner had lost in the venture to perfect and manufacture the oil separation system.

XVIII.

Contogouris therefore contacted Bret Shelton and C.I.N.C. Industries to discuss obtaining an exclusive agreement to acquire the units for use in the Gulf of Mexico region. Contogouris also attempted to approach BP about the use of the technology by traveling to BP's Unified Command Center in Robert, Louisiana, but was unable to gain access to decision makers with BP.

XIX.

Due to his inability to gain access to BP to market the system, Contogouris determined that he would need to bring in new partners who could lend assistance in gaining access to BP and to manage the company.

XX.

Stephen Baldwin, an actor, and Contogouris have been friends for many years. On April 29 or April 30, 2010, Baldwin advised Contogouris that he would be coming to New Orleans to meet with a local attorney, John Houghtaling, who was discussing making a motion picture in which Baldwin would be the star. Baldwin asked Contogouris to attend a luncheon with Houghtaling to discuss the movie project. During that meeting, Contogouris expressed the view that the

proposed movie would likely be unprofitable, and those interested in making a film should make a documentary film based on the BP oil spill. Houghtaling immediately expressed interest in this idea.

XXI.

In the days that followed, Contogouris met with Houghtaling and mentioned to him his efforts to market the CINC technology to BP. Houghtaling indicated he could be of assistance in gaining access to BP and asked to be made a partner in the venture. He also indicated that he knew another individual, Frank Levy, a resident of Metairie, Louisiana, who could lend assistance in the venture due to his knowledge of and experience in the offshore oil industry. Levy was also an investor/backer in the proposed movie project. During this same time, Contogouris was successful in making contact with Costner, who indicated he had an interest in participating in the venture.

XXII.

On May 7, 2010, a Joint Venture agreement was confected between the following individuals and legal entities to market the CINC technology to BP: Contogouris, Baldwin, Houghtaling, L&L Properties X, L.L.C., which was an entity formed by Frank Levy, Franco Valobra and WestPac.

XXIII.

On May 10, 2010, the joint venturers decided to reorganize the legal entity as a limited liability company, and on that date, Contogouris caused Ocean Therapy Solutions, LLC ("OTS"), a Louisiana limited liability company, to be organized with the Louisiana Secretary of State. Contogouris was at that point, and through June 19, 2010, the first founding member, managing member, and largest shareholder of OTS.

XXIV.

On May 13, 2010, the negotiations with CINC were successful and OTS entered into a marketing agreement with CINC under the terms of which it had the exclusive rights to market the oil separation system in the Gulf of Mexico.

XXV.

On that same date, an Operating Agreement was executed that governed the management of OTS. The original operating agreement reflected the following ownership interests in OTS: Contogouris, 28%, Baldwin, 10%, Valobra, 5%, L&L Properties X, 15.5%, John W. Houghtaling, 21.5%, and WestPac, 20%. Levy was installed as the CEO of OTS. The prior joint venture agreement was cancelled and declared null and void.

XXVI.

By this point in time, Costner had introduced the members of OTS to Smith, who Costner identified as his business manager and business partner in WestPac.

XXVII.

BP agreed to watch the separator operate on May 13, 2010, and agreed to test the unit for possible use in cleaning up the Deepwater Horizon spill.

XXVIII.

A difference in business philosophy developed between the members of OTS. Contogouris and Levy wanted the company to use a business model that would insure recurring business and a possibility of marketing the device to other major oil companies. They proposed that the units be rented to BP at a fair price in a long-term arrangement. Houghtaling and Smith favored a "quick kill" approach involving a one-time sale of the equipment to BP at a higher price.

XXIX.

This disagreement, coupled with a fall out between Houghtaling and Levy in connection with the failed movie project which resulted in the filing of a suit by Levy against Houghtaling in the 24th Judicial District Court for the Parish of Jefferson in late May, 2010, prompted Levy to express his desire to withdraw from OTS. Without the prior knowledge of Contogouris and Baldwin, Levy and

Houghtaling entered into an agreement whereby Levy would convey his membership interest in OTS to Houghtaling in exchange for a release from Houghtaling of Levy's obligations in connection with the movie project and an indemnity from OTS for Levy's involvement in the oil spill clean up venture. Houghtaling agreed, and without prior knowledge of plaintiffs or OTS, acquired Levy's 15.5% interest, part of the consideration for which was an indemnity given not by Houghtaling, but by OTS. Houghtaling replaced Levy as CEO of OTS.

XXX.

Contogouris had been uncomfortable with Smith's involvement in OTS, and therefore explored options for buying out Smith and Costner or alternatively withdrawing from OTS along with Baldwin by selling his interest to Smith, Costner and/or Westpac. Discussions ensued with WestPac initially, and then Smith, proposing to buy Contogouris' interest for $1.4 million, and to buy Baldwin's interest for $500,000.00. No agreement was executed in connection with these initial discussions.

XXXI.

By early June, 2010, BP had not responded to OTS' overture even though it had previously issued a non-binding letter of intent to OTS to acquire a number of units. The members of OTS therefore pressed forward with promoting the

technology through media outlets. Arrangements were made by Costner, Smith, and Houghtaling for Costner to testify before Congress on June 9, 2010 to discuss the technology and his efforts to have BP employ it to combat the oil spill.

XXXII.

BP agreed to meet with representatives of OTS on June 8, 2010. Contogouris and Baldwin were purposefully excluded from the BP meeting of this date by Costner, Smith and Houghtaling. Costner, Smith and Houghtaling met with Doug Suttles of BP on June 8, 2010 at Houghtaling's residence on Common Street in New Orleans. Upon information and belief, Louisiana Attorney General James David ("Buddy") Caldwell, Sr. arranged for and attended the meeting at the request of Houghtaling. During that meeting, Suttles committed BP to order units of the separator from OTS, and agreed to make an $18 million deposit against the total purchase price upon issuance of the purchase order. Contogouris and Baldwin had no knowledge of the $18 million deposit at the time.

XXXIII.

Costner testified before Congress on June 9, 2010. In his testimony, Costner indicated that BP had placed an order for a number of units. He also testified that he was a main principal in OTS, while the company records indicate that he held no ownership interest in his name. Houghtaling also made public

statements, including one on WWL Radio, indicating that BP had agreed during the June 8, 2010 meeting to purchase an initial order of 32 units.

XXXIV.

Contrary to these public statements, Smith told Contogouris that BP had in fact not placed an order, and these statements were being made by Costner and Houghtaling to pressure BP into making an order. Contogouris relayed this information to Baldwin and expressed that this strategy of Costner, Smith and Houghtaling was deceptive and inappropriate when dealing with an important customer such as BP. Both Contogouris and Baldwin were operating under the impression that BP had not made a binding purchase commitment for any separator units from OTS. Defendants, despite having a fiduciary obligation to do so, did not disclose to plaintiffs that BP agreed to an $18 million advance deposit, and did not disclose that as of that time, defendants had already agreed to make selective dividends or distributions from OTS only to themselves consisting of most of the deposit to be made by BP. This selective distribution was in violation of the Operating Agreement of OTS . Defendant Smith affirmatively misrepresented the true state of affairs to plaintiffs, and by omission of material facts, failed to inform plaintiffs of the agreement reached with BP.

Baldwin and Contogouris relied on these statements and omissions to their detriment.

XXXV.

On June 10, 2010 Contogouris flew to Los Angeles to enter into a binding sale of his membership interest to Smith and/or WestPac for $1.4 million. The original proposed agreement called for WestPac/Smith to pay the purchase price in full upon execution of the agreement. Smith and his attorney Dan Grigsby indicated to Contogouris on June 10 or the morning of June 11 that due to Smith's pending divorce settlement, he could not raise the full purchase price by June 11, and would make an initial down payment of 10% on June 11, to be followed by a final payment on June 18 of the balance, at which time the membership interests would be transferred. Contogouris and Baldwin later learned that this too was a deception and in fact Smith and Costner intended to use OTS' monies from the BP deposit to purchase their personal interest in OTS, all to the detriment of the plaintiffs. This was part of a scheme to deprive plaintiffs of their pro-rata rights to the distribution of these monies prior to the sale of their interests.

XXXVI.

On June 11, both Baldwin and Contogouris entered into that certain "Transfer, Withdrawal, Release and Indemnity Agreement" under the terms of

which Contogouris would convey his 28% interest in OTS to Smith or WestPac for $1.4 million, and Baldwin would transfer his 10% interest to Smith or WestPac for $500,000.00. On June 11, 2010, wire transfers in the amount of $140,000 and $50,000 respectively were sent from WestPac's RaboBank, N.A. account number 122238420 to Contogouris and Baldwin's bank accounts, representing the down payment. The "Transfer, Withdrawal, Release and Indemnity"agreement was not to become effective until paid in full by Patrick Smith and/or Westpac in accordance with the agreement.

XXXVII.

Unbeknownst to both Baldwin and Contogouris at that time, BP issued a purchase order to OTS on June 12, 2010 for 32 units for a gross price in excess of $52 million. At this time, Baldwin and Contogouris were still shareholders of OTS as they had not been paid in full for their shares and were therefore entitled to their pro-rata share of any distribution to be made out of the BP advance deposit. The BP purchase order called for an initial deposit of $18 million to be made to OTS pending delivery. On June 14, 2010, Costner, Smith and WestPac clandestinely, secretly and wrongfully caused an unauthorized bank account in the name of OTS to be opened at Rabobank, N.A. in California. Bryan Bates, who was represented by Smith to Contogouris to be the Chief Financial Officer and

bookkeeper of WestPac and Patrick Smith, participated in the opening and managing of this account. The opening of this account by OTS was not authorized by its members, which at that time included both Baldwin and Contogouris. Patrick Smith was not an authorized officer of OTS and had no authority to open such a bank account, which ultimately, upon information and belief, was used by Costner and Smith as their own personal piggy bank. Houghtaling, as CEO of OTS, confirmed that the account was not authorized in a letter sent by Houghtaling to Rabobank in July, 2010.

XXXVIII.

All without the knowledge of plaintiffs, after creation of this account, Costner, Smith, Bates and WestPac, or persons working at their direction, prepared a commercial invoice to BP calling for the $18 million deposit to be made to OTS by wire to the newly opened unauthorized Rabobank account in the name of OTS and not to the bank account of OTS authorized by Contogouris, the founding member, and Houghtaling, the authorized CEO.

XXXIX.

On June 15, BP's Doug Suttles announced publicly that an order for 32 units had been placed. BP wired the $18 million deposit to OTS's Rabobank account on

June 16, 2010. The financial terms of the order were not disclosed publicly by BP or by defendants.

XL.

On that same date, June 16, 2010, Smith e-mailed Contogouris that "he had the cash" and was prepared to close on the sale of the membership interests held by Baldwin and Contogouris.

XLI.

Although not discovered by Contogouris or Baldwin until mid-July, 2010, on the morning of June 18, 2010, Costner, Smith, Bates and/or WestPac, or persons operating at their direction, arranged for the unauthorized funds transfer from the unauthorized OTS' Rabobank account to WestPac's Rabobank account for the purpose and for the amounts Smith and WestPac needed in order to consummate the acquisition of the Baldwin and Countogouris membership interests. Upon information and belief, Costner, Smith, Bates and/or WestPac, engaged in the conversion of limited liability company funds for the acquisition of their personal interests in OTS and in effect disguised these transfers to illegally purchase plaintiffs' interest in OTS, all to the detriment of all minority members of OTS. Such use of OTS' funds was in violation of the Operating Agreement signed on May 13, 2010. Contogouris became aware of these illicit funds transfers when he

was shown in July, 2010 an OTS ledger for the unauthorized bank account produced by Smith and/or Bates to Chuck Jaundot, the chief financial officer of Houghtaling's law firm who was responsible for maintaining the financial records of OTS.

XLII.

On the evening of June 18, 2010, Contogouris and Baldwin signed the pro forma documents called for in the June 11, 2010 agreement to transfer their membership interests to Smith and/or WestPac. The balance of the purchase price to effect the transfer due to Contogouris and Baldwin was wired to them from WestPac's Rabobank account using the same monies converted from OTS out of the BP deposit.

XLIII.

In effect, Costner, Smith and/or WestPac had acquired Contogouris and Baldwin's interest in OTS using funds that belonged to OTS that were surreptitiously and improperly transferred from the unauthorized OTS Rabobank account to WestPac. This action effectively robbed plaintiffs of a distribution that otherwise would have been payable to plaintiffs. Contogouris and Baldwin were paid for their shares with monies that should have been paid to them as dividends and/or distributions from OTS.

XLIV.

Neither Contogouris nor Baldwin would have entered into the agreement made on June 11 to transfer their interest to Costner, Smith and/or WestPac had they known that: (1) BP had committed to purchase units and had agreed to make an $18 million advance deposit; (2) defendants had agreed to unjustly enrich themselves through selective dividends or distributions ; and (3) OTS's funds, being part of the BP advance deposit, would be used and disguised as defendants' personal funds to acquire their interest in the company. All of these facts were intentionally withheld from Contogouris and Baldwin by defendants.

XLV.

Contogouris and Baldwin did not learn of the date of the BP purchase order, the terms thereof, or the creation of and wire transfers to and from the unauthorized OTS Rabobank account and WestPac until July, 2010.

XLVI.

Prior to the sale of plaintiffs' units in OTS, defendants Costner and Smith agreed to and schemed to make millions of dollars in selective distributions to themselves out of the monies paid as an advance deposit by BP, monies in which plaintiffs were entitled to also receive by distributions but for the misrepresentations and omissions of material fact made by defendants.

FIRST CAUSE OF ACTION

XLVII.

Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j declares, in pertinent part:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange [. . .]
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

XLVIII.

The implementing regulation for this provision, which is commonly known at Rule 10b-5, was promulgated at 17 C.F.R. §24010b-5, and provides:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

XLIX.

The defendants collectively, either through misrepresentation or omission of disclosure of material facts, misled plaintiffs into selling their interests in OTS. These misrepresentations consisted of defendants failure to disclose to plaintiffs Suttles' commitment to place an order and making a multi-million advance deposit and statements and agreements under which either Smith and/or WestPac would pay for plaintiffs' interests in OTS, when in fact the funds used to acquire their interest were made using a portion of the advance deposit made by BP, which were assets of OTS. Clearly, plaintiffs would not have sold their interest in OTS for the prices received if they had known BP had placed a $52 million order with OTS and would not have elected not to participate in a distribution from the $18 million deposit at a time when they would have been due their pro-rata share of any such distribution. Thus Contogouris and Baldwin were denied a distribution that should have been made to them.

L.

Plaintiffs aver that this misrepresentation(s) and/or omission(s) were made knowingly by defendants, or with reckless disregard for the truth thereof, and

were made with the intent to deceive. Plaintiffs further allege that their reliance on these misrepresentation(s) and/or omission(s) was justifiable in that plaintiffs had no reason to know that they would be paid for their interest in OTS with funds belonging to OTS in which plaintiffs had an interest, and in that they had no reason to believe that Smith was untruthful when he told Contogouris there was no firm deal with BP on or prior to June 11 despite Costner and Houghtaling's public statements to the contrary. These actions and omissions were part of a plan by defendants to implement a selective distribution scheme and deny plaintiffs their pro-rata right to a distribution.

LI.

Neither Contogouris nor Baldwin exercised control over OTS under the terms of the Operating Agreement governing the operation of OTS. The Operating Agreement required a supermajority vote of 60% of the membership in order to take actions on behalf of the company. The membership interests held by plaintiffs in OTS constituted an "investment contract" and a security under federal law. 15 U.S.C. 78c(a)(10)

LII.

These misrepresentations were made by defendants through the use of instrumentalities of interstate commerce, such as interstate telephone lines,

facsimiles between states, and or e-mails sent interstate. Literally dozens of emails and facsimiles were exchanged between plaintiffs and defendants between June 10 and June 18, 2010 discussing the terms of the arrangement. Funds were wired between states using instrumentalities of interstate commerce as part of the scheme to defraud plaintiffs.

LIII.

Baldwin and Contogouris relied upon the statements made by defendants that Smith and/or WestPac would use their own funds to purchase plaintiff's interests in OTS, and relied upon representations made by Costner and Smith that no firm deal had been made with BP as of June 11, 2010. At all times, Costner and Smith knew full well that their misrepresentations and bad faith in failing to fully disclose the agreement reached with BP at the June 8, 2010 meeting would work to the detriment of plaintiffs.

LIV.

Plaintiffs have been damaged directly by the misrepresentations and omissions of defendants in that they sold their membership interests for a fraction of their actual value.

LV.

Defendants are therefore in violation of Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5, and are therefore liable to plaintiffs for their actual damages sustained.

LVI.

The sale of the separator units to BP generated an estimated profit to OTS of $38 million. As a 28% owner of OTS, Contogouris' share of the profit from the sale would have been approximately $10.64 million, and he only received $1.4 million for his interest due to the deception perpetrated by defendants. He has therefore been damaged in an amount which will be proven at trial hereof, but which is estimated to be $9.2 million. As a 10% owner of OTS, Baldwin's share of the profit from the sale would have been approximately $3.8 million, and he only received $500,000 for his interest in the company. Baldwin has therefore been damaged in an amount to be proven at trial hereof, but which is estimated to be $3.3 million.

LVII.

In the alternative, plaintiffs have been damaged to the extent that they as holders of membership units in OTS on the date of the BP advance deposit they

would have been entitled to share in distributions made to other members of OTS out of the advance deposit made by BP.

SECOND CAUSE OF ACTION

LVIII.

Article 1949 of the Louisiana Civil Code declares that error vitiates consent when it concerns a cause without which the obligation would not have been incurred and that cause was known or should have been known to the other party.

LIX.

Plaintiffs were operating under the mistaken belief that their membership interest in OTS would be purchased with funds held by Smith and/or WestPac rather than with funds properly belonging to OTS. Receiving funds other than those belonging to OTS, and funds which in the ordinary course of business would have been distributed to plaintiffs, for their interest was a material cause of plaintiffs entering into the transaction to sell their interests in OTS. Defendants knew, or should have known, that plaintiffs never would have sold their interest in OTS had they known that OTS' funds which otherwise would have been distributed to plaintiffs would be used to purchase their interests in OTS.

Plaintiffs were also unaware that OTS had a firm and binding commitment from BP to purchase 32 units prior to the sale of their membership interests.

LX.

These errors vitiated plaintiffs' consent to sell their interests in OTS to WestPac and/or Smith. Plaintiffs are entitled to a recission of the transfer of their ownership interest in OTS together with damages equal to the amount of the distribution that would have been paid to plaintiffs had they remained members of OTS owning 28% and 10% respectively from June 18, 2010 to present, or such other reasonable compensation as may be due plaintiffs.

THIRD CAUSE OF ACTION

LXI.

Article 1948 of the Louisiana Civil Code declares that fraud is one of the bases for vitiating consent.

LXII.

Article 1953 of the Louisiana Civil Code declares that fraud may result from either misrepresentation or from silence.

LXIII.

The actions of defendants, in wiring funds that originated from the account of OTS as consideration for acquiring plaintiffs' 38% interest in OTS, constituted

fraud. If those funds were transferred from OTS to Smith or WestPac as a distribution, then plaintiffs would also have been entitled to a distribution in the amount of $3.8 million. At no time did defendants represent that the funds used to acquire plaintiffs' interest in OTS would be anything other than funds belonging to Pat Smith, WestPac or from third party funds secured by a lender who did not receive security in property not then belonging to defendants. That is precisely what occurred, all constituting fraud.

LXIV.

Alternatively, to the extent defendants knew they had a firm commitment from BP to purchase separators from OTS, and told plaintiffs that they did not, such omission of a material fact constituted fraud.

LXV.

By reasons of defendants' fraud, plaintiffs are entitled to recission of the sale, and further entitled to receive all dividends or distributions that would have been made to them as 38% owners of OTS from June 11, 2010 to the present, or such other reasonable compensation as may be due them.

FOURTH CAUSE OF ACTION

LXVI.

Plaintiffs aver upon information and belief that the policies and procedures of Rabobank, N.A. require that for a limited liability company to open a checking account, the limited liability company must submit signatures from all members authorizing the creation of the account, a copy of the articles of organization, and a copy of the LLC operating agreement.

LXVII.

Plaintiffs aver that Rabobank improperly and negligently opened the account from which the wires were sent to acquire plaintiffs' interest in OTS in that a majority of the members did not authorize creation of the account and in that Rabobank did not follow its own policies and procedures in permitting this account to be opened.

LXVIII.

Plaintiffs aver that the negligence of Rabobank in opening the account facilitated the fraud perpetrated by one or more of the other defendants, in that it permitted the funds of OTS to be converted to private use to acquire plaintiffs' membership interests in OTS. Plaintiffs further aver that the wire transfers sent from the OTS account to acquire their membership interests were not properly

authorized by the LLC, and Rabobank negligently participated in the conversion of OTS funds to private use by one or more of the other defendants.

LXIX.

As a result of aforesaid negligence on the part of Rabobank, N.A., and its unauthorized transfers from the OTS account, plaintiffs have been damaged in an amount equal to what they would have received from their ownership in OTS but for the negligent and unauthorized use of OTS funds facilitated by the negligence of defendant Rabobank, N.A.

LXX.

Plaintiffs reserve the right to amend this cause of action to include any other unauthorized transfers from the Rabobank account that are uncovered during the course of discovery in this action.

WHEREFORE, plaintiffs' pray:

(1) That process in due form of law may issue, citing defendants to appear and answer within the delays provided by law;

(2) After due proceeding are had, that there be judgment in plaintiffs' favor, and against defendants, either individually or *in solido*, awarding plaintiffs such damages and relief that may be equitable in the premises, including but not limited to the actual reasonable value

of their interest in OTS, or recission of the sale of their interests in OTS together with payment of such distributions or dividends from OTS as would have been made to them from June 11, 2010 to the present; and

(3) With respect to defendant Rabobank, N.A., awarding plaintiffs such damages as may have been caused by their negligence or unauthorized transfer of OTS funds; and

(4) For all other and further relief, including interest, costs, and attorneys' fees, that plaintiffs may be entitled to receive.

Respectfully submitted this 22nd day of December, 2010.

WAITS, EMMETT & POPP

s/Randolph J. Waits

RANDOLPH J. WAITS, T.A. (La. 13157)
JOHN F. EMMETT (La. 1861)
MATTHEW F. POPP (La. 24608)
1515 Poydras Street, Suite 1950
New Orleans, Louisiana 70112
Telephone: (504) 581-1301
Telecopier: (504) 585-1796

KING, KREBS & JURGENS, PLLC

s/Timothy S. Madden
HENRY A. KING (La. 7393)
TIMOTHY S. MADDEN (La. 21733)
MONICA J. MANZELLA (La. 29965)
4500 Place St. Charles
201 St.Charles Avenue
New Orleans, Louisiana 70170
Telephone: (504) 582-3800
Telecopier: (504) 582-1233
Attorneys for Spyridon C. Contogouris and
Stephen A. Baldwin

PLEASE SERVE:

WestPac Resources, LLC
Through the Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

To be forwarded to:

WestPac Resources, LLC
629 State Street, Suite 222
Santa Barbara, CA 93101

and to

The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Patrick N. Smith
629 State Street, Suite 222
Santa Barbara, CA 93101

Kevin Costner

Rabobank, N.A.
Through the Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

To be forwarded to:

1448 Main Street
El Centro, California 92243