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CAUSE NO. 2015-46550

ASCENT RESOURCES – UTICA, LLC (F/K/A AMERICAN ENERGY – UTICA, LLC); ASCENT RESOURCES, LLC (F/K/A AMERICAN ENERGY APPALACHIA HOLDINGS, LLC); ASCENT RESOURCES UTICA HOLDINGS, LLC (F/K/A AMERICAN ENERGY OHIO HOLDINGS, LLC); THE ENERGY & MINERALS GROUP FUND III, LP; EMG FUND III OFFSHORE HOLDINGS, LP; FR AEU HOLDINGS, LLC and FR AE MARCELLUS HOLDINGS, LLC	§	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS
v.	§	165th JUDICIAL DISTRICT
DUANE MORRIS, LLP	§	**JURY TRIAL DEMANDED**

PLAINTIFFS' SECOND AMENDED PETITION

Plaintiffs Ascent Resources – Utica, LLC (f/k/a American Energy - Utica, LLC), Ascent Resources, LLC (f/k/a American Energy Appalachia Holdings, LLC), Ascent Resources Utica Holdings, LLC (f/k/a American Energy Ohio Holdings, LLC), The Energy & Minerals Group Fund III, LP, EMG Fund III Offshore Holdings, LP, FR AEU Holdings, LLC and FR AE Marcellus Holdings, LLC file this Second Amended Petition complaining of Defendants Duane Morris, LLP and Thomas Blalock and, in support, would respectfully show the following:

I. DISCOVERY LEVEL

Plaintiffs assert that a Level 3 Discovery Control Plan should govern this case.

II. PARTIES

The following plaintiffs are referred to herein as the "**Ascent Plaintiffs**":

Plaintiff Ascent Resources – Utica, LLC (f/k/a American Energy - Utica, LLC)("**AEU**") is a limited liability company, organized in the State of Oklahoma and with its principal place of business in the State of Oklahoma.

Plaintiff Ascent Resources, LLC (f/k/a American Energy Appalachia Holdings, LLC)("**AEAH**") is a limited liability company, organized in the State of Delaware and with its principal place of business in the State of Oklahoma.

Plaintiff Ascent Resources Utica Holdings, LLC (f/k/a American Energy Ohio Holdings, LLC)("**AEOH**") is a limited liability company, organized in the State of Delaware and with its principal place of business in the State of Oklahoma.

The following plaintiffs are referred to herein as the "**Investor Plaintiffs**":

Plaintiff The Energy & Minerals Group Fund III, LP is a limited partnership, organized in the State of Delaware and with its principal place of business in the State of Texas.

Plaintiff EMG Fund III Offshore Holdings, LP is a limited partnership, organized in the State of Delaware and with its principal place of business in the State of Texas.

Plaintiff FR AEU Holdings, LLC is a limited liability company, organized in the State of Delaware and with its principal place of business in the State of Connecticut.

Plaintiff FR AE Marcellus Holdings, LLC is a limited liability company, organized in the State of Delaware and with its principal place of business in the State of Connecticut.

Defendant Duane Morris, LLP is a Delaware limited partnership, with its principal place of business in Philadelphia, Pennsylvania, but which maintains an office and has partners residing in Harris County, Texas. This defendant has answered and appeared through counsel and is being served through its counsel, pursuant to Tex. R Civ. P. 21.

Defendant Thomas Blalock is an individual and resident of the State of Oklahoma and who has done and continues to do extensive business in the State of Texas and Harris County, Texas. He may be served with process via certified mail to the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079, to be forwarded to Defendant Thomas Blalock at his place of business at 301 N.W. 63rd Street, Harvey Parkway Office Building, Sixth Floor, Oklahoma City, OK 73116 or wherever he may be found. For those wrongful acts that occurred prior to January 1, 2014, Blalock was acting in his individual capacity, as well as an agent and partner of the law firm, Commercial Law Group. For those wrongful acts committed after that date, Blalock was acting in his individual capacity, as well as agent and Chief Legal Officer of American Energy Partners.

III. JURISDICTION AND VENUE

This court has jurisdiction over this matter because the damages in question exceed the minimum jurisdiction of this court. Venue is proper in Harris County because all or a substantial amount of the events at issue took place in Harris County.

IV. BACKGROUND

A. Aubrey McClendon's Departure from Chesapeake

Aubrey McClendon was the founder and former CEO of Chesapeake Energy Corporation ("**Chesapeake**"). Defendant Thomas Blalock was the longtime personal counsel to Mr. McClendon.

On January 29, 2013, McClendon and Chesapeake announced that McClendon would be retiring from Chesapeake, effective April 1, 2013. Blalock served as McClendon's counsel in negotiating his departure from Chesapeake. At the time, Blalock was a partner with the Commercial Law Group, PC (later renamed as Commercial Law Group, PLLC), where we served until December 31, 2013. While advising McClendon, Blalock was acting individually,

and as agent/partner of the Commercial Law Group.

Shortly thereafter, McClendon established several new business entities in connection with a new business venture, called American Energy Partners ("**AEP**"). Effective January 1, 2014, Blalock became the Chief Legal Officer for AEP. From that date forward, Blalock was acting on behalf of himself, and as agent for AEP.

On or about April 18, 2013, Chesapeake and McClendon signed severance agreements, which placed the date of his formal termination from Chesapeake as April 1, 2013.

On June 14, 2013, McClendon formed Plaintiff AEU. Its initial sole member was McClendon. Blalock was the attorney who prepared the paperwork to form AEU.

Over the summer of 2013, AEU entered into several Purchase and Sale Agreements for acreage leases on thousands of acres in the "Utica Shale Play" in Ohio. Blalock reviewed such agreements, and advised McClendon regarding their execution.

During that period of time, Blalock and McClendon learned that Chesapeake believed that McClendon had improperly obtained Chesapeake's confidential information and was using this information with his new businesses. Indeed, Blalock met with counsel for Chesapeake multiple times regarding this allegedly improperly obtained information. Blalock advised Defendant Duane Morris (counsel chosen for McClendon who had represented McClendon by this point on multiple matters over more than five years) that Chesapeake was taking the position that McClendon had improperly acquired Chesapeake's valuable and proprietary information.[1]

B. The Investment

Later in the summer of 2013, McClendon, AEU and the Investor Plaintiffs began

[1] Blalock had been close friends with Duane Morris partner Matthew Taylor for many years; it was this close friendship that led to McClendon forgoing major legal markets in the United States and instead hiring Duane Morris out of Philadelphia. Over the years, this friendship led to many millions of dollars in fees to Matthew Taylor and Duane Morris. McClendon was one of the top ten most lucrative clients for Duane Morris over several years.

discussing a major investment in AEU. Blalock was McClendon's counsel on these matters. By this point, Duane Morris had been McClendon's counsel on multiple matters, including DOJ investigations, state investigations, numerous class actions, and a SEC investigation; Blalock again associated Duane Morris to assist McClendon in closing the transaction. Prior to closing the investment transaction, Blalock prepared and provided to McClendon and AEU non-disclosure agreements. Such agreements were required to be executed by potential investors, prior to being provided information about the investments. Executed by McClendon, such agreements listed "AEU" as the disclosing party. During the same time frame that Blalock continued to correspond with Chesapeake about allegedly stolen information, McClendon—with Blalock's help—was providing such information to potential investors to lure them to invest and take an ownership position in AEU. Yet, Blalock never told such potential investors about Chesapeake's claim that this proprietary information had been stolen.

In connection with this investment, a term sheet was prepared and executed. Blalock again reviewed the term sheet on behalf of McClendon and AEU prior to its execution. Thereafter, Plaintiff AEOH was formed on September 6, 2013. AEP at this point no longer had any ownership interest of AEU, and was no longer a corporate affiliate.

On September 27, 2013, the Investor Plaintiffs and other investors made direct investments in AEOH and, simultaneously, all membership interests in AEU were contributed to AEOH. Thus, AEU became a wholly-owned subsidiary of AEOH. As a result of the transaction, McClendon's interest in AEU became less than 5%; McClendon also lost control of the board of directors of AEU.

During the investment transaction, Duane Morris served as AEU and AEOH's counsel, as well as AEP's counsel. Firm Vice Chairman, Matt Taylor, was the clients' primary contact at

Duane Morris, and received client attribution credit at the firm. As stated, Taylor and Duane Morris had represented Aubrey McClendon in a variety of matters, dating back to at least 2009, and worked extensively with Blalock on these matters.

Even though Blalock and Duane Morris represented AEU during the investment transaction, neither advised the new AEU board of Chesapeake's ongoing claim that McClendon had improperly misappropriated Chesapeake's trade secrets and proprietary information. Further, even though both Blalock and Duane Morris were negotiating with counsel for the investors and other investor representatives, both withheld and omitted this important information that was material to the closing of the transaction. Indeed, both also assisted Aubrey McClendon in his efforts to hide and omit such material information to the transaction.

As stated, as part of the investment transaction, the Investor Plaintiffs became the majority owners of AEU and AEOH. Further, the Investor Plaintiff representatives took the majority of the board seats for AEU an AEOH.

In sum, as of September 27, 2013, the Investor Plaintiffs owned the majority of AEU and AEOH and controlled the board of each. Duane Morris and Blalock were aware of that such change would result from the closing of the transaction. Further, both Duane Morris and Blalock were well aware that the assets owned by AEU were primarily focused on the Utica Shale Play and that these assets had been acquired by McClendon after he had left Chesapeake. Both knew that the information used to acquire the interests in the Utica Shale Play was the same information that Chesapeake continued to claim was improperly converted by Aubrey McClendon.

At the completion of the investment and transaction, Duane Morris announced its involvement in this major transaction, via a press release on the PR Newswire. As an example,

Duane Morris bragged internally that McClendon was "famous" and patted themselves on the back for representing such a lucrative and famous client in such a large transaction.

Even before the closing of the transaction, AEU (along with AEP) had again retained Duane Morris to represent AEU in a federal trademark matter; such matter involved a controversy regarding use of the "American Energy" name. Duane Morris's Matt Taylor was AEU's lead trial counsel in this matter; Blalock was also involved as counsel. That matter was ongoing during the closing of the investment transaction, and also throughout all of the events described below. Duane Morris did so all the while still representing McClendon individually, and AEP, on at least nine other matters.

C. Current Ownership and Management of AEU

On December 31, 2014, the Investor Plaintiffs and all other owners of AEOH contributed their membership interests in AEOH to Plaintiff AEAH. AEOH became a wholly-owned subsidiary of AEAH.

On December 31, 2014, McClendon was replaced as CEO of AEU, AEAH and AEOH, by Jeffrey Fisher.

D. Duane Morris and Aubrey McClendon's Long-Term Relationship

As stated above, Defendant Duane Morris, and specifically, Matt Taylor, had a long history with McClendon. Prior to his death, McClendon (and entities that he owned) had been a very important and very lucrative client of Duane Morris over the years, paying Duane Morris several million dollars every year. In an article dated October 24, 2014 in the *Philadelphia Business Journal,* Matt Taylor of Duane Morris detailed Duane Morris' "multifaceted" representation of McClendon. According to the interview, this representation has included

multiple class actions, an SEC investigation, and multiple other government investigations. Over the years, McClendon paid Duane Morris more than ten million dollars in attorneys' fees.

E. The Chesapeake Claims

On November 12, 2013, Chesapeake sent McClendon's counsel (Blalock) a notice letter, formally notifying McClendon and Blalock that Chesapeake was investigating McClendon's possible misappropriation of Chesapeake's confidential and proprietary information, and had retained outside counsel to perform the investigation. The notification included a request that McClendon preserve certain documents and records, also known as a "litigation hold." Neither McClendon, Blalock, nor Duane Morris advised any of the AEU board members (all of whom were representatives of the Investor Plaintiffs) of this letter or of Chesapeake's claims made in the letter.

On January 16, 2015, Chesapeake's outside counsel from Houston forwarded a formal notice of claim and settlement demand to McClendon's counsel, Blalock. That demand letter asserted that McClendon had misappropriated Chesapeake's trade secrets and used those secrets to acquire, among other things, certain assets owned at that time by AEU – specifically, the mineral leases which were the subject of the 2013 investment by the Investor Plaintiffs. Chesapeake made clear that it believed that McClendon had effectively stolen information to acquire the AEU assets, sold those assets to the Investor Plaintiffs, and that Chesapeake intended to file suit to recover all of those assets.

Chesapeake's demand also claimed that McClendon had breached his fiduciary duties to Chesapeake in order to benefit himself, as well as AEP, AEU and "its investors" (which would include the Investor Plaintiffs).

In its demand letter, Chesapeake made clear that, unless the claims were resolved, it

intended to file suit against McClendon, AEP, AEP's "related entities and other parties" (which included AEU) and "AEP's investors", on January 27, 2015.

Neither McClendon, nor Blalock, nor Duane Morris advised AEU's other board members (all of whom were affiliated with the Investor Plaintiffs) of the demand or the threat of litigation. The demand made against McClendon and the affiliated entities raised a conflict for Duane Morris and Blalock. Chesapeake was threatening to sue AEU (Duane Morris' and Blalock's client), and put all of AEU's assets in jeopardy, because of the actions of their more-favored client, McClendon. However, despite the fact that AEU was a current client of Duane Morris and Blalock, and despite the fact that Duane Morris had represented AEU during the initial investment, neither Duane Morris nor Blalock disclosed this significant threat to AEU's board. Instead, Duane Morris and Blalock chose to protect the interests of their more favored clients, McClendon and AEP, to the great detriment of their other client, AEU, and AEU's investors.

In response to Chesapeake's demand, lawyers at Duane Morris initiated discussions with Chesapeake's Houston-based outside counsel, in consultation with Blalock. Again, McClendon, Blalock and Duane Morris failed to notify AEU's board of those discussions, or that they had even been scheduled. However, in those meetings, Duane Morris and Blalock represented to Chesapeake that they had authority to represent and negotiate for not only McClendon and AEP, but also AEU and its affiliates, and its investors. Indeed, prior to the meetings, Duane Morris worked with Chesapeake's counsel (and in consultation with Blalock) to draft a tolling agreement that specifically named AEU. That tolling agreement was drafted by Duane Morris's lawyers, (in consultation with Blalock) and was ultimately signed on AEU's behalf by Aubrey McClendon.

In correspondence leading up to the meetings between McClendon and Chesapeake, and

during those meetings, Chesapeake specifically asked Duane Morris for the identity of all AEU investors so that the investors could be made part of the settlement discussions. However, Duane Morris refused to provide that information and, by letter, threatened to sue Chesapeake if it made any efforts to contact those investors or related parties. This course of action was also approved by Blalock.

On February 9, 2015, lawyers from Duane Morris, Blalock and McClendon met in New York City with Chesapeake's Houston outside counsel and Chesapeake representatives. At that meeting, Duane Morris and Blalock again represented that they had the authority to represent AEP, AEU, any American Energy affiliates, AEU investors, as well as any potential parties to Chesapeake's potential lawsuit. Neither Duane Morris nor Blalock had such authority. Plaintiffs were not made aware of that meeting.

After the meeting, on February 12, 2015, Duane Morris sent a letter to Chesapeake's counsel in Houston, discussing terms of a proposed mediation and making certain demands of Chesapeake. Plaintiffs were not provided with a copy of the letter or apprised of any potential mediation.

F. <u>The Chesapeake Lawsuit</u>

Settlement discussions ultimately broke down. Chesapeake filed suit on February 17, 2015, naming AEU as a defendant, along with "John Doe Investors 1-20." With regard to AEU, Chesapeake alleged that AEU received the benefit of McClendon's theft of trade secrets (the Utica Shale Play assets) from Chesapeake. With regard to the investors, Chesapeake alleged that the investors "used [Chesapeake's trade secrets] for their own benefit and to guide their investment in McClendon's efforts to obtain acreage which Chesapeake had been pursuing and

seeking to acquire." Chesapeake further alleged that the AEU investors "participated, facilitated, assisted, aided and abetted" McClendon's alleged breach of fiduciary duties to Chesapeake.

In light of the circumstances surrounding Chesapeake's claims, Duane Morris and Blalock could not represent both McClendon and AEU, or its investors, because such attempt would give rise to a major conflict of interest. Blalock's and Duane Morris's mistaken representations to Chesapeake that it represented AEU and its investors prevented AEU and the Investor Plaintiffs from immediately corresponding and negotiating with Chesapeake. Had Blalock and Duane Morris not mistakenly represented that it represented AEU and its investors, Plaintiffs would have taken all necessary action to avoid being named in the lawsuit. Plaintiffs would never have been named in the lawsuit.

Further, Blalock and Duane Morris knew very well that AEU was in the process of seeking additional equity investment for the development of AEU's significant assets. Unfortunately, on the day of the planned equity raise, Chesapeake filed its lawsuit. The lawsuit was reported in the national press on the very morning it was filed. The naming of AEU and "investors" in the public lawsuit caused Plaintiffs significant damage in that the lawsuit materially and adversely impacted the terms of the additional debt available to AEU and the company's ability to raise additional equity. The lawsuit significantly delayed AEU's planned capital raise and the delay caused Plaintiff to incur significantly increased costs in raising money and also caused additional damages as described below.

After the lawsuit was filed, AEU's board immediately retained counsel for AEU and the Investor Plaintiffs. Counsel promptly began discussions and information sharing with Chesapeake's counsel, in an effort to resolve the claims. This allowed for Plaintiffs and Chesapeake's principals to meet and promptly reach agreement to resolve the claims.

V. CAUSE OF ACTION 1: BREACH OF FIDUCIARY DUTY—AEU/ALL DEFENDANTS

Plaintiffs incorporate the previous allegations.

At all relevant times, Plaintiff AEU was a client of Duane Morris and Blalock. Specifically, when AEU was formed, Blalock acted as its counsel. When AEU was threatened and then sued in late summer 2013 for use of the name "American Energy," both Blalock and Duane Morris acted as its counsel and continued to be such for several more years. When AEU/McClendon provided information to potential investors in the spring and summer of 2013, Blalock acted as AEU's counsel. At the time of the closing of the investment transaction in October 2013, both Duane Morris and Blalock acted as AEU's counsel. After closing the transaction, Duane Morris and Blalock acted as AEU's counsel in a FERC matter.

As AEU's counsel, Duane Morris and Blalock each owed AEU a fiduciary duty. Duane Morris and Blalock breached this duty in multiple ways, including, but not limited to:

- Duane Morris and Blalock breached this duty by failing to immediately disclose Chesapeake's ongoing claims that McClendon had stolen proprietary information.
- Duane Morris and Blalock breached this duty by failing to disclose to AEU and its principals that Chesapeake had sent a formal settlement demand.
- Duane Morris and Blalock breached this duty by concealing Chesapeake's claim that information concerning the Utica Shale Play had been stolen, or that Chesapeake intended to file suit to recover such information.
- Duane Morris and Blalock breached this duty by corresponding and negotiating with Chesapeake's lawyers on AEU's behalf, without informing AEU of such.
- Duane Morris and Blalock breached this duty by pretending to represent AEU in the Chesapeake dispute, all the while knowing that on this particular matter, AEU had not given them authority to do so. Duane Morris and Blalock breached this duty by allowing McClendon to mislead AEU's ultimate investors, as well as the new AEU board, with regard to Chesapeake's claims.

- Duane Morris and Blalock breached this duty by assisting McClendon in his efforts to hide his ongoing dispute with Chesapeake.

- Duane Morris and Blalock breached this duty by placing the interests of their mutual, lucrative client, Aubrey McClendon over those interests of their mutual client, AEU.

- Duane Morris and Blalock breached this duty by continuing to attempt to represent AEU, despite knowing that there was a conflict of interest between the interests of their client Aubrey McClendon, and the interests of their client, AEU.

As a result of Duane Morris's and Blalock's acts and omissions, Plaintiffs have been damaged, as set forth below. Plaintiff seeks both compensatory and punitive damages for these fiduciary duty breaches.

VI. CAUSE OF ACTION 2: NEGLIGENCE—ALL PLAINTIFFS AGAINST DUANE MORRIS

Plaintiffs incorporate the previous allegations.

Defendant Duane Morris owed Plaintiffs a duty of reasonable care. Duane Morris repeatedly breached this duty, and such breaches proximately caused Plaintiffs harm.

Such breaches included, but are not limited to:

- Failing to disclose the existence of Chesapeake's claims against the AEU Plaintiffs and the Investor Plaintiffs.

- Failing to disclose the imminent threat of litigation and the possibility of participation in settlement discussions.

- Failing to refrain from representing to Chesapeake that it represented AEU and the other Plaintiffs, when it had no authority to do so.

- Allowing Aubrey McClendon to mislead the investor Plaintiffs, AEU, and the AEU board, about Chesapeake's claims that information had been stolen.

- Allowing Aubrey McClendon to represent to Chesapeake that McClendon had the authority to negotiate on AEU and its investors' behalf, and indeed, preparing a tolling agreement that McClendon ultimately allowing McClendon to sign it.

Duane Morris breached these duties to Plaintiffs, causing them extensive damage, as set forth below.

As further evidence of its breach of its duty of reasonable care, Duane Morris, through both words and conduct, asserted to various individuals that it represented, and had the authority, to represent the Plaintiffs in the ongoing dispute with Chesapeake. Plaintiffs were without knowledge, or the means of acquiring knowledge, of Duane Morris's assertions. Duane Morris's representation to third persons that it represented Plaintiffs estops Duane Morris from denying the existence of an attorney-client relationship with Plaintiffs or that it owed no duty to the Plaintiffs.

VII. CAUSE OF ACTION 3: FRAUD—ALL PLAINTIFFS/ALL DEFENDANTS

Plaintiffs incorporate the previous allegations.

Duane Morris and Blalock failed to disclose, and indeed took efforts to conceal—from April 2013 to October 2013:

- Chesapeake's pre-investment allegations that Aubrey McClendon had stolen or had been provided proprietary information, even though such allegations and assertions were discussed in multiple in-person meetings;
- Chesapeake's allegation that Aubrey McClendon had stolen information from Chesapeake;
- Chesapeake's formal written demand that proprietary information taken by McClendon be returned, and Chesapeake's formal, litigation hold letter.
- Such information was material; such information should have been disclosed and should not have been concealed.

Duane Morris and Blalock failed to disclose, and indeed took efforts to conceal—from October 2013 until February 2015:

- Chesapeake's intent to file a lawsuit seeking, among other things, a return of stolen information and a royalty involving the Utica Shale Play;

- Chesapeake's formal settlement offer;
- That Chesapeake and McClendon signed a tolling agreement, and that such agreement included AEU;
- That representatives of Chesapeake and McClendon, to include Duane Morris and Blalock, were meeting and in fact met in New York City to discuss resolution of the pending litigation;
- That Duane Morris, Blalock, and McClendon were pretending to act on AEU's behalf, as well as on behalf of its investors;
- That Duane Morris, Blalock, and McClendon were representing to Chesapeake and its representatives that McClendon still had authority to act for AEU, all the while knowing that McClendon held only one seat on the AEU board, was not the CEO, and owned indirectly less than 5%.

All of the facts, and others, listed above were material. Defendants were fully aware that Plaintiffs were ignorant of such facts, and that the Plaintiffs did not have an equal opportunity to discover these facts. Indeed, Duane Morris and Blalock concealed this information not only from the Plaintiffs, but also from Chesapeake--despite the fact that Chesapeake repeatedly sought to discover the actual corporate makeup of American Energy and its affiliates, sought to discover the specific entities who had actually invested in the Utica Shale Play, and sought the identify of those entities who held such Utica assets. Rather than disclose this information, Defendants—with McClendon—instead pretended that they represented the investors and the entities that held and were developing the assets in the Utica Shale Play.

Duane Morris, and Blalock were deliberately silent when they had a duty to speak. By failing to disclose these material facts, Duane Morris, and Blalock intended to induce the Plaintiffs to refrain from acting. Plaintiffs relied on Duane Morris, and Blalock's nondisclosure and, because they had no knowledge of Chesapeake's claims or the impending lawsuit, refrained

from taking any action – until it was too late.[2] Plaintiffs were damaged as a result of acting without that knowledge, as set forth below. Plaintiffs seek compensatory and punitive damages for Defendants' fraud.

VIII. CAUSE OF ACTION 4: AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

Plaintiffs incorporate the previous allegations.

As explained in detail above, Aubrey McClendon owed AEU and the Investor Plaintiffs a fiduciary duty. Duane Morris and Blalock knew that McClendon owed a fiduciary duty to the Plaintiffs. And, as shown in detail above, Duane Morris and Blalock also knew that they were participating in, and providing assistance to McClendon in the course of breaching his fiduciary duties to the Plaintiffs. As a result of Duane Morris's and Blalock's acts and omissions, Plaintiffs suffered damages, as set forth below. Plaintiffs seek compensatory and punitive damages for such conduct.

IX. CAUSE OF ACTION 5: CONSPIRACY TO COMMIT BREACH OF FIDUCIARY DUTY AND FRAUD

Plaintiffs incorporate the previous allegations.

Plaintiffs would show that Duane Morris and Blalock together, and conspired with McClendon to breach his aforementioned fiduciary duties to AEU, and to commit fraud on all Plaintiffs. The purpose of the conspiracy was to keep AEU's full board and the Investor

[2] Even after AEU and the Investor Plaintiffs finally learned of the impending Chesapeake lawsuit, Duane Morris attempted to pressure principals who controlled AEU to retain Duane Morris. As a part of this effort, Duane Morris repeatedly lied to EMG general counsel Laura Tyson. Specifically, Duane Morris misrepresented to Tyson that a response to the lawsuit needed to be filed "this week," when in fact there was no longer such urgency, and after Tyson refused to retain Duane Morris, such response was not filed for three weeks. Duane Morris further misrepresented to Tyson that no conflict existed between McClendon and the Plaintiffs in this case—when in fact such a conflict was actual and clear. Duane Morris also misrepresented to Tyson the actual history of the ongoing dispute, and even refused to provide Tyson with the Tolling Agreement. When the Tolling Agreement was finally disclosed to Tyson by Chesapeake—not Duane Morris—Duane Morris pretended that it had forgotten that AEU was listed as a party.

Plaintiffs from learning about the Chesapeake claims so that the investors would invest, so that the investors would respond to capital calls, so that AEU would continue paying AEU Services (a company owned by McClendon and which indirectly paid Blalock), and so that AEU and its owners would not take action against McClendon or AEU Services. Duane Morris, Blalock and McClendon had a meeting of the minds on this objective and, as shown in detail above, together, made one or more unlawful and overt acts towards this objective. As a result, Plaintiffs suffered damages. Plaintiffs also seek punitive damages.

X. JOINT AND SEVERAL LIABIITY

Plaintiffs incorporate the previous allegations.

Duane Morris and Blalock are joint and severally liable for all acts of McClendon, AEP, and AEU Services, the conspirators as referenced above. Duane Morris and Blalock planned and assisted in this conspiracy, and, as such, they are jointly and severally liable for all acts done by any member of the conspiracy in furtherance of such.

XI. DAMAGES

Plaintiffs incorporate the previous allegations.

On January 28, 2015 (after Chesapeake's demand), McClendon, acting in his capacity as Chairman of the Board of AEU, requested the Finance Committee of the Board (which included representatives of the Investor Plaintiffs) to approve proceeding with a substantial loan for AEU. Blalock was aware of this request. Additionally, on January 29, 2015, members of the AEU board executed a board consent initiated by McClendon and approved a significant capital call. As of that time, McClendon, Duane Morris and Blalock failed to disclose to the full AEU board (which included the Investor Plaintiffs) that Chesapeake had made these serious allegations, that a settlement demand had been made, or that litigation with Chesapeake was imminent.

As a result of the AEU capital call initiated by McClendon, the Investor Plaintiffs took action to call significant amounts of money from their investors. The lenders under the new AEU loan required that this capital be funded as a condition to the loan and also required the Investor Plaintiffs to execute and deliver an Equity Commitment Letter, agreeing to invest an additional significant sum with the expectation that it would be funded in 90 days or less, subject to certain conditions. While the Investor Plaintiffs were providing substantial funds to AEU, and agreeing to provide a significant amount more, they were completely unaware of Chesapeake's threatened lawsuit. In response to McClendon's call, the Investor Plaintiffs provided the $143 million in funding. These monies went to, among other things, payments to AEU Services, a company owned by McClendon.

McClendon was accused of stealing confidential and proprietary data from Chesapeake. Duane Morris had represented McClendon in his individual capacity as far back as 2009. Blalock had been McClendon's personal counsel for even longer. After a series of meetings were held on the subject, a litigation hold letter was sent to Blalock in November 2013—a month after the investment and transaction closed. McClendon and his counsel, however, were well aware of the disputed ownership of the data well before the transaction closed. Not once did McClendon or Blalock reveal that there was a dispute regarding the ownership of the data. Further, even after the threat of litigation was made, neither McClendon nor his attorneys, Blalock and Duane Morris, revealed to the Plaintiffs the threat of impending litigation. Instead, Duane Morris and Blalock assisted in hiding the threat. Ultimately, the Plaintiffs paid Chesapeake to resolve the litigation, well after the damage of litigation had been done, but to avoid further damage. Duane Morris and Blalock, as co-conspirators, are jointly and severally liable for those monies paid.

At the time of Duane Morris's and Blalock's misrepresentations and deception, AEU had prepared to begin a significant equity offering to third party investors. Had Duane Morris and Blalock not lied about who they represented, and actually told Chesapeake that they actually had no authority to represent AEU or the Investor Plaintiffs, then the Plaintiffs would have been able to resolve the dispute with Chesapeake short of a lawsuit. Because of Defendants' conduct, the Plaintiffs were never given such opportunity, and the equity offering was significantly delayed. Because of the delays, AEU was forced to seek alternative financing approaches in the near term. Among these was the sale of key assets at a discount. Additionally, AEU was required to refinance debt at increased costs. Further, as a result of Defendants' acts and omissions, the Investor Plaintiffs have suffered significant dilution in their equity investment in AEU and its parent entities.

By reason of the occurrences made the basis of this action, including the conduct on the part of Duane Morris and Blalock, Plaintiffs suffered compensatory damages in excess of $440 million. Plaintiffs also seek punitive damages against the Defendants.

XII. DAMAGES NOT SUBJECT TO CAPPING.

Under Texas law, it is a felony when, an individual or individuals, with intent to defraud or harm any person, by deception "causes another to sign or execute any document affecting property or service or the pecuniary interest of any person," when such pecuniary interest exceeds $2,500.00. Texas Penal Code § 32.46, Securing Execution of Document by Deception. The Tolling Agreement at issue in this case was secured by deception; such agreement involved a pecuniary interest of the Plaintiffs that well exceeded $2,500.00. Because Defendants' conduct alleged herein is a felony, the punitive damages sought herein are not subject to state punitive caps.

XIII. TEXAS STATE LAW APPLIES.

The Investor Plaintiffs reside in Texas. Blalock and McClendon met with the Investor Plaintiffs in Houston, Texas. The fraudulent statements complained of were uttered to the Investor Plaintiffs in Texas, and were heard in Texas. The fraudulent omissions complained of should have been disclosed during conversations held with individuals in Texas, while the conversations were held in Texas. After the investment, AEU was controlled by individuals through a board made up of individuals who reside in Texas, and who made decisions while in Texas. Most of Duane Morris's fraudulent statements were made to Chesapeake representatives who reside in Texas. Under the most significant relationship test, Texas law applies to each of Plaintiffs' claims herein.

PRAYER

WHEREFORE Plaintiffs pray for judgment against Defendants Duane Morris, LLP and Thomas Blalock, jointly and severally, for actual damages for an amount not less than $440,000,000.00, punitive damages, pre-and post-judgment interest, all costs of court, and all such other and further relief, at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

THE BUZBEE LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been duly served on counsel in accordance with the Texas Rules of Civil Procedure on August 8, 2017, as set forth below:

Via E-filing
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