

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXAS PACIFIC LAND TRUST and, solely in their
respective capacities as trustees for Texas Pacific Land
Trust, DAVID E. BARRY and JOHN R. NORRIS III,

Plaintiffs,

v.

ERIC L. OLIVER,

Defendant.

and

ERIC L. OLIVER, SOFTVEST, L.P., HORIZON
KINETICS LLC, and ART-FGT FAMILY PARTNERS
LIMITED,

Counterclaim Plaintiffs,

v.

DAVID E. BARRY and JOHN A. NORRIS III, in their
individual capacities and in their capacities as trustees for
the Texas Pacific Land Trust,

Counterclaim Defendants.

Case No. 3:19-CV-01224-B

**ORDER SETTING A SCHEDULE FOR, AND PROTOCOL FOR
SEEKING DISCOVERY RELATING TO, COUNTERCLAIM PLAINTIFFS' MOTION
FOR A DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION**

Before the Court is the parties' Joint Motion for Entry of an Order Setting a Schedule for,
and Protocol for Seeking Discovery Relating to, Counterclaim Plaintiffs' Motion for a
Declaratory Judgment and Preliminary Injunction. Having considered the parties' submission
and the relevant law, the Court hereby **GRANTS** the parties' joint motion.

Proceedings on Counterclaim Plaintiffs' Motion for a Declaratory Judgment and Preliminary Injunction (the "Motion") shall be as follows:

1. The parties have agreed to produce the documents and witnesses listed in Exhibit A. The parties shall exchange the documents identified in Exhibit A by July 30, 2019, and any privilege log by August 3, 2019. Counterclaim Plaintiffs have also agreed to respond by August 2, 2019 to the interrogatories listed in Exhibit A.
2. Any discovery requests may be served up to and including July 15, 2019, and the parties reserve any and all objections to such discovery requests.
3. Both parties reserve the right to seek additional discovery, including discovery discussed during meet-and-confer efforts.
4. Any motions regarding discovery requested no later than July 15, 2019, shall be filed by July 18, 2019. Responses to any such motions shall be filed by July 22, 2019, and any replies, if needed, shall be filed by July 23, 2019.
5. The parties shall produce any documents ordered by the Court by August 1, 2019, and any privilege log by August 4, 2019.
6. All depositions shall occur between August 6 and August 16, 2019.
7. Counterclaim Defendants shall file their response to the Motion by August 30, 2019.
8. Counterclaim Plaintiffs shall file their reply in support of the Motion by September 13, 2019.
9. The parties anticipate the hearing on the Motion will last approximately two days. The Court acknowledges that counsel for Counterclaim Defendants is unavailable

on September 19, 23, 24, and 27, 2019, and hereby sets the Motion for a hearing to begin on September 25-26, 2019.

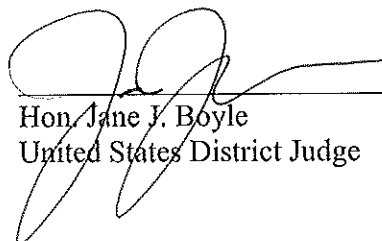
This Order shall not be construed as a waiver of any party's right to seek a court order for additional discovery to the extent that, based on document production, deposition testimony, or other discovery responses, the party determines in good faith that additional discovery is needed. Any motions for additional discovery shall be submitted promptly to the Court. Responses to any such motions shall be filed within three business days, and any replies, if needed, shall be filed within one business day.

This Order shall not be construed as a waiver of any party's right to seek a continuance for good cause of any of the dates or deadlines ordered herein, including, but not limited to, the hearing date.

In light of the Court's entry of this Order, Counterclaim Plaintiffs' Motion for a Hearing on their Motion for a Declaratory Judgment and Preliminary Injunction (ECF No. 40) is **DENIED** as moot.

SO ORDERED

Dated: 7-15-19



Hon. Jane J. Boyle
United States District Judge

EXHIBIT A

Exhibit A: Agreed Production of Documents, Witnesses, And Interrogatory Responses

I. Documents

- A. Counterclaim Plaintiffs agree to produce the following categories of non-privileged documents in their possession, custody, or control:
1. All non-privileged documents and communications with the SEC between February 1, 2019 and May 22, 2019 relating to the election of a TPL successor trustee in 2019.
 2. All non-privileged documents and communications between February 1, 2019 and May 22, 2019 between or among members of the Investor Group relating to any solicitation activities.
 3. All non-privileged documents and communications between February 1, 2019 and May 22, 2019 between members of the Investor Group and D.F. King relating to any solicitation activities.
 4. All non-privileged documents and communications between February 1, 2019 and May 22, 2019 between members of the Investor Group and Broadridge, relating to any solicitation activities.
 5. All non-privileged documents and communications with Santa Monica Partners or Universal Guaranty Life Insurance Company February 1, 2019, and May 22, 2019 regarding the election of a successor TPL trustee.
 6. All non-privileged documents and communications related to the sign-up sheet for the shareholder meeting that was held on May 22, 2019 in a conference room on the fifth floor of 2021 McKinney Avenue (the "May 22 Special Meeting").
 7. A list of those attendees at the May 22 Special Meeting who are not reflected on the sign-up sheet for the meeting but that Counterclaim Plaintiffs believe attended the meeting.
 8. All non-privileged documents and communications, other than the sign-up sheet for the May 22 Special Meeting, that attendees executed or delivered at the meeting.
 9. All non-privileged documents and communications relating to the calculation of votes cast at the May 22 Special Meeting by the inspector of elections, including master ballots and individual ballots.
 10. All recordings regarding TPL, including recordings of calls or meetings, for the period February 1, 2019 to May 22, 2019.

11. All non-privileged documents and communications relating to Counterclaim Plaintiffs' contention that Incumbents cannot unilaterally postpone a special meeting to elect a successor trustee once the special meeting has been noticed.
 12. All non-privileged documents and communications relating to Counterclaim Plaintiffs' contention that Mr. Oliver was duly elected a TPL trustee in 2019.
 13. All non-privileged documents and communications relating to Counterclaim Plaintiffs' contention that David E. Barry was not duly elected a TPL trustee in 2017.
 14. All non-privileged documents and communications relating to Counterclaim Plaintiffs' contention that a trustee election is a "non-routine" proposal under Rule 452 of the New York Stock Exchange and that the 2017 election of Mr. Barry as a TPL trustee was erroneously classified as a "routine" proposal, including the circumstances that led to the discovery that the 2017 election was erroneously classified.
 15. All non-privileged documents and communications upon which Counterclaim Plaintiffs intend to rely at the hearing on their motion.
- B. Nineteen non-parties affiliated with the Counterclaim Plaintiffs¹ agree to produce non-privileged documents in their possession, custody, or control responsive to the categories listed in I.A. above to the extent they are not duplicative of the documents Counterclaim Plaintiffs produce.
- C. Counterclaim Defendants and TPL agree to produce the following categories of non-privileged documents in their possession, custody, or control in the following categories:
1. All non-privileged documents and communications between February 1, 2019 and May 22, 2019 regarding solicitation activities related to the election of a TPL successor trustee in 2019.
 2. All non-privileged documents and communications between February 1, 2019 and May 22, 2019 with the SEC related to the election of a TPL successor trustee in 2019.

¹ The 19 non-party affiliates of Counterclaim Plaintiffs are Kline Oliver; SoftVest Advisors LLC; SoftVest FP I, LLC; Debeck LLC; Debeck Properties; SFF Royalty LLC; Horizon Asset Management; Horizon Kinetics Asset Management; Kinetics Advisers; Kinetics Asset Management; Allan R. Tessler; Andrea Tessler; Christopher Tessler; Frances G. Tessler; Karla Tessler; Tessler Family LP; Tessler FMC; Apres Vous, LLC; and FRMO Corp.

3. All non-privileged documents and communications relating to Counterclaim Defendants' position that quorum requirements apply to TPL special shareholder meetings to elect a successor trustee.
4. All non-privileged documents and communications relating to Counterclaim Defendants' position that TPL trustees may postpone, without prior approval from shareholders or a court, a special shareholder meeting to elect a successor trustee that has been noticed.
5. All non-privileged documents and communications related to the purported meeting of TPL shareholders held on May 22, 2019 in a conference room on the fifth floor of 2021 McKinney Avenue.
6. All recordings regarding TPL, including recordings of calls or meetings, for the period February 1, 2019 to May 22, 2019..
7. All non-privileged documents and communications between February 1, 2019 and May 22, 2019 related to the consideration and nomination of Preston Young for trustee of TPL, including the Trustee Questionnaire completed by Mr. Young and any minutes from meetings of the Trustees regarding the consideration or nomination of Mr. Young for TPL trustee.
8. All non-privileged documents and communications related to due diligence conducted regarding Mr. Barry's nomination to serve as Trustee for TPL.
9. Documents from Broadridge or TPL sufficient to show the number of shares voted for Mr. Barry at the January 12, 2017 special meeting by brokers, banks, or nominees without client instructions to the extent such information exists and is within Counterclaim Defendants' and TPL's possession, custody, or control. To the extent such documents are not within their possession, custody, or control, Counterclaim Defendants and TPL agree to request from Broadridge documents sufficient to show the number of shares voted for Mr. Barry at the January 12, 2017 special meeting by brokers, banks, or nominees without client instructions.
10. All non-privileged documents and communications upon which Counterclaim Defendants intend to rely at the hearing on Counterclaim Plaintiffs' motion.

II. Interrogatories

- A. Counterclaim Plaintiff Eric L. Oliver agrees to provide responses to interrogatory nos. 1, 2, 3, 4, 9, 10, and 11 contained in Plaintiffs' First Set of Interrogatories to Eric L. Oliver served on June 17, 2019.

- B. Counterclaim Plaintiff SoftVest L.P. agrees to provide responses to interrogatory nos. 1, 2, 3, 4, and 8 contained in Plaintiffs' First Set of Interrogatories to SoftVest L.P. served on June 17, 2019.
- C. Counterclaim Plaintiff Horizon Kinetics LLC agrees to provide responses to interrogatory nos. 1, 2, 3, 4, and 8 contained in Plaintiffs' First Set of Interrogatories to Horizon Kinetics LLC served on June 17, 2019.
- D. Counterclaim Plaintiff ART-FGT Family Partners Limited agrees to provide responses to interrogatory nos. 1, 2, 3, and 4 contained in Plaintiffs' First Set of Interrogatories to ART-FGT Family Partners Limited served on June 17, 2019.
- E. All Counterclaim Plaintiffs agree to provide a response to the following interrogatory: Explain in detail the basis for your statement that "[u]pon information and belief, had the January 12, 2017 election been properly classified as 'non-routine,' Mr. Barry would not have received a majority of the votes that were legally cast."

III. Party Depositions

- A. Counterclaim Plaintiffs agree to produce the following individuals for deposition:
 - 1. Eric L. Oliver
 - 2. Jay Kesslen
 - 3. Murray Stahl
 - 4. Allan Tessler
- B. Counterclaim Defendants agree to produce the following individuals for deposition:
 - 1. David E. Barry
 - 2. John R. Norris III

IV. Third-Party Depositions

- A. Counterclaim Plaintiffs have requested that Ed McCarthy of D.F. King voluntarily appear for deposition, and Mr. McCarthy has agreed to do so.
- B. Counterclaim Defendants agree to request that the representative of MacKenzie Partners most knowledgeable about the issues relating to the disputed 2019 election of a successor TPL trustee voluntarily appear for deposition, but cannot compel its attendance.

- C. Counterclaim Plaintiffs agree to not oppose efforts by Counterclaim Defendants to seek the depositions of Victoria Paper with the New York Stock Exchange or a corporate representative for the New York Stock Exchange.