



VIA EMAIL ONLY

(larry.hartig@alaska.gov; daniel.sullivan@alaska.gov)

December 20, 2012

Larry Hartig, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, AK 99811-1800

Dan Sullivan, Commissioner
Alaska Department of Natural Resources
550 W 7th Avenue, Suite 1400
Anchorage, AK 99501-3561

RE: BUCCANEER ENERGY & THE JACK-UP RIG "ENDEAVOUR"

Dear Commissioners Hartig & Sullivan:

Attached please find a complaint filed this week by Archer Drilling against Buccaneer Energy et al. alleging breach of contract and actual damages in excess of \$6 million.

While the assertions in the complaint remain allegations until adjudicated, the factual history surrounding Buccaneer's performance around the jack-up rig "*Endeavour*" strongly supports Archer's claims.

I am writing now to urge you to immediately delay all ADEC and DNR permitting efforts until the State of Alaska conducts a review of Buccaneer's fiscal and operational capacity to drill safely in the fisheries of Cook Inlet.

Buccaneer has repeatedly made false representations to Alaskan officials, the general public and its investors about the condition of the rig *Endeavour* and its ability to operate it. AIDEA's considerable investment in the *Endeavor* also counsels for heightened scrutiny.

Very truly yours,

Bob Shavelson
Inletkeeper

Cc: (VIA EMAIL ONLY)
Senator Mark Begich
Senator Lisa Murkowski
Sean Parnell, Governor
Ted Leonard, AIDEA
Dennis McLerran, EPA Region 10

NO. _____

ARCHER DRILLING LLC AND
RIG INSPECTION SERVICES (US)
LLC

Plaintiffs

V.

BUCCANEER ENERGY LIMITED,
BUCCANEER ALASKA DRILLING,
LLC, BUCCANEER RESOURCES,
LLC, KENAI DRILLING, LLC, AND
KENAI OFFSHORE VENTURES,
LLC

Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs Archer Drilling LLC ("Archer") and Rig Inspection Services (US) LLC ("RIS," and collectively with Archer, "Plaintiffs") file this Petition against Defendants Buccaneer Energy Limited, Buccaneer Alaska Drilling, LLC, Buccaneer Resources, LLC, Kenai Drilling, LLC, and Kenai Offshore Ventures, LLC ("KOV") (collectively, "Defendants"). In support, Plaintiffs allege as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiffs respectfully request that the Court implement a Level 3 Discovery Control Plan for the conduct of discovery in this matter.

PRELIMINARY STATEMENT

2. For over 35 years, Archer has set the standard in providing drilling, maintenance and rig management services on fixed platform drilling installations

on the United Kingdom Continental Shelf and the Norwegian Continental Shelf. Since 2009, Archer has adapted this model to successfully expand into other international regions. Now, Archer offshore drilling crews, consisting of more than 2,300 skilled drilling personnel, operate over thirty-two fixed installations around the globe, taking responsibility for operations and maintenance of all drilling facility equipment owned by Archer's clients. Archer has long-term contracts with a large number of major operators, including Apache, BP, Chevron, ConocoPhillips, Fairfield Energy, Marathon Oil, Shell, Statoil, and Talisman.

3. RIS is a company affiliated with Archer that provides a broad range of specialized services in the survey and inspection sector of the oil and gas industry. The surveyors and inspectors of RIS are all highly qualified in their respective fields, with its senior personnel having over twenty years of experience working in the key competencies of the oil and gas (both offshore and onshore) industries.

4. Founded in 2007, Buccaneer Energy Limited ("Buccaneer") is a relatively new player in the oil and gas industry. It has experienced some success with drilling wells onshore and offshore in Texas, the state in which its business is headquartered. In 2010, however, Buccaneer along with the other Defendants, all of whom are affiliated companies, embarked on an entirely new business strategy in which they had no prior experience: owning a jackup rig that would explore and develop oil and gas in the Cook Inlet, Alaska. To accomplish this goal, the Defendants needed the assistance of a very experienced drilling contractor and rig inspector with proven track records, which they found in Archer and RIS.

5. From the start, though, the Defendants undermined and underfunded the project. By favoring wishful thinking over hard facts, the Defendants turned a blind eye to the amount of time, money, and effort needed to bring such a rig up to operational levels. Indeed, the Defendants underfunded the refurbishment of the rig and then instructed that the rig be removed from the shipyard where it was being refurbished and directed that it be transported to Alaska before the refurbishment and recertification work had been completed. Included in the outstanding work were a number of marine related requirements of the American Bureau of Shipping, installation of the mud treatment and conditioning systems, refurbishment of deep well riser systems, winterization of exposed working areas, full commissioning of all drilling systems, and a DROPS survey of the drilling derrick. The result of the untimely departure has been a debacle that has left Plaintiffs unpaid for millions of dollars of their services and expenses incurred for the Defendants' benefit and at the Defendants' direction.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff Archer Drilling LLC is a Delaware limited liability company having a principal place of business in Houston, Texas.

7. Plaintiff Rig Inspection Services (US) LLC is a Texas limited liability company having a principal place of business in Houston, Texas.

8. Defendant Buccaneer Energy Limited ("Buccaneer") is an Australian corporation with a principal place of business in Houston, Texas. Buccaneer may be served at its place of business: 952 Echo Lane, Suite 420, Houston, Texas, 77024.

9. Defendant Buccaneer Alaska Drilling, LLC ("Buccaneer Alaska") is an Alaska limited liability company with a principal place of business in Houston, Texas. Buccaneer Alaska may be served at its place of business: 952 Echo Lane, Suite 420, Houston, Texas, 77024. Buccaneer Alaska is a wholly-owned subsidiary of Buccaneer.

10. Defendant Buccaneer Resources, LLC ("Buccaneer Resources") is a Texas limited liability company with a principal place of business in Houston, Texas. Buccaneer Resources may be served at its place of business: 952 Echo Lane, Suite 420, Houston, Texas, 77024. Buccaneer Resources is a wholly-owned subsidiary of Buccaneer.

11. Defendant Kenai Drilling, LLC ("Kenai Drilling") is an Alaska limited liability company with a principal place of business in Houston, Texas. Kenai Drilling may be served at its place of business: 952 Echo Lane, Suite 420, Houston, Texas, 77024. Kenai Drilling is a wholly-owned subsidiary of Buccaneer and Buccaneer Alaska.

12. Defendant Kenai Offshore Ventures LLC ("KOV") is a Delaware limited liability company with a principal place of business in Houston, Texas. KOV is a subsidiary of Buccaneer, which is fifty-percent owned by Buccaneer Alaska. Defendants KOV may be served at its place of business: 952 Echo Lane, Suite 420, Houston, Texas, 77024.

13. At all relevant times, Defendants acted as a single business enterprise that knowingly authorized, directed, participated in, and/or ratified the conduct

directed to Plaintiffs. Upon information and belief, KOV is an undercapitalized shell company with no employees and no assets other than the ENDEAVOUR, which is a highly over-leveraged asset in which KOV has little to no equity. At all relevant times, KOV has acted through the conduct of the other Defendants. Buccaneer Alaska is the manager of KOV, and KOV is housed at Buccaneer's offices in Houston. Representatives of Buccaneer Alaska and Buccaneer Resources engaged in the misconduct alleged here, which was directed to Plaintiffs. Individuals who have claimed to represent KOV in its dealings with Plaintiffs are in fact employees of the other Defendants. Upon information and belief, KOV is an undercapitalized alter ego of the other Defendants, and, in addition to finding direct liability, this Court should disregard and pierce any corporate formality or separateness in holding the other Defendants liable for the acts and omissions of KOV.

14. This Court has subject matter jurisdiction over all claims asserted in this Petition because all such claims exceed the jurisdictional minimum of this Court.

15. This Court has personal jurisdiction over each of the Defendants in this case. Each of them has committed acts within Texas, or which were directed at Texas, in derogation of Plaintiffs' rights. Each of the Defendants knew that their conduct would, or was likely to, have effects within the state of Texas upon the business of Archer, which has its headquarters here.

16. Venue is proper in Harris County, Texas, because all or a substantial part of the claims asserted herein arose within this County. Moreover, the

Defendants have transacted their affairs within this county. Finally, Plaintiffs and Defendant KOV entered into a contract that selects Harris County, Texas as the proper venue for any dispute, controversy, or claim arising out of the agreement, which encompasses the causes of action asserted here.

FACTS

The Defendants Purchase the ENDEAVOUR and Contract with Archer.

17. In 2010, Buccaneer formed KOV to own a particular type of oil drilling rig – called an offshore jackup rig – for the exploration and development of oil and gas in the coastal waters of Alaska.

18. In September 2011, Buccaneer announced that it had executed a purchase agreement, through its subsidiary KOV, to acquire such a rig from Transocean, named the GSF ADRIATIC XI. The total purchase price was \$68.5 million.

19. According to the announcement, the Defendants were investing little of their own money in the project, with the remaining funds being obtained from private lenders and the Alaska Industrial Development Authority.

20. Buccaneer further announced that the rig “will immediately be transported to an Asian based shipyard to undergo modifications to enable operations in the Cook Inlet, Alaska” and that it “is anticipated that the Rig will arrive in the Cook Inlet for the 2012 drilling season in April / May 2012.” Upon completing the acquisition, Buccaneer renamed the rig ENDEAVOUR, SPIRIT OF INDEPENDENCE (“ENDEAVOUR”).

21. Before making the journey to Alaska, the ENDEAVOUR would first have to be refurbished so that it could meet the rigorous requirements imposed by both federal and Alaskan authorities on such rigs. Then, once in Alaska, the Defendants would need a skilled operator to actually run the rig's drilling operations. Defendants turned to Archer and RIS to fill both of these roles. Buccaneer publicly announced in its annual report that Defendant Kenai Drilling would enter into a bare boat charter agreement with KOV to lease the rig and, in turn, Kenai Drilling would enter into a service contract with Archer to operate the rig.

22. To this end, Defendants entered into a Master Service Agreement with Archer on October 4, 2011. Under this contract, Defendants would issue work orders to Plaintiffs for such services as they required. The parties entered into work orders, whereby Plaintiffs would supervise and manage the refurbishment of the ENDEAVOR in a shipyard in Singapore.

23. Under these work orders, Plaintiffs were not responsible for the condition of the rig at the time of purchase, were not responsible for the work of other contractors, were not responsible for equipment supplied by third parties, and were not responsible for change in or deviation from inspection standards by third parties. Plaintiffs, however, were indemnified against any consequential damages.

24. Defendants entered into a separate agreement with Keppel FELS to perform the actual refurbishment of the rig at its shipyard in Singapore. According to its website, Keppel FELS and its network of offshore yards have successfully

delivered almost half of the world's new-build jackup rigs and semisubmersibles in the past decade.

25. As envisioned by the parties, Archer's job description would change over time. During the initial phase, Archer along with RIS would oversee the refurbishment of the ENDEAVOUR. Next, Archer would enter into a separate management agreement that would govern Archer's role as the operator of the rig in Alaska.

26. Unfortunately, the Defendants' ambitious plans for ENDEAVOUR were matched neither by the funding they provided nor by the realities of the rig's condition.

27. In fact, the ENDEAVOUR was built in 1982 and had not worked in years. At the time of purchase, the rig had been "cold-stacked" off the coast of Malaysia. "Cold-stacked" is an industry term used to describe a rig that is idling unmanned offshore and, accordingly, is exposed to whatever decay, corrosion or other harms that the elements may inflict. Cold-stacked is the common condition for an offshore rig before it is either scrapped or forced to undergo a significant overhaul in a shipyard to bring it back up to operational capability.

28. It was always clear that the ENDEAVOUR required a significant amount of work. Moreover, many items requiring overhaul could be known only after an intrusive inspection of the equipment installed on the rig after it was docked in the Keppel FELS shipyard in Singapore.

29. Despite the scope of the project of refurbishing the ENDEAVOUR out of cold-stack, winterizing it, and transporting it into the Cook Inlet of Alaska, the Defendants' entire initial budget was a mere \$18 million. To put this in context, the cost of building a new rig for such harsh environments typically exceeds \$200 million. Indeed, the transport of the rig from Singapore to Alaska alone costs in excess of \$1 million.

30. In other words, the Defendants underfunded the ENDEAVOUR project from the outset. Plaintiffs, as well as other vendors including the shipyard, consistently notified the Defendants of these severe deficiencies in their financial planning, but the Defendants staunchly refused to heed these warnings.

31. Defendants were late in funding large components that have a long lead time and key items like the rig's TopDrive were late in arriving at the shipyard, further delaying the project and preventing needed repairs before the rig left the shipyard.

32. Archer had to stand down its workforce during the Singapore shipyard project due to the fact that Defendants were delinquent in making payments on overdue invoices. Several key equipment packages were delayed in the refurbishment program due to the fact that Defendants could not or would not pre-fund the work. Vendors were unwilling to commence scopes of work or release equipment without these payments due to Defendants' payment track record and poor credit lines.

While Failing to Pay Plaintiffs in Breach of the Master Service Agreement, Defendants Force the ENDEAVOUR to Leave the Shipyard Prematurely.

33. From late 2011 into 2012, Plaintiffs provided Defendants with an extensive amount of services in managing and supervising the refurbishment of the ENDEAVOUR. Nevertheless, Defendants were habitually slow in making any payments to Plaintiffs as well as other vendors. Even when those delayed payments were made, Defendants failed to compensate Plaintiffs for more than a fraction of the services rendered.

34. As the months passed, those unpaid amounts continued to grow. At present, the Defendants remain in breach of the Master Service Agreement by having failed to pay millions of dollars owed to Plaintiffs.

35. Despite the substantial amount of work needed to bring the ENDEAVOUR up to compliance levels, Defendants insisted that the ENDEAVOUR exit the Singapore shipyard in the hope of commencing drilling operations in Alaska prior to the work stoppage brought on by winter.

36. This plan completely ignored the amount of work that remained to be done before the ENDEAVOUR could pass all the applicable federal and Alaskan codes, standards, and inspections. Against Plaintiffs' recommendations, Defendants removed the ENDEAVOUR from the Singapore shipyard prior to all work being completed.

37. Defendants knowingly took the rig out of the shipyard with scopes of work yet to be completed and claimed that the remaining work would be completed

en route to Alaska. Plaintiffs disagreed with this decision and informed Defendants that it is improper to conduct such "hot-work" while in transit on a transport vessel. Defendants took the rig out of shipyard knowing it was not ready and knowing that there were not sufficient resources in Alaska, such as a shipyard, a labor force, and a management agreement with Archer. As a result, Defendants had to use Archer drilling crews to do shipyard work.

Once the ENDEAVOUR Reaches Alaska, Defendants Induce Plaintiffs to Provide Services and Incur Millions in Expenditures Without Reimbursement.

38. Defendants' haste to transport the ENDEAVOUR to Alaska placed the entire project in a logistical quagmire: more work needed to be done on the rig but they no longer had the resources or the manpower of a shipyard with which to complete it. Moreover, Defendants lacked relationships with the local vendors to execute the outstanding work.

39. In spite of these formidable obstacles, Defendants, on the rig's arrival in Homer, Alaska, publicly claimed that the rig would only need two weeks of modifications before setting off north to explore oil and gas deposits. This baseless posturing flew in the face of the facts on the ground. The scopes of work that Defendants refused to complete in Singapore remained to be done. The rig also needed to pass inspections by the U.S. Coast Guard, the Alaska representatives of the American Bureau of Shipping, and various local agencies. Defendants had no infrastructure prepared to support this process and also had poor lines of credit with many of the local vendors.

40. Faced with this dilemma of their own making, Defendants looked to Plaintiffs to bail them out. They represented to Archer (and in an annual public report) that they would execute a management agreement which would have seen Archer operate the ENDEAVOUR in the Cook Inlet. In the meantime, however, they needed Plaintiffs' help.

41. Defendants instructed Archer to proceed with hiring more than 70 workers – individuals who were to be brought on for the operation of the ENDEAVOUR once it passed inspections – and temporarily use them as workers who would help bring the rig up to code. Defendants also requested that Archer provide funding to pay the various vendors whose goods and services were needed to complete preparatory work on the rig.

42. Defendants understood and agreed that Plaintiffs were fronting the daily operating expenses in Alaska and would have to be paid for their services. Buccaneer Resources' CFO authorized the opening of an operating account with money to fund Archer's crew and procurement on a 30-day basis with additional "parked" funds to act as collateral for failure to pay in a timely manner.

43. Archer undertook this work on behalf of Defendants on the understanding and agreement that a Management Agreement for the ongoing management of the ENDEAVOUR was to be issued once the rig arrived in Alaska. Some four months later and despite several requests by Archer, Defendants failed to issue this agreement.

44. Archer's work once the rig arrived in Alaska was plainly outside the scope of existing work orders between Defendants and Archer. Archer did not contract to perform "shipyard work" – which had been covered by Defendant's contract with Keppel FELS in the Singapore shipyard. Now in Alaska and without a shipyard, however, Defendants expected Plaintiffs to fill-in and not only provide the actual scope of work, but also to add a full crew to act as shipyard labor and bail out Defendants on their procurement problems.

45. Upon information and belief, individuals in Alaska working on behalf of Defendants issued work instructions to third parties with the directive to invoice Archer for work done under those instructions. Meanwhile, Defendants continued to drag their feet as to finalizing and executing a management agreement for the ENDEAVOUR's operations.

46. Nevertheless, in the absence of a contract for such obligations and in reliance on Defendants' representations and reassurances of repayment, Archer brought on a full crew to act as shipyard labor and paid for Defendants' vendors in Alaska in the interests of finally getting the rig operational.

47. In doing so, Archer effectively provided Defendants with a bridge loan as they could neither pay the local vendors nor the crews needed to complete the shipyard work. Archer's employees have been fully paid by Archer throughout the project. Archer also has paid for vendor personnel working on behalf of Defendants since the arrival of the ENDEAVOUR in Alaska. Many of the local vendors were

not willing to accept Defendant's terms of credit given its recent history of poor payment performance.

48. Defendants entered into a memorandum of understanding (MOU) with Archer on November 4, 2012 intended to resolve all previously disputed invoices in a timely manner. Given the importance of this process, Archer senior executives flew into Houston to attend a pre-scheduled meeting to conclude the MOU process. Defendants' representatives, however, failed to attend the scheduled meeting and as such the terms of the MOU lapsed.

49. Plaintiffs incurred millions of dollars in expenses in an effort to get the ENDEAVOUR project completed. Defendants neither timely nor in good faith raised disputes as to Archer's invoices. To the contrary, Defendants had represented that they would reimburse those payments. Plaintiffs reasonably relied on those representations, but Defendants have failed to fulfill the obligations they assumed. Defendants' belated disputes of Plaintiffs' invoices were made in bad faith and were nothing more than tactics to delay their payment obligations.

50. Plaintiffs terminated their business relationship with Defendants on December 13, 2012. This decision was taken after several attempts were made by Archer to collect payment on multiple overdue invoices for considerable sums of money. At that time, Archer notified local vendors, the Coast Guard, and the Homer Harbor Master, that Plaintiffs could no longer be associated with the ENDEAVOUR project. The very next day, in an effort to avoid public embarrassment, Defendants issued a letter claiming to terminate Plaintiffs, when, in fact, Plaintiffs had

terminated the relationship the prior day due to the long-standing failure to pay overdue invoices.

51. The ENDEAVOUR is still at quayside in Homer, Alaska because Defendants refused to listen to their vendors, failed to accept a reasonable work scope for the refurbishment of the rig, and failed to secure enough money for the project. While drilling for oil & gas in the Cook Inlet is possible, Archer believes both the personnel involved and the equipment in use must be in excellent condition and ready for work. After a year of experiencing delays in getting paid and witnessing shortages in scopes of work for the refurbishment of the ENDEAVOUR, Archer in its experience believes those conditions had not been met and cannot agree to crew and operate ENDEAVOUR in its current condition and under its current ownership and the companies expected to be in control.

FIRST CAUSE OF ACTION - BREACH OF CONTRACT

52. Plaintiffs and Defendants entered into the Master Services Agreement, which is a valid, enforceable contract. Defendants also separately issued Work Orders, Purchase Orders, and other work directives that constitute valid, enforceable agreements.

53. As parties to these agreements and contracts, Plaintiffs are proper parties to sue for their breach.

54. Plaintiffs performed their obligations under all relevant agreements and contracts, including the Master Services Agreement.

55. Defendants, however, have breached the obligations and monies they owe under all relevant agreements and contracts, including the Master Services Agreement.

56. Defendants' breach of the contract caused Plaintiffs injury.

57. Defendants are also liable in this cause of action because they knowingly authorized, directed, participated in, and ratified breaches of contract.

SECOND CAUSE OF ACTION – PROMISSORY ESTOPPEL

58. Defendants made numerous promises to Plaintiffs that Plaintiffs would be reimbursed for funding of labor and vendors on the ENDEAVOUR project in Alaska.

59. Plaintiffs reasonably and substantially relied on those promises to their detriment.

60. Plaintiffs' reliance on those promises was foreseeable to the Defendants.

61. Injustice can only be avoided by enforcing the Defendants' promises.

THIRD CAUSE OF ACTION – QUANTUM MERUIT

62. Plaintiffs provided valuable services and materials to Defendants.

63. The services and materials were provided for the benefit of Defendants.

64. Defendants accepted the services and materials.

65. Defendants had reasonable notice that Plaintiffs expected compensation for their services and materials.

FOURTH CAUSE OF ACTION – UNJUST ENRICHMENT

66. Defendants have obtained a benefit from Plaintiffs by taking an undue advantage, including (among other things) the work Plaintiffs performed on the ENDEAVOUR without receiving payment and the funding Plaintiffs provided for labor and vendors without receiving reimbursement.

FIFTH CAUSE OF ACTION – MONEY HAD AND RECEIVED

67. Defendants hold money that belongs to Plaintiffs in equity and good conscience.

SIXTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH CONTRACT

68. Plaintiffs had a valid contract with KOV at all relevant times.

69. Defendants Buccaneer, Buccaneer Alaska, Buccaneer Resources, and Kenai Drilling have willfully and intentionally interfered with this contract by preventing payment of money that Plaintiffs are rightfully owed.

70. This interference proximately caused Plaintiffs' injury.

71. Plaintiffs have incurred actual damage and/or loss as a result.

JURY DEMAND

72. Plaintiffs hereby demand a jury trial as to all claims that may be tried to a jury.

PRAYER

73. Wherefore, Plaintiffs respectfully request that Defendants be cited to answer this Petition, and to defend against the allegations contained herein.

Plaintiffs ask that the Court award to them, to the fullest extent allowed by law and equity:

- a. Actual damages in excess of \$6,000,000;
- b. Disgorgement and/or forfeiture of all Defendants' ill-gotten gains;
- c. Exemplary damages;
- d. Attorney's fees;
- e. Costs, including expert witness fees; and
- f. Such other and further legal and equitable relief to which Plaintiffs may show themselves to be entitled.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ Marc G. Matthews

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**ATTORNEYS FOR PLAINTIFFS
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