ICC (INTERNATIONAL CHAMBER OF COMMERCE)

ICC Case No. 22192/RD/MK

JACK J. GRYNBERG AND RSM PRODUCTION CORPORATION V. RODEO RESOURCES L.P. AND JIM FORD

PARTIAL AWARD

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30 July 2018

Tribunal:
Gary V. McGowan (Sole arbitrator)

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Partial Award

I. Background and Procedural History

1. Claimant Jack J. Grynberg ("Grynberg") is an individual residing in the State of Texas, His business address is 3600 South Yosemite Street Suite 900, Denver, Colorado 80237-1830, USA. Claimant RSM Production Corporation ("RSM") is a Texas corporation with its office at the same address.

2. Respondent Rodeo Resources, L.P. ("RRLP") is a Delaware partnership with its principal office located at 1222 Barkdull Street, Houston, TX 77006 USA. Respondent Jim Ford ("Ford") is an individual residing at the same address.

3. Grynberg, RSM, RRLP, and Ford are the only parties to this arbitration.

4. On November 18, 2015, Claimants brought claims in Texas state court in a lawsuit styled *Jack J. Grynberg and RSM Production Corporation v. Rodeo Resources, LP and Jim Pord,* Cause No. 2015-69097 (11th Judicial District Court of Harris County, Texas). Pursuant to motion of defendants (Respondents here), the Court stayed the proceedings and compelled the parties to arbitration. On August 10, 2016, Claimants commenced this arbitration by filing a Request for Arbitration with the International Court of Arbitration of the International Chamber of Commerce ("ICC"), naming as respondents RRLP and Ford. Respondents submitted their Answer in Response To Request for Arbitration on September 15, 2016.

5. This arbitration arises from a 2006 Farmin Agreement (Ex. 2) and an Operating Agreement (Ex. 31), each dated December 6, 2005, and each between RSM and Logbaba Development Ltd. ("LDL"). The Operating Agreement is one of several annexes to the 2006 Farmin Agreement.

6. Ford owns LDL indirectly through another company, as explained more fully below.

7. Both the Farmin Agreement and the Operating Agreement contain arbitration provisions. The Farmin Agreement states:

   9.2 *Dispute Resolution*

   Any and all claims, demands, causes of action, disputes, controversies and other matters in question arising out of or relating to this Agreement, including any question regarding its breach, existence, validity or termination,...shall be resolved by one arbitrator in accordance with the Arbitration Rules of the International Chamber of Commerce. The place of arbitration shall be Houston, Texas. The proceedings shall be in the English language. The resulting arbitral award shall be final and binding, and judgment upon such award may be entered in any court having jurisdiction. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. Any monetary award issued by the arbitrator shall be payable in United States Dollars. The

arbitrator shall have no authority to award special, indirect, consequential, exemplary, or punitive damages.

Ex. 2. The Operating Agreement, attached as Annex Five to the Farmin Agreement, provides in paragraph 18.2:

(B) Arbitration. Any Dispute shall be exclusively and definitively resolved through final and binding arbitration, it being the intention of the Parties that this is a broad form arbitration agreement designed to encompass all possible disputes.

(1) Rules. The arbitration shall be conducted in accordance with the following arbitration rules (as then in effect) (the "Rules"): Rules of the International Chamber of Commerce ("ICC").

(2) Number of Arbitrators. The arbitration shall be conducted by three arbitrators, unless all parties to the Dispute agree to a sole arbitrator within thirty (30) Days after the filing of the arbitration. For greater certainty, for purposes of this Article 18.2(D), the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other parties to the Dispute.

(3) Method of Appointment of the Arbitrator's. If the arbitration is to be conducted by a sole arbitrator, then the arbitrator will be jointly selected by the parties to the Dispute. If the parties to the Dispute fail to agree on the arbitrator within thirty (30) days after the filing of the arbitration, then the ICC shall appoint the arbitrator.....

(4) Consolidation. If the Parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligation, then all such proceedings may be consolidated into a single arbitral proceeding.

(5) Place of Arbitration. The place of arbitration shall be Houston, Texas,

(6) Language. The arbitration proceedings shall be conducted in English and the arbitrator(s) shall be fluent in the English language.

(7) Entry of Judgment. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.

(8) Notice....

(9) Qualifications and Conduct of the Arbitrators. All arbitrators shall be and remain at all times wholly impartial, and, once appointed, no arbitrator shall have any ex parte communications with any of the parties to the Dispute concerning the arbitration or the underlying Dispute other than communications directly concerning the selection of the presiding arbitrator, where applicable. Whenever the parties to the Dispute are of more than one nationality, the single arbitrator or the presiding arbitrator (as the case may be) shall not be of the same nationality as any of the parties or their Ultimate Parent Companies, unless the parties to the Dispute otherwise agree.

(10) Interim Measures.....

(11) Costs and Attorneys' Fees. The arbitral tribunal is authorized to award costs and attorneys' fees and to allocate them between the parties to the Dispute. The costs of the arbitration proceedings, including attorneys' fees shall be borne in the manner determined by the arbitral tribunal.

(12) Interest. The award shall include interest as determined by the arbitral award, from the date of any default or other breach of this Agreement until the arbitral award is paid in full. Interest shall be awarded at the Agreed Interest Rate.

(13) Currency of Award. The arbitral award shall be made and payable in United States dollars, free of any tax or other deduction.

(14) Exemplary Damages. The parties waive their rights to claim or recover, and the arbitral tribunal shall not award, any punitive, consequential, multiple, or other exemplary damages (whether statutory or common law) except to the extent such damages have been awarded to a third party and are subject to allocation between or among the parties to the Dispute.

(15) Waiver of Challenge to Decision or Award. To the extent permitted by law, any right to appeal or challenge any arbitral decision or award, or to oppose enforcement of any such decision or award before a court or any governmental authority, is hereby waived by the Parties except with respect to the limited grounds for modification or non-enforcement provided by any applicable arbitration statute or treaty.

(16) Decision. The decision of the sole arbitrator or a majority of the arbitrators, as the case may be, shall be reduced to writing; final and binding without the right of appeal; the sole and exclusive remedy regarding any controversies, claims, counterclaims, issues or accountings presented to the arbitrator(s); made and promptly paid in the United States Dollars free of any deduction or offset.; and any costs or fees incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the Party resisting such enforcement.

(17) Non-Appearance. The arbitration shall proceed in the absence of a Party who, after due notice, fails to answer or appear. An award shall not be made solely on the default of a Party, but the arbitrator(s) shall require the Party who is present to submit such evidence as the arbitrator(s) may determine is reasonably required to make an award.

(C) Confidentiality. All negotiations, mediation, arbitration, and expert determinations relating to a Dispute (including settlement resulting from negotiation or mediation, an arbitral award, documents exchanged or produced during a mediations or arbitration proceeding, and memorials, brief or other documents prepared for the arbitration) are confidential and may not be disclosed by the Parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except (in accordance with Article 15.2) to the extent necessary to enforce this Article 18 or any arbitration award, to enforce other rights of a Party, or as required by law; provide, however, that breach of this confidentiality provision shall not void any settlement, expert determination or award.

Ex. 31.

8. Both the Farmin Agreement and the Operating Agreement choose Texas substantive law. "The substantive law of Texas law...shall govern this Agreement for all purposes...." Farmin Agreement, ¶ 9.1. "The substantive laws of the State of Texas, exclusive of any conflict of laws principles that could require the application of any other law, shall govern this Agreement for all purposes, including the resolution of all Disputes between or among Parties." Operating Agreement, ¶ 18.1.

9. In case of a conflict between the Farmin Agreement and the Operating Agreement, the Farmin Agreement controls. *See* Farmin Agreement, ¶ 12.7.

10. The place of this arbitration is Houston, Texas. *See* ¶ 9.2 of the Farmin Agreement and ¶ 18.2(B)(5) of the Operating Agreement.

11. Paragraph 9.2 of the Farmin Agreement calls for the appointment of one arbitrator, whereas Operating Agreement ¶ 18.2(B)(2) requires three arbitrators. The parties agreed to submit the matter to a sole arbitrator. *See* ¶ 126 of the amended Terms of Reference.

12. The ICC Arbitration Rules (in force from 2012) and the IBA Rules on the Taking of Evidence apply in tins proceeding. The Arbitrator does not have the authority to act as *amiable compositeur* or to decide *ex aequo et bono (see* ICC Rule 21(3)).

13. Pursuant to ICC Rule 13(3), on December 15, 2016, the International Court of Arbitration of the International Chamber of Commerce ("ICC Court") directly appointed Gary McGowan as Sole Arbitrator. His full name and address are;
Gary McGowan
McGowan Arbitration and Dispute Resolution
5009 Caroline, Suite 100
Houston, Texas 77004 USA

14. On January 10, 2017, the Arbitrator convened a teleconference with counsel to discuss a draft Terms of Reference and a procedural timetable. However, shortly before the teleconference, the Arbitrator received a copy of a December 22, 2016, order, entered by a Colorado state court, naming John L. Morgan as Receiver for RSM and placing the company in receivership. Given this development, counsel for RSM advised during the teleconference they needed additional time to obtain instructions from the Receiver as to whether and how io proceed. This development caused a delay of over three months.

15. In April 2017 RSM received authorization from the Receiver to continue pursuing claims in this arbitration.

16. The Arbitrator conducted a case management teleconference on May 17, 2017, again to discuss a draft Terms of Reference and procedural timetable.

17. On May 30, 2017, the Arbitrator submitted to the ICC a fully executed Terms of Reference. On June 5, 2017, the Arbitrator issued Case Management Order ("CMO") No. 1, setting a procedural timetable for the proceeding, including a date for the evidentiary hearing— January 8, 2018.

18. On June 12, 2017, the ICC informed the parties, pursuant to ICC Rule 36(6), that the claims in this matter were considered withdrawn as of May 29, 2017, following the parties' failure to pay the balance of the advance of costs by a deadline fixed by the ICC Court. The parties then jointly requested reinstatement of the proceeding. At its session of June 28, 2017, the Court, in recognition of the parties' agreement, confirmed the claims had not been effectively withdrawn and the matter would move forward in light of Respondents' payment of US$ 72,500 toward the balance of the

advance on costs. This episode caused another delay.

19. On June 29, 2017, the ICC acknowledged receipt of the fully executed Terms of Reference dated May 30, 2017. Per ICC Rule 30(1), the ICC Court fixed March 12, 2018 as the time limit for rendering a Final Award.

20. In late July 2017, the parties jointly requested a resetting of the procedural timetable, and on July 20, 2017, the Arbitrator issued CMO 2, which adjusted the schedule and reset the hearing for March 27, 2018.

21. On November 21, 2017, Claimants served their First Amended Request for Arbitration, which the Arbitrator deemed to be, in effect, a request to amend the Terms of Reference. The Arbitrator granted this request in CMO 9 (dated December 3, 2017) and on January 11, 2018, submitted an amended Terms of Reference to the ICC.

22. On March 1, 2018, the ICC Court extended the time limit for rendering a Final Award to May 31, 2018, and on May 3, 2018, the ICC Court extended the deadline to August 12, 2018.

23. Respondents' Answer asserted they did not sign the alleged Farmin agreement dated June 24, 2004, and are thus not bound by it. The ICC interpreted this allegation as a Rule 6(3) plea challenging the jurisdiction of the Court and so notified the parties. However, on October 7, 2016, Respondents informed the ICC they had no objection to the ICC's jurisdiction over the claims and parties herein. Thus, jurisdiction of the Arbitrator to decide the all matters in dispute is not contested, and no issue of jurisdiction is presented.

24. From July 2017 through March 2018, the Arbitrator received and decided several discovery motions, a request for leave to file a dispositive motion (denied), and a motion to bifurcate the hearing (denied). During the same period, the Arbitrator issued fourteen CMOs and conducted several telephonic conferences with counsel concerning the above motions and discovery' issues.

25. On February 23, 2018, the parties submitted pre-hearing briefs, along with extensive evidentiary materials.

26. The hearing occurred March 27-30, 2018 (four days) in Houston, Texas, USA. Claimants were represented by:
Howard L. Close
Randall C. Owens
Ronnie Flack
Andrew C. Nelson
Wright & Close, LLP
One Riverway, Suite 2200
Houston, Texas 77056 USA

Respondents were represented by:

E. P. Mano DeAyala

Andrew C. Wright
Buck Keenan, LLP
700 Louisiana Street, Suite 5100
Houston, TX 77002 USA

27. At the hearing, the parties submitted witness statements for six people and called five of those witnesses live for direct and cross-examination. They also submitted over 145 exhibits.

28. The parties filed post-hearing briefs thereafter, and by email dated July 19, 2018, the Arbitrator declared the proceedings closed (except for the issue of attorneys' fees and costs) as of June 23, 2018, per ICC Rule 27.

II. Facts

29. The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. To the extent this recitation differs from any party's position, that is the result of determinations as to credibility, relevance, burden of proof considerations, and the weighing of evidence, both oral and written.

A. Overview

30. The relevant "facts" here concern people and companies whose complex web of negotiations, agreements, and business relationships spanning about fifteen years. An introduction to the significant players and their current roles may aid clarity and comprehension. The recitations in ¶¶ 31-35 are undisputed.

31. Claimant Grynberg, a registered professional engineer with a degree in Petroleum (Production) Engineering, has engaged in the oil and gas business for over fifty years. Since at least 2003, he has been President and Chief Executive Officer of Claimant RSM. Grynberg's three adult children—Rachel Grynberg, Miriam Grynberg, and Stephen Grynberg (collectively, the "Grynberg children")—own RSM, At all relevant times, however, Grynberg controlled and managed the company.

32. Respondent Ford, too, has been in the oil and gas business for decades, He and Grynberg had done business with each other before 2004 and enjoyed a relationship of mutual cordiality' and respect. Ford controls Respondent RRLP, owned by him, his wife, and his children.

33. The Logbaba Gas-Condensate Field lies in the Republic of Cameroon ("Cameroon"). In 2001, RSM obtained a Concession Contract with Cameroon, granting to RSM the exclusive right (permit) to explore, develop, and produce hydrocarbons in the Logbaba Block, a specified 64 km² area, for up to 35 years. RSM now owns an undivided 40% interest in that Contract, and Gaz du Cameroon, S.A. ("GdC"), a subsidiary' of Victoria Oil & Gas, Ltd. ("VOG").[1] owns the other 60% and operates the

Logbaba permit. Dr. Kevin Foo ("Foo") is the Chairman of VOG. The Grynberg children own a minority shareholder interest in VOG.

34. GdC owns its 60% interest in the Concession Contract by reason of a 2006 Farmin Agreement between RSM and LDL (n/k/a GdC). In 2006 LDL was a subsidiary of Rodeo Resources, Inc. ("RRI"), but later LDL was acquired by VOG. Ford owned (and still owns) RRL

35. Until recently (2017), GdC (f/k/a LDL) bore obligations to RRI under two contracts (entered in 2006)—the Contingent Payment Agreement ("CPA") and the Reserve Bonus Payment Agreement ("RBPA"). These contracts lie at the center of this dispute and are discussed more fully below. Ford, who controlled both RRI and LDL in 2006, caused these entities to enter the CPA and RBPA. In 2011, RRI assigned its rights under those agreements to Respondent RRLP. *See* Ford Witness Statement, ¶ 22.

B. Grynberg/RSM Obtain the Concession Contract and Enlist the Aid of Ford/RRI

36. A chronological account of relevant events follows, except for evidence relating to Grynberg Information (explained later), which is recounted separately. The recitations in ¶¶ 37-40 are undisputed.

37. In the 1950s, Elf Serepca ("Elf") drilled four wells in the Logbaba Field. These wells produced abundant gas but little oil. Given the absence of an available market for gas in Cameroon in that period, Elf considered the wells uneconomic and abandoned further development.

38. In May 2001, however, believing that a local gas market could be developed, RSM obtained the Concession Contract. (For all purposes under the Contract, the Executive Manager of Societe Nationale des Hydrocarbures ("SNH") represented Cameroon.) The Contract's initial term was two years but could be renewed for two additional 2-year terms, called Exploration Phases, if RSM completed specified Minimum Work Program Requirements for each year. Cameroon could terminate the Contract at the end of any Exploration Phase if RSM did not complete the Minimum Work Requirements

39. The project described in the Concession Agreement was called "Logbaba Natural Gas and Condensate Field Development Project" (the"Project").

40. In mid-2004, needing capital and assistance to revive the Contract, Grynberg approached Ford about farming into RSM's interest. In June 2004 Ford agreed in principle to do so, subject to completion of due diligence and a mutually acceptable participation agreement. *See* Ex. 11. Ford incorporated RRI in July 2004, then intending it to become a farmee and the operator under the Concession Contract.

C. RSM and RRI Fitfully Negotiate Toward a Farmin Contract; Ford

[1] VOG is the ultimate parent of GdC, which is directly owned by Bramlin, Ltd., a direct subsidiary of VOG.

Tries To Raise Money For Drilling; RSM Formally Authorizes RRI As Agent

41. The facts found below are largely disputed.

42. Claimants contend RSM and RRI entered, on June 24, 2004, a written farmin agreement to share a 50/50 interest in the Concession. *See* Ex. 3 (the "2004 RSM-RR1 Agreement"). Respondents deny executing that particular agreement, saying the purported signatures of Grynberg and Ford thereon were forged.

43. The "2004 RSM-RRI Agreement." which expired by its terms on December 24, 2004, was no more than an early version of the Farmin Agreement entered later (February 2006), and it accurately reflects the parties' initial agreement in principle as to a 50/50 division. *Id.: see Ex.* 2, discussed below. It was never an enforceable contract.

44. In February 2005, in an email to Grynberg, Ford said he was close to securing a financial commitment and would "put the Project into a company other than [RRI] for funding purposes." *See* Ex. 13. He added—"I need to finalize the farmin agreement with you."

45. Ford was then separately negotiating terms with Canamara Energy Corporation ("CRC") for a CRC option to acquire all of RRJ's interest in the anticipated farmin agreement, with RRI keeping a 1% gross overriding royalty to be borne by the CRC interest. On February 21, 2005, as part of an exchange of terms, Ford wrote CRC: "I will send you copies of the Production Sharing Contract [Concession Agreement] and the Farmout to [RRI] so that you can get comfortable that we actually have control of the project." See Ex. 14. (In fact, there was no farmin agreement on February 21, 2005—Ford must have referred to his expectation of one.) Though Grynberg knew Ford/RRI was trying to raise money for the Project, Ford did not disclose to Grynberg/RSM the substance of negotiations with CRC or other potential sources of money. (Canamara never actually acquired RRI or an interest in the Project.)

46. In April 2005, close to the end of the first Exploration Phase. RSM had not completed the applicable Minimum Work Requirements, Consequently, SNH considered the Concession Contract terminated for default and so notified RSM, See Ex. 17. Ford agreed to try to resurrect the Contract. So, on April 25, Grynberg executed and delivered to Ford an affidavit authorizing RRI "and its representatives, and in particular, Jim Ford, President of [RRI]... to represent RSM...in the Logbaba project" and 'To represent RSM...in fulfillment of its obligations" under the Concession Contract, *See* Ex. 6 (the "Grynberg Affidavit"). The Affidavit further stated: "[RRI] will be the operator, and RSM and [RRI] are 50/50 partners."

47. In mid-June 2005, Ford, under authority of the Grynberg Affidavit, met with SNH in Cameroon and persuaded it to reinstate the Concession Contract. Ford and RRI later repeatedly relied on the Grynberg Affidavit in soliciting investors for the Project—to establish RRI's authority to speak for RSM and its legitimate interest in the Project. *See, e.g.,* Ex. 24 (CRC, March 2005); Ex. 20 (CRC, April 26, 2005); Ex. 21 (CRC, May 3, 2005); Ex. 28 (Pat Reddi, October 2005); Ex. 34 (CRC, December 2005); Ex. 77 (Bramlin, November 21, 2007).

48. In September 2005, Ford formed LDL, whose shares were owned 100% by RRI, as a special purpose entity to farm into RSM's interest in the Concession Contract Ford planned to raise funds for the Project by selling RRI's stock ownership of LDL and to retain an interest for himself through his ownership of RRI.

49. By mid-December 2005, Ford's negotiations with CRC had evolved into a proposed letter of intent between RRI and "Newco" (an entity to be controlled by CRC), whereby RRI would grant to Newco an exclusive, conditional option to acquire all of RRI's interest in the Logbaba Project in exchange for Newco funding commitments. The letter noted LDL's "burden" to pay RRI (a) a 1.2% overriding royalty and (b) a $5,000,000[2] "production" bonus. *See* Ex. 34. (Again, in December 2005, no farmin had been signed, nor had RSM and LDL entered the CPA or RBA. Rather, Ford expected those agreements to occur.)

50. The CRC negotiations did not lead to a contract. Ford would thus turn to Foo as a potential funding source, as discussed below, and would continue to demand a production royalty and reserve-based bonus for RRI.

D. Ford Continues Efforts to Raise Mossy; RSM and LDL Enter a Farmin Agreement Granting 60% to LDL; Ford Causes RRI and LDL to Enter the CPA and RBPA

51. The facts found below are largely disputed.

52. On January 27, 2006, Ford emailed Grynberg, "RSM is still the official license holder, and everything we are doing is on your behalf." *See* Ex. 35.

53. As stated above, before entering a written contract. Ford and Grynberg had agreed in principle to a 50/50 division of the Concession Contract between RRI (or its designated operating entity) and RSM. However, Grynberg later assented to increase LDL's interest to 60% and to reduce RSM's share to 40%, as reflected in the Farmin Agreement signed on or near February 22, 2006. *See Ex. 2.* The Grynberg-Ford negotiations for the Farmin occurred on a parallel track with Ford/RRI's separate negotiations with Foo (VOG) and other investors (collectively, the "Foo investors"). *See* Ex. 37, 38, 39. From February 16 to February 20, 2006, Ford and the Foo investors exchanged drafts of a Memorandum of Understanding ("MOU") to be included in a "Participation Agreement." Per these drafts, the Foo investors would acquire all shares of LDL in exchange for a commitment to fund the Logbaba drilling program. The Participation Agreement, if finalized, would be "conditional on...LDL renegotiating the current Farm In [sic] Agreement with RSM, whereby the LDL's percentage of working interest in the Concession Agreement should be increased to the minimum of 75% and NEWCO will be recognised as the new shareholder of LDL." *Id.* Consistent with these drafts, Ford testified Foo wanted him io renegotiate LDL's Farmin interest to 75%.

54. The MOU drafts also provided LDL would conditionally promise to pay RRI a 1.2% royalty on production and a bonus based on the value of reserves. On February 20, 2006, Ford emailed to Foo

[2] All dollar amounts are stated in US dollars

and others another draft MOU and an unsigned "Reserve Bonus Payment Agreement." The latter specified a contingent reserve bonus payment from LDL to RRI in an amount up to $10,000,000. Ford closed the email—"I meet with RSM tomorrow and will advise you of the outcome [of the Farm in negotiation]." Ex. 39.

55. On February 21, 2006. Ford met with Grynberg in Denver to finalize the Farmin Agreement, in which RSM and LDL settled on a 40% share for RSM and a 60% share for LDL. On February 23, 2006, Ford emailed the Foo investors:
These are the revised versions [of the Farmin agreement and Operating Agreement] that are now signed. It was done before leaving Denver.

I have also started revising our MOU to allow for a 60-40 deal to satisfy the condition for going forward.

Ex. 40. On February 24, Ford emailed them the fully executed Farmin Agreement. *See* Ex. 41.

56. Thus, around February 22, 2006, RSM and LDL entered the Farmin Agreement (the "2006 Farmin Agreement") (inexplicably dated December 6, 2005). Therein, RSM assigned to LDL a 60% undivided interest in the Concession Contract, and LDL promised to fund and to perform the Contract's drilling requirements and to pay RSM a 2% royalty on total production. Ex. 2. RSM and LDL simultaneously entered the annexed Operating Agreement (Ex. 31).

57. Neither Respondent in the instant arbitration was or is a party to the 2006 Farmin Agreement or the Operating Agreement. RSM and LDL (later known as RDL, then GdC) have been the only parties to those contracts.

58. Shortly after the 2006 Farmin Agreement was signed, Ford caused LDL and RRI (both of which he controlled) to enter the CPA and RBPA (or, "Side Agreements") between themselves. The CPA obligated LDL to pay RRJ a 1.2% royalty interest from LDL's 60% share of the Concession Contract See Ex. 4. The RBPA obligated LDL to pay RRI up to $10 million in bonus (again, out of LDL's 60% share) based on certain reserve estimates, in five annual installments beginning the fourth year after commencement of production.[3] *See* Ex. 5. Like the 2006 Farmin Agreement, both the CPA and RBPA were dated December 6, 2005, but they were actually executed sometime between February 22 and March 2, 2006. *See* Ex. 39, 40, 42.

59. Ford testified he told Grynberg about the Side Agreements by telephone and in person before and after they were done. *See* Hearing Transcript at p. 176, 184-85; Ford Witness Statement, ¶ 13. Grynberg testified he knew nothing of them until 2015. *See* Hearing Transcript at p. 152. The record contains no evidence of any written disclosure of the Agreements to Grynberg. He does not appear as a direct or copy recipient on any of the written communications concerning the Side Agreements (see Ex. 37, 38, 39, and 40), and the Arbitrator believes that Grynberg would have objected to the Agreements if he had known about them. Thus, more probably than not, Ford did not disclose the CPA or RBPA, or his intention to create them, to Grynberg, who would not have entered into the 2006 Farmin Agreement had he known about them. *See* Hearing Transcript at 132, 135, 149, 152.

[3] The bonus quantum was to be calculated as $500,000 for each one million Barrels of Oil-equivalent reserves up to a total maximum payment of $10,000,000.

60. On March 20, 2006, the MOU negotiations culminated in a Participation Agreement among RRI, VOG(Foo), ANA Investments, Ltd., and Githa Gondi (ANA and Gondi were referred to as "P&L"). Essentially, subject to certain conditions, VOG and P&L would form a new company (NEWCO) to acquire LDL from RRI and then list NEWCO on London's AIM Stock Exchange to raise funds for LDL drilling under the Concession Contract. The LDL shares transferred to NEWCO would carry the "burdens" provided in the CPA and RBPA between RRI and LDL. Ex. 43. The Agreement's conditions precedent never occurred, and it terminated on June 30, 2006. Nevertheless, it would later serve as a template (in large part) for Bramlin's acquisition of LDL. See discussion below.

61. By June 2006. Ford's fund-raising efforts shifted again. On June 12, RRI entered into a "Shareholders Agreement" with HJ Resources (owned and controlled by Foo), Hydrocarbons Technologies Ltd., and Archidonia Minerals, S.A. (owned and controlled by Ford) (collectively, "HJ Resources et al"). This Agreement confirmed RRI's transfer of 10,000 (10%) of LDL's shares to HJ Resources et al, with RRI keeping 90,000 shares (90%). The LDL shareholders pledged to achieve either a listing or a sale of LDL and to procure a loan of $2,000,000 to LDL in the interim. *See* Ex. J to Ford Witness Statement.

62. In the fall of 2006, Grynberg, unaware of Ford's negotiations and agreements with Foo as to financing, communicated directly with Foo in an attempt to raise money. In a September 17, 2006 letter, Grynberg confirmed Foo's agreement to organize, by October 31, 2006, a "new company," with an initial funding commitment of £3,000,000, to acquire the share capital of LDL and use "all reasonable endeavours" to raise $30,000,000 for the Logbaba project. Ex. J to Ford Witness Statement. The agreement would become null and void if the deadline were not met. On October 3, 2006, Grynberg and Foo extended the October 31 deadline to March 31, 2007. *See* Ex. K to Ford Witness Statement. This letter agreement, which came to naught must have represented a fallback path for Foo if the LDL Shareholders Agreement had failed.

63. Respondents say the Grynberg-Foo negotiations led to Bramlin's funding the Project, described below, and show that Grynberg must have known about the CPA and RBPA Not so. The Bramlin structure flowed directly from the HJ Resources, et al negotiations. The paper trails of Grynberg-Foo, on the one hand, and HJ Resources, et al, on the other, show no connection between the two. And, nothing in the evidence suggests Grynberg learned about the Side Deals in his communications with Foo.

E. RSM and LDL enter Share Acquisition Agreement; Ford Obtains Bramlin Funding for the Project

64. The facts found below are largely disputed.

65. Ou September 18, 2006, RSM and LDL entered a Share Acquisition Agreement, in which LDL promised to "procure that RSM... is allotted 17.1% of the...share capital of any company that acquires the...share capital of LDL and whose share capital is listed on AIM [the London Alternative Investment Market] or other recognised investment exchange," The Agreement did not mention the CPA or RBPA, even though the anticipated "company" in which RSM would hold a 17.1% ownership would be burdened indirectly by LDL's obligations to RRI under those Side Agreements. See Ex. 59. Grynberg was still unaware of the Side Agreements when he signed the Share Acquisition

Agreement *See* ¶ 59 above.

66. In November 2006, Cameroon approved RSM's deed of assignment of a 60% interest in the Concession Contract to LDL, which then became operator of the permit. *See* Ex. 66 and 71.

67. On December 31. 2006, RRI assigned its remaining 90,000 shares of LDL (90%) to Rodeo LP (not RRLP), another partnership owned by Ford and his family and controlled by Ford.

68. In early 2007 LDL changed its name to Rodeo Development, Ltd. ("RDL") (later to be known as GdC).

69. On February 21, 2007, Rodeo LP sold its remaining 90,000 RDL shares to HJ Resources et al, making the latter the 100% owner of RDL (f/k/a LDL). *See* Ex. 62.

70. In November 2007, Bramlin acquired all shares of RDL from HJ Resources et al, making RDL a subsidiary of Bramlin. Foo was the Chairman of Bramlin. As consideration for the RDL shares, Bramlin issued its own stock to the sellers of RDL's shares and others, including the Grynberg children, the owners of RSM. *See* Ex. 81. Transfer of these Bramlin shares to the Grynberg children was apparently intended to satisfy LDL's promise, m the Share Acquisition Agreement, to "procure that RSM...is allotted 17.1% of the entire issued share capital of any company that acquires the entire issued share capital of LDL and whose share capital is listed on AIM...." *See* Ex. 59; Ex. 81, at p. 119-20. (Neither Grynberg nor RSM themselves received Bramlin shares.)

F. The Bramlin Disclosures

71. The facts found below are largely disputed.

72. To qualify as "the company that acquires the entire issued share capital of LDL" per the Share Acquisition Agreement, Bramlin had to become listed on the London AIM Exchange, The listing process required public disclosure of all material information about the contractual obligations of Bramlin and RDL (f/k/a LDL). To this end, Bramlin attorneys provided to prospective Bramlin shareholders (including the Grynberg children) and to certain "Concert Parties" (including RSM) drafts of an "Admission Document" containing such disclosures, including the RBPA and CPA.

73. On November 19, 2007, Grynberg, as President and CEO of Concert Party RSM, signed a "Concert Party Responsibility' Statement," acknowledging:
... [T]he information contained in the Admission Document for which I am responsible is in accordance with the facts... I confirm that I have carefully read the latest proof of foe Admission Document as at the date of this letter and am in full agreement with all the statements contained in it for which I am responsible.

Ex. 69.

74. The Admission Document included a "Competent Person's Report" prepared by RPS Energy Limited ("RPS"), which conducted an independent evaluation of the "Logbaba Asset." Ex. 81, part III. The RPS

Report said (in relevant part)—
.... [RPS] extracted additional terms from the Contingent Payment and Reserves Bonus agreements entered on December 6 2005 between RDL and [RRI].

.... [U]nder the Contingent Payment agreement. RDL agrees to pay [RRI] a contingent payment equal to 1.2% of gross production.

Additionally, RDL, according to the Reserves Bonus Agreement, agrees to pay a reserve bonus of US$500,000 per million BOE, up to US$10,000,000, to [RRI], where one BOE is defined as being equal to six Mcf. The reserve bonus is based on the gross field reserves, as calculated at the end of the fourth year after commencement of production by RDL under the farm-in Agreement with RSM. In the calculation of the reserve bonus, the BOE reserves shall not be reduced as a result of production during the reference period under the farmin Agreement.

The Reserve Bonus Agreement states that foe reserve classification for the calculation is based on Proved plus Probable plus Possible. However, since the current reserves uncertainty range will almost certainly be reduced after four years of production, RPS has assumed that the reserves base to calculate the reserve bonus is the total recoverable volume that corresponds to the case being evaluated (i.e. 1P, 2P and 3P).

The payment of the reserve bonus can be made in five equal instalments per year, but is subject to be accrued interest of 6% per annum of the unpaid balance. It is assumed, in RPS's economic base assessment, that the maximum payment is made as soon as possible, to avoid interest payment.

Id., p. 46. The Report fulsomely described the agreements again on pages 128-29 and referred to them briefly on page 88. *See id.,* p. 88, 128-29.

75. In June 2008, Bramlin released its Annual Report for 2007. Bramlim sent the Report to its shareholders, including foe Grynberg children, and published it on the company's website. Though Grynberg was not a shareholder of Bramlin, the Admission Document listed the addresses of the Grynberg children, who were Brandin shareholders, as "C/O RSM, Prentice Point, Suite 500, 5299 Boulevard Greenwood Village, CO 80111-3321 US." *See* Ex. 81, p. 109. (Boldness added). It is reasonable to infer that Grynberg, the President of RSM and fiduciary to his children (who owned RSM) continued to monitor the interests of his children vis-à-vis their Bramlin shares and that he received the Bramlin annual reports on their behalf.

76. The 2007 Bramlin Annual Report disclosed the existence and terms of the RBPA and CPA as follows:

20. Reserve bonus liability

The liability arises under a reserves bonus agreement with [RRI] on the Logbaba gas field. The amount of the liability will be calculated four years after commencement of hydrocarbon production by reference to reserves of the field, as assessed at that time, with a maximum amount of USD 10 million (£5.0 million). The Directors are of the view that there is reasonable probability of the Logbaba field being developed and having sufficient reserves, as defined in the agreement, to trigger the maximum payment approximately five years after foe balance sheet date.....

.....

26. Related Party Transactions

.... Prior to the acquisition by the Company, RDL had a related party relationship with its parent company [RRI], which provided a number of services for RDI... Those services were terminated ahead of foe acquisition by Bramlin, but [RRI] continues to hold a 1.2% overriding royalty interest on gross production from foe Logbaba licence, and under a reserve bonus agreement dated 6 December 2005 is entitled to receive a payment of US$500,000 (£251,143) per million barrels of oil equivalent of field reserves, up to a maximum of US$10,000,000 (£5,022,854). As set out in note 20, this payment has been recognised as a long term liability in foe Group's balance sheet at fair value.

Ex. 83 at pp. 24, 26-27.

77. In November 2008 Bramlin shareholders received a "Recommended Proposal for Acquisition of Bramlin by Victoria Oil and Gas, Plc." ("VOG"), which again disclosed the existence and terms of RBPA and CPA.

G. VOG Acquires Bramlin; RDL Becomes GdC; RRI Assigns the CPA and RBPA to RRLP

78. Except for the last two sentences of paragraph 87, the facts found below are undisputed.

79. In December 2008 VOG, a publicly traded company, acquired Bramlin by means of a share swap, making VOG the ultimate corporate parent of RDL (f/k/a LDL). Bramlin shares, including those held by the Grynberg children, were swapped for shares in VOG. No drilling of wells had occurred by this time. *See* Ex. 084.

80. In May 2009, VOG published and issued to all shareholders its Annual Report for year ended May 31, 2009. The Report summarized the terms and existence of the RBPA, but there was no mention of the CPA by name or any summary' of its terms.[4] *See* Ex. 85 at pp. 55, 56, 58. Essentially the same information appeared in VOG annual reports issued to shareholders in May 2010 and May 2011. *See* Ex. 88.91.

81. RDL began drilling the first well for the Logbaba Project in August 2009, and the second in early 2010, and completed these wells in 2010. During the course of the drilling, Foo was in regular communication with Grynberg about the wells.

82. In February 2010 RSM submitted a Request for Arbitration against respondents VOG, RDL, and Foo in ICC No. 16933/VRO, which attached as Exhibit E foe March 20. 2006 Participation Agreement (Ex. 43). Exhibit E stated: "The transfer of shares in LDL by [RRI] to Newco shall be subject to foe following burdens provided for in the following agreements: (i) Contingent Payment Agreement

[4] At page 55, the Report lists "Non current [sic] liabilities," including $1,993,000 in "Contingent consideration." This item may relate to the CPA liability, but the reference is obscure.

between [RRI] and LDL, dated December 6, 2005; and (ii) Reserve Bonus Payment Agreement, dated December 6, 2005." *See* Ex. 86. In early 2011, the same document appeared in RSM's Stipulated Proposed Arbitration Hearing Exhibits List. *See* Ex. 90.

83. In October 2011, RRI assigned its interest in the RBPA and CPA to Respondent RRLP. See Ex. 93.

84. In 2013, RDL changed its name to Gaz du Cameroon, S.A. ("GdC"). *See* Ex. 121.

85. In April 2015, RRLP, as successor to RRl's rights under foe RBPA, notified GdC that the first payment under the RBPA was due on June 28, 2015. *See* Ex. 100. GdC (f/k/a RDL, f/k/a LDL) failed to make the payment.

86. In August 2015, RRLP submitted to the ICC a Request for Arbitration in ICC Case No. 21278, asserting claims against GdC under the CPA and RBPA. The Request specifically sought $10,000,000 for breach of the RBPA. *See* Ex. 102. In the fall of 2015, Foo told Grynberg about the foregoing arbitration proceeding and the contracts at issue therein. *See* Hearing Transcript at pp. 152-53. Until that communication, Grynberg, more probably than not, did not have actual knowledge of the Side Agreements. *Id; see* 59 above.

87. On November 18, 2015, Grynberg and RSM filed a petition in Texas state court against Ford and RRLP *(see* Ex. 103), which obtained an order compelling foe dispute to arbitration.

88. Eventually, Ford and RR LP accepted a confidential settlement from GdC in ICC Cast No. 21278 and relinquished all claims against GdC arising from the CPA and RBPA.

H. "Grynberg Information"

89. The facts found below are largely disputed.

90. In the early part of 1993, Grynberg began his investigation of hydrocarbon reserves in foe Logbaba Field. He and persons hired by him gathered and processed seismic and petrophysical information, and he interpreted that seismic data and performed a quantitative analysis of well logs and well test data. For example, he interpreted "bright spots" on the seismic maps to show precisely where the gas and condensate potential in the Field was likely located. (Grynberg's work product and analyses described in this section H will be called the "Grynberg Information" or "Information").

91. During the development of the Grynberg Information. Grynberg travelled to Paris and Cameroon, and his daughter Rachel Grynberg made two trips to Cameroon. Further, he traded offshore data relating to a prospect in offshore Grenada to acquire Chevron's confidential information regarding the Logbaba Block (also included in "Grynberg Information"). Additionally, he hired a company to process data. Grynberg testified he spent over tour years and over $2,000,000 to develop the Information.

92. In November 2001, Grynberg sent a reserve analysis to SNH. His letter stated, in part:

An evaluation of the Logbaba Gas Field Area has been completed by me and under my supervision. The recoverable reserves are estimated to be **2.0 TCF of natural gas and 31.6 MMBBL of condensate.** This work has included interpretations of the written reports as well as openhole well logs from the original four gas wells drilled in the Logbaba Gas Field and a quantitative well log analysts of the logs run in toe LA #104 gas well. The evaluation included PVT data, as available. A volumetric analysis was completed, incorporating geologic interpretation and all tost data available summarized on attached maps, Figures 1-13.

Ex. 9 (boldness added). Later, he submitted an "Executive Summary" to Cameroon revising these estimates downward to 1.11 TCF of natural gas and 17.7 million barrels of condensate. [5] *See* Ex. 124.

93. In early 2005 RRI hired John Ya ("Yu") of Petrotech Engineering to prepare an engineering report to be used to obtain financing for the Project. Yu reviewed RSM files in Denver and made copies of well logs, gas analysis reports, drilling reports, and other information, almost all gathered and created by Elf when it drilled four wells in the Logbaba Block in the 1950s. The Elf information was publicly available from the government Ministry of Hydrocarbons in Cameroon. The papers Yu reviewed were not marked "confidential." and he received no special instructions to keep them so. Yu issued reports for prospective investors in June 2005 (CRC), October 2005 (Pat Reddi), and February 2007 (RDL). *See, e.g.,* Ex. 27.

94. According to Respondents, LDL used the Yu analysis—not Grynberg's reserve estimates.....to raise money for the Project However, Ford and RRI did use at least some Grynberg estimates in submissions to potential investors during 2005 and 2006. For example, see the mid-October 2015 Letter of Intent between Pat Reddi and Ford:"... when fully developed, the Logbaba natural gas/ condensate field could ultimately produce 1.11 TCP of natural gas and 17.7 million barrels of condensate." Ex. 28. These were the Grynberg numbers in his Executive Summary. See Ex, 124.

95. In Grynberg's witness statement, he refers to the Yu report in support of an allegation that GdC (f/k/ a LDL) has used the Grynberg Information to develop the Logbaba Field. On its face, however, the Yu report appears to be an independent analysis, and the Arbitrator has seen no probative evidence showing Yu cribbed from proprietary Grynberg Information, as distinguished from Elf-generated well data available to the public from foe government of Cameroon.

96. According to Grynberg, after the 2006 Farmin Agreement was executed, he shared with Ford the Grynberg Information, telling him it was proprietary and confidential and owned by Grynberg and RSM. [6] Grynberg says Ford then presented the Information to Foo in London, ultimately selling it for a profit, without disclosing this to Grynberg or getting his consent. *See amended Terms of Reference,* ¶ 40. Foo and GdC allegedly used that Information to explore and develop the Logbaba Field. The record does not support this allegation. Indeed, at the hearing, Grynberg admitted giving Grynberg Information directly to Foo. *See* Hearing Transcript at pp. 456-57.

97. The November 2006 RPS Report, contained in the Bramlin Admission Document, disclosed that RPS's evaluation of the Logbaba Project's reserves was based on data for the wells drilled by Elf, structure maps prepared by RSM, and an independent assessment report done in February 2007 by Petrotech

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[5] In February 2001 the World Bank published a report concerning the potential for gas production and consumption in Cameroon. However, the report did not mention reserve estimates specifically for Logbaba. *See* Ex. 8.

[6] Grynberg kept the Information in RSM's office in Denver.

Engineering, Ltd. See Ex, 81, at p. 39

98. Foo did not receive any seismic data for the Logbaba Project from Grynberg or Ford, even though he asked them both for any such data in 2007-08. The Bramlin Admission Document states, "there are no seismic data available,..." Id. at p. 41.

III. Summary of Claimants' Claims and Relief Requested

A. Breach of Fiduciary Duty and Fraud By Non-Disclosure

99. No later than April 2005, when Grynberg signed the Grynberg Affidavit, Ford and RRI had a fiduciary duty to RSM and Grynberg, based on the agent-principal nature of the relationship. The Affidavit broadly authorized Ford and RRI to act as agent for RSM vis-a-vis the Concession Contract.

100. Ford and RRI breached that fiduciary duty and committed fraud by causing LDL to enter the CPA and RBPA with [RRI], which conferred on the latter potentially millions of dollars in future benefit----self-dealing----without disclosing the Side Agreements to Grynberg.

101. Claimants seek $11,000,000 in damages, or alternatively, disgorgement of the monies received by Respondents in settlement of ICC Case No. 21278 and/or the imposition of a constructive trust over those funds.

B. Breach of Contract—Disclosure of Grynberg Information

102. RSM entered into valid and enforceable contracts with Respondents.

103. The contracts obligated RSM to provide Respondents with certain proprietary, confidential information, and RSM did so.

104. RSM and Grynberg provided the Grynberg information to Ford and his various companies in accordance with the express terms of the 2006 Farmin Agreement and the RSM-RRI Agreement.

105. Respondents had a contractual obligation to keep RSM's and Grynberg's confidential information confidential

106. Respondents disclosed Grynberg Information to Foo in breach of the 2006 Farmin Agreement and RSM-RRI Agreement, and Ford and RRLP have used and are continuing to use Grynberg Information to the detriment of RSM and Grynberg.

107. Claimants seek an award of approximately $11,000,000 in damages as a result of Respondents' breaches and an order preventing further use of Grynberg Information.

C. Breach of Contract—Assignment

108. The RSM-RRI Agreement, 2006 Farmim Agreement, and Operating agreement prohibited assignments, as described therein, without written consent of the other parties. Respondents breached these contracts when they caused LDL to make assignments to RRI vis-a-vis the RBPA and CPA.

109. Claimants seek an award of approximately $11,000,000 in damages as a result of these alleged breaches.

D. Unjust Eurichment/Quantum Meruit

110. Claimants provided Respondents with Grynberg Information, who assigned it to Foo for a benefit. Respondents recently sought $10,000,000 from Foo and GdC under the RBPA as a direct result of the Claimants' provision of the Information to Respondents.

111. To the extent Respondents have recovered $10,000,000 or any other amount under the RBPA, Claimants are entitled to those amounts, since it would be inequitable and unconscionable for Respondents to profit and or enjoy the benefit of Grynberg Information without justly paying for it

E. Trade Secret Misappropriation

112. The Grynberg Information comprises trade secrets. Respondents acquired and/or used these trade secrets through improper means, and are currently using the Information in their exploration and development of the Logbaba Field.

113. Claimants seek an award of approximately $11,000,000 in damages for the alleged misappropriation of trade secrets.

F. Claim for Attorney's Fees and Costs

114. Claimants seek an award of their reasonable attorney’s fees and costs pursuant to §38,001 of the Texas Civil Practice & Remedies Code.

G. Request for Interest

115. Claimants seek an award of prejudgment and post-judgment interest at the highest lawful rate.

IV. Summary of Respondents' Defenses

A. Alleged RSM-RRI Agreement not enforceable

116. The 2006 Farmin Agreement superseded the purported 2004 RSM-RRI Agreement Moreover, the purported 2004 RSM-RRI Agreement is not an enforceable contract, since it was never consummated.

B. Respondents not bound by 2006 Farmin Agreement

117. Grynberg and Respondents are not parties to the 2006 Farmin Agreement. Grynberg has no claim under that Agreement as a non-signatory, and Respondents are not bound by an agreement they did not sign.

C. RRLP not liable as mere assignee under the CPA and RBPA

118. Claimants have tailed to allege any facts or legal theories under which RRLP could be liable as a mere assignee of RRIs rights under the CPA and RBPA. In fact, RRLP did not even exist when Claimant's claims allegedly accrued.

D. Claims barred by limitations

119. All claims are time-barred. Claimants allege conduct in 2005 or 2006 that allegedly breached the 2006 Farmin Agreement and fiduciary duties owed to Claimants. The Request for Arbitration cites no conduct within the applicable three or four-year statute of limitations.

E. Claims barred by estoppel and ratification

120. The claims are barred by estoppel and ratification. Claimants have been aware of the RBPA and CPA since 2005 when Ford and Grynberg discussed these interests being carved out of GdC's 60% interest. At that time, Grynberg expressed his disinterest because those agreements would not affect his or RSM's interests or profitability. After 2005, Bramlin and later VOG notified Claimants, at least annually through 2015, of the existence and terms of the CPA and RBPA via the Bramlin Admission Document, Bramlin annual reports, and VOG annual reports.

121. Each of the above were ratifications of the RBPA and CPA, and Claimants are estopped from making claims based on those contracts.

F. No breach of the 2006 Farmin Agreement

122. Claimants do not allege facts constituting a breach of the 2006 Farmin Agreement. They allege Respondents breached the confidentiality provision in the 2006 Farmin Agreement by: (1) entering into the RBPA and CPA in 2005 without Claimants' consent; and (2) disclosing confidential information to third parties in"2005 or 2006" in connection with Bramlin's acquisition of RDL (n/k/a GdC), and VOG's acquisition of Bramlin. At the time the CPA and RBPA were executed, however, LDL and RRI were both owned and controlled by Ford. Regarding Bramlin's acquisition of RDL in 2007 and VOG's subsequent acquisition of Bramlin in 2008, as shareholders of those companies, Claimants were notified and approved of those transactions. Moreover, ¶¶71.1(6) and (7) of the 2006 Farmin Agreement permitted the alleged disclosures. Finally, Grynberg had already shared "confidential" information with Foo pursuant to their September 2006 letter agreement.

G. No fiduciary duty

123. Claimants have failed to allege facts establishing a fiduciary duty to Claimants. Even if Respondents and Grynberg were parties to the 2006 Farmin Agreement, it expressly disclaims any fiduciary relationship between the parties.

H. No cause of action for unjust enrichment; so unjust enrichment

124. Unjust enrichment is merely an equitable remedy under Texas law and not an independent cause of action. In any ease, any benefits to RRLP from GdC under the CPA or RBPA have been derived from the 60% of the 2006 Farmin Agreement already assigned to GdC. Even if there were grounds for unjust enrichment, the claim would belong to GdC, not Claimants.

I. Claim for Fees and Costs

125. Respondents seek recovery of their attorneys' fees and costs.

V. Issues To Be Decided

A. Fiduciary Duty and Fraud

126. Did Respondents owe a fiduciary duty to Claimants?

127. If so, did Respondents breach that duty?

128. If so, did that breach cause damages to Claimants and in what amount?

129. Did Respondents commit fraud by failing to disclose to RSM the existence and terms of the CPA and RBPA?

130. If so, did that fraud cause damages to Claimants and in what amount?

B. 2006 Farmin Agreement and RSM-RRI Agreement

131. Are Respondents bound by the Agreement?

132. If so, did Respondents breach the Agreement?

133. If so, did that breach cause damages to Claimants and in what amount?

134. Was the purported RSM-RRI Agreement consummated?

135. If so, who are the parties to the RSM-RRI Agreement?

136. Are Respondents bound by the RSM-RRI Agreement?

137. Was the RSM-RRI Agreement superseded by the 2006 Farmin Agreement?

138. If not, did Respondents breach the RSM-RRI Agreement?

139. If so, did that breach cause damages to Claimants and in what amount?

C. Misappropriation of Trade Secrets

140. Did Claimants maintain trade secrets?

141. Did Claimants disclose trade secrets to Respondents with the expectation of confidentiality?

142. Did Respondents misappropriate trade secrets owned by Claimants?

143. If so, did that misappropriation cause damages to Claimants and in what amount?

D. Unjust Enrichment and Quantum *Meruit*

144. Did Respondents unjustly enrich themselves?

145. If so, are Claimants entitled to relief for that unjust enrichment and in what amount?

146. Are Respondents liable to Claimants in *quantum meruit* for wrongful use of Claimants' propriety, confidential information?

E. Attorneys' Fees and Costs

147. Are Claimants entitled to an award of attorneys' fees and costs and in what amount?

148. Are Respondents entitled to an award of attorneys' fees and costs and in what amount?

VI. Analysis and Decision—Breach of Fiduciary Duty

A. Texas Law

149. An agency relationship "creates, as a matter of law, a fiduciary relationship." *Harding Co. v. Sendero Res., Inc.,* 365 S.W.3d 732. 743 (Tex. App.—Texarkana 2012, pet. denied) (citing *Johnson v. Brewer & Pritchard P.C.,* 73 S.W.3d 193, 200 (Tex. 2002)); *Texas Bank & Trust Co.* v. Moore, 595 S.W.2d 502, 507 (Tex. 1980).

150. An agent is a person who is authorized by another to transact business or manage some affair by that person's authority and on account of it. *Crooks* v. *Ml Real Estate Partners. Ltd,* 238 S.W.3d 474, 483 (Tex. App.—Dallas 2007, pet. denied); *Coleman v. Klockner & Co. AG,* 180 S.W.3d 577, 588 (Tex. App.—Houston [14th Dist.] 2005, no pet.). The agent owes his principal "a high duty of good faith, fair dealing, honest performance, and strict accountability." *In re Estate of Miller,* 446 S.W.3d 445, 455 (Tex. App.—Tyler 2014, no pet.).

151. An agent's duty is "to act loyally for the principal's benefit in all matters connected with the agency relationship." *Id* at 453 (citing *Restatement (Third) of Agency* § 8.01 (2006)). "[A]bsent the principal's consent, an agent must refrain from using his position or the principal's property to gain a benefit for himself at the principal's expense." *Id.* (citing *Tex. Bank & Trust Co. v. Moore,* 595 S.W.2d at 508-09 (Tex.1980)). If the agent gains a benefit from the unauthorized use of his position or the principal's property, he engages in self-dealing. A "benefit" can be an advantage, a privilege, profit, or gain. *Id.*

152. When an agent engages in self-dealing transaction, it is deemed presumptively unfair and invalid. *Id.* When the principal proves self-dealing, the fiduciary can escape liability only if he can establish the fairness of the transaction. *Id* He must show he acted fairly and "informed the principal of all material facts relating to the alleged transaction." *Jordan v Lyles,* 455 S.W.3d 785, 792 (Tex. App.—Tyler 2015, no pet.).

153. A fiduciary relationship engenders a duty of full disclosure of all material facts. Valdez v. *Hollenbeck,* 465 S.W.3d 217,230-31 (Tex. 2015), Texas law imposes this duty of full disclosure because a "person to whom a fiduciary duty is owed may be unable io inquire into the fiduciary's

actions or may be unaware of the need to do so." *Id.* A fiduciary owes "a strict duty of good faith and candor, as well as the general duty of full disclosure respecting matters affecting the principal's interests; there is a general prohibition against the fiduciary's using the relationship to benefit his personal interest, except with the full knowledge and consent of the principal regarding all material facts." *Welder* v *Green,* 985 S.W.2d 170,175 (Tex. App.—Corpus Christi 1998, pet. denied).

154. Breach of fiduciary duty is not limited to instances in which the fiduciary's conduct comes at the expense of the principal.
A fiduciary cannot say to the one to whom he bears such relationship: You have sustained no loss by my misconduct in receiving a commission from a party opposite to you, and therefore you are without remedy. It would be a dangerous precedent for us to say that unless some affirmative loss can be shown, the person who has violated his fiduciary relationship with another may hold on io any secret gain or benefit he may have thereby acquired.... **[I]f the fiduciary "takes any gift, gratuity, or benefit in violation of his duty,... without a full disclosure, it is a betrayal of his trust and a breach of confidence, and he must account to his principal for all he has received."**

Kinzbach Tool Co. v. Corbett-Wallace Corp., 160 S.W.2d 509, 514 (Tex. 1942) (citations omitted; boldness added).

B. Existence of Duty; To Whom; and Scope

155. The informal dealings between Ford and Grynberg, both before and after the April 2005 Grynberg Affidavit, did not create a fiduciary relationship. Mere friendship, respect, and trust between sophisticated businessmen do not a fiduciary make.

156. However, the Grynberg Affidavit broadly authorized RRI "and its representatives, and in particular, Jim Ford, President of [RRI]...[1] to represent RSM...in the Logbaba project," and [2] "to represent RSM... in fulfillment of its obligations" under the Concession Contract. *See* Ex. 6. The Affidavit created an agency relationship between RRI, as agent, and RSM, as principal. As a matter of law, that principal-agent relationship made RRI the fiduciary of RSM as to matters within the scope of the agency.

157. Respondents try to limit the scope of that agency to RRI's dealings with SNH, excluding RRI's financing endeavors. But the Affidavit covered RRI's representation of "RSM...in fulfillment of its obligations" under the Concession Contract. Without financing, RSM could not comply with that Contract, and the parties understood RRI would use the Affidavit to obtain funding from third parties for RSM's drilling obligations, RRI did so.

158. Thus, RRI owed a fiduciary' duly to RSM, at least through February 22, 2006, when RSM and LDL entered the 2006 Farmin Agreement and that duty extended to RRl's fund-raising efforts. [7]

159. Respondents also say Ford *individually* had no fiduciary duty to RSM, since the Grynberg Affidavit referred to hint only in his capacity as President of RRI. If Respondents mean that Ford, by donning

[7] Respondents cry foul about the principal-agent basis for fiduciary duty, contending that Claimants failed to assert this legal theory in the Terms of Reference. "Agency," however, a legal construct based on foe Grynberg Affidavit, added nothing new to Claimants allegations.

his RRI bat, could cut side deals for his personal benefit with impunity and cause RRI to breach its fiduciary duty to RSM without incurring personal liability, they are mistaken about Texas law on tort duties.

...[T]here are three separate legal bases under Texas law for imposing liability on an employee who carries out the fiduciary functions of an entity; '(1) first, foe employee owes a fiduciary duty directly as a subagent carrying out the employer's fiduciary' functions, (2) second, the employee is liable if he "participates" in the employer's breach of fiduciary duty, which the employee necessarily does if he is the one carrying out the breaches, and (3) third, the employee is personally liable for any tort he commits in the course of his employment, and breach of fiduciary duty is of course a tort."

Medve v. *JP Morgan Chase Bank, N.A.,* et al., CA H-15-2277, Dkt. 8 at 6 (S.D. TX, Feb 2, 2016) *(citing In re Merrill Lynch Trust Co. FSB,* 235 S.W.3d 185 (Tex. 2007); *Leyendecker & Assocs., Inc.* v. *Wechter,* 683 S.W.2d 369, 375 (Tex. 1984); *Searle-Taylor Mach. Co. v. Brown Oil Tools,6 Inc.,* 512 S.W.2d 335, 338 ('Tex. App.-Houston 1974, *writ ref'd n.r.e.)).*

160. Accordingly, Ford is personally liable for any RRI breaches of fiduciary duty he caused to occur.

161. However, RRI owed a fiduciary duty only to RSM, not to Grynberg himself, since RRI was agent only for RSM.

162. Respondents note the express disclaimer of fiduciary duty in the 2006 Farmin Agreement and annexed Operating Agreement. See Ex. 1, ¶ 12.1. But that disclaimer did not negate the fiduciary status of RRI vis-à-vis RSM, since RRI was not a party to the contract. Moreover, the disclaimer did not retroactively absolve RRI of fiduciary' duties that preexisted the 2006 Farmin Agreement

163. It is true RRI was not a mere agent—it had its own, above-board interest in the Project—an undivided 50% (then 60%) interest at first directly and later indirectly through LDL. That interest was inchoate until late February 2006, but RSM/Grynberg had accepted it and knew Ford was attempting to raise money for the 8/8's interest[8] through RRI. Accordingly, the question arises whether RRI's fiduciary duty as fund-raising agent for the Project extended to RRT's trading with its own interest (or anticipated interest) to procure that funding. The answer is yes, if (a) the trading harmed RSM or (b) RRI used its agency relationship with RSM to leverage a benefit only for itself (as distinguished from a benefit to the 8/8's interest).

C. Breach of Duty

164. Arguably, the Side Agreements, at least when they were signed, did not adversely affect RSM, since LDL was obligated to make the contingent payments to RRI solely out of its 60%, not RSM's 40%. But this argument ignores the change of RSM's interest from 50% down to 40% in the third week of February 2006, at a critical juncture in Ford's talks with the Foo investors. Per the secret discussions between Ford and Foo at the time, the Foo investors were negotiating to purchase LDL, which they knew would (a) own a share of the Concession Contract and be solely responsible for funding its drilling obligations (per the expected farmin agreement with RSM) and (b) bear seven-figure,

[8] *i.e.,* for both RSM's share and the LDL's share, which added up to 100%, or in oil patch vernacular

contingent liabilities to RRI per the expected Side Agreements. Accordingly, in trading with Ford, Foo tried to improve the economics for LDL in two ways. One, he insisted on a higher (than 50%) farmin share for LDL vis-a-vis RSM. Thus, the February 20 draft of the Participation Agreement contained the following "condition":

Upon execution of this agreement, [RRI] shall use its reasonable best efforts to renegotiate the Farmin Agreement to provide that LDL will acquire a 75% working interest in the Concession Contract instead of a 50% working interest in the Concession Contract.

Ex. 39. Two, Foo attempted, unsuccessfully, to cap LDL's reserve bonus liability at $5,000,000 (instead of $10,000,000, as provided in the later-executed RBPA).

165. More likely than not, the anticipated Side Agreements, which would significantly burden LDL, impacted what Foe was willing to accept as LDL's percentage of the Concession Contract and what RRI had to get from RSM to satisfy Foo.[9] RRI's demand for a significant benefit (via the Side Agreements) from LDL, which caused Foo to demand a greater farmin share for LDL at the expense of RSM, put RRI in conflict with RSM. In the righteous world of fiduciary duty, Ford/RRI should have fully disclosed his communications with Foo to Grynberg/RSM before the Farmin Agreement was signed.[10] If Grynberg had known of the expected Side Agreements, whose terms were material to the economics of the Project, he/RSM likely would have objected.

166. Ford did not disclose (or seek approval of) his intention to cause LDL to enter the CPA and RBPA with RRI during the February 2006 negotiation of the terms of the then- contemplated Farmin Agreement These Side Agreements were of substantial benefit to RRL Therefore, RRI engaged in undisclosed self-dealing in breach of its fiduciary duty to RSM, and Ford participated in (caused) that breach.

167. The evidence is silent about what Ford told Grynberg to persuade him to yield a 10% interest to LDL in the 2006 Farmin Agreement. But Ford, as the fiduciary, has the burden to show he acted fairly and "informed the principal of all material facts relating to the alleged transaction." *Jordan v. Lyles,* 455 S.W.Sd 785, 792 (Tex. App.—Tyler 2015, no pet.). He did not carry that burden.

D. Remedy

168. Ford caused the Side Agreements to be assigned by RRI to Respondent RRLP, which last year recovered from GdC a substantial sum of money in settlement of RRLP's claims under those Agreements. RSM seeks from Ford an amount equal to that settlement payment, either as damages or disgorgement for breach of fiduciary duty. However, because this claim is barred by limitations, as discussed below, I will not undertake a damages or disgorgement analysis.

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[9] Respondents note that by early 2006 the parties knew that drilling would be more expensive than originally expected, since the two Elf wells would have to be "twinned"—they could not be merely re-opened. No doubt this knowledge was a factor in Foo's asking for a higher percentage for LDL, but it did not negate the importance of the Side Agreements as a contributing factor.

[10] The Side Agreements also adversely affected the Bramlin shares later issued to the beneficial owners of RSM.

VII. Analysis and Decision: Fraud By Omission

169. The fiduciary duty and fraud theories of liability are intertwined, since a party negotiating a contract has no duty to disclose information to the other party absent a legal duly to do so. As discussed above, RRI owed to RSM a fiduciary duty when the 2006 Farmin Agreement and tire Share Acquisition Agreement were signed. Because the related Side Agreements were material to those RSM contracts. RRI had a duty to disclose the Side agreements to RSM. RRI's failure to do so fraudulently induced RSM to enter the 2006 Farmin Agreement and the Share Acquisition Agreement. Ford is personally liable for this fraud, since he participated in (caused) it. See ¶ 159 above.

170. Because I determine below that this claim, too, is barred by limitations, I will not undertake a damages analysis.

VIII. Analysis and Decision: Breach of Contract—Disclosure of Grynberg Information

171. The 2006 Farmin Agreement, ¶ 2.2, states:
To the extent not already supplied to [LDL] or already in the possession of [LDL], RSM shall deliver to [LDL]...original copies...of all...data relating to the Contract including...correspondence, information and reports including petroleum engineering, reservoir engineering, drilling, geological, geophysical, historical seismic data, and all other kinds of technical data and reports, samples, well logs and analyses....

Paragraph 7.1 provides;

...each party agrees that all information disclosed under this agreement, except information in the public domain or lawfully in possession of a party prior to the dale of this agreement, shall be considered confidential and shall not be disclosed to any other person or entity without the prior written consent of the party which owns such confidential information.

172. Because neither Ford nor RRLP, the only Respondents herein, was a party to the 2006 Farmin Agreement, they cannot be liable for breaching it. This claim is denied.

173. The alleged RSM-RRI Agreement was never consummate and, in any event, lacked a confidentiality clause. Moreover, neither Ford nor RRLP was a party to that purported Agreement. Thus, the claim for breach of that Agreement is denied.

IX. Analysis and Decision: Breach of Contract—Assignment

174. The 2006 Farmin Agreement provided: "

Neither party may assign this agreement without the written consent of the other, which shall not be unreasonably withheld, conditioned or delayed. It is provided, however, that without the prior consent of [RSM], [LDL] may make an assignment of this agreement (i) as collateral in connection with a financing and (ii) to an Affiliate of [LDL].

Ex. 2, 11 13. The Operating Agreement also contained an anti-assignment provision: "No Transfer shall be made by any Party which results in the transferor or the transferee holding any interest other than a Participating Interest in the [Concession] Contract and this [Operating] Agreement." Ex. 313, ¶ 12.2.

175. The alleged RSM-RRI Agreement provided: "Grantee may not assign any rights that it may have in or as a result of this Agreement, or in the Permit, without Grantor's prior written consent, which shall not be unreasonably withheld." Ex. 3, Art. V.

176. Again, neither Ford nor RRLP was a party to the 2006 Farmin Agreement, the annexed Operating Agreement, or the alleged RSM-RRI Agreement, Therefore, these claims are denied.

X. Analysis and Decision: Unjust Enrichment and Quantum Meruit

177. Unjust enrichment occurs when someone has "wrongfully secured a benefit or has passively received one which it would be unconscionable to retain." Eun Bok Lee v. Ho Chang Lee, 411 S.W.3d 95, 111 (Tex. App.—Houston [1st Dish.] 2013, no pet). According to Claimants, Ford and Rodeo, LP were unjustly enriched by the payments made under the CPA and RBPA. Since (a) those contracts were a breach of fiduciary duty and (b) Ford's failure to disclose them to RSM was fraudulent, the Panel finds that unjust enrichment has occurred as to Respondent RRLP, which received the CPA/RBPA payments, and Claimant RSM, the fiduciary and fraud victim. However, this claim adds nothing to the fiduciary duty and fraud claims and, more importantly, is barred by limitations. *See* discussion below.

178. Claimants assert a quantum meruit claim for the fair value of the Grynberg Information provided to and used by Respondents. To prove quantum meruit, Claimants must establish: (i) they provided valuable services or materials; (2) the services or materials were provided for Respondents; (3) Respondents accepted the services or materials; and (4) Respondents had reasonable notice that foe Claimants expected compensation for foe services or materials. *See In re Kellogg Brown & Root, Inc.,* 166 S.W.3d 732, 740 (Tex. 2005); *Vortt Expl. Co. v. Chevron USA., Inc.,* 787 S.W.2d 942, 944 (Tex. 1990).

179. A claim for *quantum meruit* will not lie when foe subject matter of the materials/services rendered is covered by a contract, either with Respondents or a third party. *See Black Lake Pipe Line Co.* v. *Union Constr. Co.,* 538 S.W.2d 80, 86 (Tex. 1976). Here, the 2006 Farmin Agreement between RSM and LDL governs the Logbaba Project and speaks directly to "Confidential Information," thereby precluding the *quantum meruit* claim. Thus, this claim is denied.

XI. Analysis and Decision: Misappropriation of Trade Secrets

180. "Misappropriation of trade secrets is a common-law tort cause of action. The elements of misappropriation are: (1) existence of a trade secret; (2) breach of a confidential relationship or improper discovery of a trade secret; (3) use of foe trade secret; and (4) damages." *Trilogy Software, Inc. v. Callidus Software, Inc.,* 143 S.W.3d 452,463 (Tex. App.—Austin 2004, pet. denied).

181. The portion of the Grynberg Information comprising Grynberg's engineering analysis was a trade secret, but not underlying data developed by Elf.

182. "Use" of a trade secret means "commercial use by which the offending party seeks to profit from the use of the secret." Sw. *Energy Prod. Co. v. Berry-Helfand,* 491 S.W.3d 699, 722 (Tex. 2016).

183. Though Ford used some of the Grynberg Information—reserve estimates.....in efforts to attract investors, including Foo, to the Logbaba Project, these disclosures caused no harm to RSM or Grynberg, who implicitly consented to Ford's use of the Information for the mutual benefit of RSM and RRI. RSM/Grynberg provided the Information to Ford and Yu without restriction. Grynberg knew Ford would be trying to raise money for drilling and that a reserve analysis was essential to that task. *See* 93-95 above. [11]

184. The evidence did not prove Ford conveyed Grynberg Information to Foo, although LDL had the right to do so per the 2006 Farmin Agreement ¶ 7.1(6).

185. Thus, this claim is denied.

XII. Analysis and Decision: The Limitations Defense

A. Burden of Proof and Time Period

186. The statute of limitations for a breach-of-fiduciary-duty claim requires that it be brought within four years after it accrues. *Dunmore v. Chicago Title Ins. Co.,* 400 S.W.3d 635, 640 Hex. App.—Dallas 2013, no pet.). The limitations period for fraud is likewise four years. Tex. Civ. Prac. & Rem. Code § 16,004(a)(4).

187. Claimants brought their claims, at the earliest, on November 8, 2015, when they filed the state court suit. Thus, if those claims accrued before November 8, 2011, they are barred by limitations. To prevail on this affirmative defense, Respondents bear the *initial* burden to prove such accrual. *See Woods* v. *William M. Mercer. Inc.,* 769 S,W.2d 515, 517 (Tex. 1988). [12]

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[11] Ford did not, and had no need to, use any Grynberg information to accomplish the Side Agreements with LDL, which he controlled.

[12] However, the burden shifts to Claimants to plead and prove that, per the discovery rule, accrual was deferred to the time when they first knew, or reasonably should have known, the accrual facts. *Id.*

B. Accrual of Claims

188. "Causes of action accrue and statutes of limitations begin to run when facts come into existence that authorize a claimant to seek a judicial remedy." *Exxon Corp. v. Emerald Oil & Gas Co.,* 348 S.W.3d 194, 202 (Tex. 2011). 'The...statute of limitations begins to run when a party has actual knowledge of a wrongful injury....Once a claimant learns of a wrongful injury', the statute of limitations begins to ran even if the claimant does not yet know 'the specific cause of the injury; the party responsible for it; the foil extent of it; or foe chances of avoiding it.'" *Id* at 207 (citations omitted); *accord, Ward v. Stanford,* 443 S.W.3d 334, 347-48 (Tex. App.—Dallas 2014, pet. denied) (fiduciary duty claims).

189. Continuation of damages for an extended period does not prevent limitations from starling to run. "Limitations commences when the wrongful act occurs resulting in some damage to the plaintiff" *Murray v. San Jacinto Agency, Inc.,* 800 S.W.2d 826, 828 (Tex. 1990) (boldness added).

190. According to RSM, its injury did not occur until payments were doe under foe RBPA. GdC's obligation to pay RRLP under foe RBPA was "conditional upon the successful drilling and completion of the wells drilled pursuant to the Farmin Agreement," which occurred on April 29, 2015. See Ex. 100; Ford Witness Statement ¶ 15. Thus, until then, Ford had no contractual right to a gain from the RBPA. According to this argument, limitations would expire on April 29, 2019, after Claimants filed their claims. *See* Ex. 100.

191. Claimant's injury analysis is overly narrow. Accrual of a claim does not require the full extent of injury be known. *ExxonMobil Corp.* y. *Lazy R Ranch, LP,* 511 S.W.3d 538, 542 (Tex. 2017). "When the plaintiff sustains a legal injury, however slight, as a consequence of the defendant's wrongful act, and the law affords a remedy, foe cause of action accrues, and the statute of limitations begins to run." *Childs v Haufsecker,* 974 S. W.2d 31, 36 (Tex. 1998). Here, a legal "injury" occurred when, in the lead up to the 2006 Farmin Agreement, Ford failed to disclose to RSM his intention to cause RRI and LDL to enter foe CPA and RBPA and thereby obtain for his wholly owned corporation RRI the *contractual right to* substantial future benefits. *See Kinzbach Tool Co. v. Corbett-Wallace Corp.,* 160 S.W.2d 509, 514 (Tex. 1942) ("...if the fiduciary 'takes any gift, gratuity, or benefit in violation of his duty....without a full disclosure, it is a betrayal of his trust and a breach of confidence..."').The contractual right itself was a "benefit," even though the actual monetary gain was contingent in nature. Without doubt, had RSM learned of the Side Agreements in 2006, he could have sued to abrogate them. Ford's plan to cause RRI and LDL to enter those Agreements, and his failure to disclose the plan to Grynberg before the parties entered the 2006 Farmin Agreement, would have authorized RSM to seek a judicial remedy premised on breach of fiduciary duty.

192. The same analysis applies to the fraud claim. RSM says the 2006 Farmin Agreement was induced by fraud (via omission)—if RSM had known about the intended Side Agreements, he would not have done the Farmin. The intended Side Agreements, and Ford's failure to disclose them before the 2006 Farmin Agreement, would have authorized RSM to seek a fraud-based judicial remedy for rescission, injunction, or damages.

193. Accordingly, the causes of action for breach of fiduciary duty and fraud accrued no later than February 22, 2006 (when the Farmin agreement was entered). Therefore, the four-year statute of limitations for both fiduciary duty and fraud claims expired on February 22, 2010, absent a delay in

accrual by reason of the discovery rule or fraudulent concealment.

C. The Discovery Rule

194. The discovery rule does apply to claims for breach of fiduciary duty and fraud. *Little v. Smith,* 943 S. W.2d 414, 420 (Tex. 1997), meaning accrual occurs when the Claimants "knew or in the exercise of reasonable diligence should have known of the wrongful act and resulting injury." *Schlumberger Tech. Corp.* v. *Pasko,* No. 17-0231, 2018 WL 1770298, at *3 (Tex. Apr. 13, 2018).

195. The doctrine of fraudulent concealment also applies to fiduciary duty claims *Dornick Res., Inc. v. Wilstein,* 312S. W.3d 864, 878 (Tex. App.—Houston 2009, no pet.). But this doctrine adds nothing to the discovery rule. "When a defendant is under a duty to make a disclosure but conceals the existence of a cause of action from foe party to whom it belongs, the defendant is estopped from relying on the defense of limitations **until the party learns of the right of action or should reasonably have discovered it."** *Valdez* v. *Hollenbeck,* 465 S.W.3d at 229-30 (citations omitted) (boldness added).

196. RSM, as the party seeking to benefit from foe discovery rule, has the burden of proving that it did not know of its injury, and could not have discovered it through reasonable diligence, more than four years before instituting claims. *See* Woods v. *William M. Mercer. Inc.,* 769 S.W.2d 515 (Tex. 1988); *Honea* v. *Morgan Drive Away. Inc., 997* S.W.2d 705 (Tex. App.— Eastland 1999); *West v. Proctor,* No. 07-10-00484-CV (Tex. App.—Amarillo 2011).

197. On November 19, 2007, Grynberg acknowledged in the RSM Concert Party Responsibility Statement that he had "carefully read the Admission Document," which disclosed and discussed the terms and existence of the RBPA and CPA in ample detail. See Ex. 69, 81. By signing a contract or acknowledgment, a party is presumed to have read and understood its contents. *See In re Prudential Co. of Am.,* 148 S.W.3d 124, 134 (Tex. 2004).

198. Claimants contend Grynberg read a mere "proof' of the Admission Document that did not refer to the RBPA and CPA. But the evidence established that, more probably than not, all draft versions of the Admission Document received by foe Concert Parties disclosed the CPA and RBPA. *See* Testimony of Ernest Miller, Hearing Transcript, pp. 677-79. Miller, who had assisted Ford in obtaining funding for the Logbaba Project, was a Bramlin Director in November 2007.

199. Claimants say the documents in this arbitration contradict Miller's testimony. On November 21. 2007. Bramlin counsel Denton Wilde Sapte LLP issued a Due Diligence Report discussing the Side Agreements, stating (among many other things), "[di]sclosure of foe terms of the CPA and the RBPA should be made in the Admission Document." Ex. 77, ¶ 7.2.13). Claimants interpret this sentence to imply that "at some point [in the drafting process] the disclosure was not made." Viewed in context of the surrounding events on November 21, 2007, that implication is weak. On November 21, called "Impact Day,"
* the Bramlin Board approved publication of the Admission Document, to happen at 7 am the next morning. See Ex. 72, ¶ 13.3 (Meeting Minutes).

* The minutes of the November 21 Bramlin Board meeting "noted that RPS Energy Limited had been

appointed as the Company's Competent Person and their report (the CCP Report) was tabled and had been reproduced in the Admission Document?' Ex. 72, ¶ 33.10.

* The CCP report dated November 21 contained the same full-throated disclosures about the Side Agreements that appeared in foe final Admission Document *Compare* Ex. 74 and 81.

200. Ten years later, we do not have a copy of the very Admission Document (called version 4) approved by the Board on November 21, 2007, but I infer frat it contained foe CCP Report (including the RBPA disclosures), since foe minutes referred to the Report. Thus, more likely than not, the Denton Wilde cautionary sentence in its Due Diligence Report, also dated November 21, was a "CYA" statement intended to deter any thought of removing the disclosure. Moreover, it is difficult to believe Bramlin counsel would obtain Concert Responsibility Statements from signatories based on a draft lacking material disclosures—omissions that could defeat the very purpose of the publicly filed Admission Document and result in possible securities fraud.

201. Claimants also argue Grynberg's review of the Admission Document was limited to those portions "for which [he was] responsible." Thus, they say did not see the CPA and RBPA references. *See* Concert Party Responsibility Statement, Ex. 69. Grynberg, however, in the exercise of reasonable diligence, would have inspected the whole Document to determine which portions he was responsible for. Significantly, full descriptions of the Side Agreements were sandwiched between, and on the same pages with, sections plainly dealing with RSM. *See* Ex. 81, p. 128-29 (top half of p. 128 described "Letter Agreement between RSM and RDL" at ¶ 10.21; bottom half described CPA at ¶ 10.23; description of RBPA immediately followed at top of p. 129 at ¶ 10.24, followed at the middle of the same page by a section on the "Share Agreement" between RSM and RDL).

202. More likely than not, Grynberg did not *actually* know of the Side Agreements until the fall of 2015. But the Concert Responsibility Statement and Admission Document show, by a preponderance of the evidence, if he had exercised reasonable diligence, be would have discovered the existence and terms of the RBPA and CPA no later than November 19, 2007. Thus, I find that the disputed claims accrued on that date. Anti, four years later, on November 19, 2011, limitations expired. Because Claimants brought their claims for breach of fiduciary duty and fraud on November 18, 2015 (at the earliest),[13] they are barred by limitations.

203. Moreover, Grynberg received, on behalf of his children, Bramlin annual reports in 2008 and 2,009, the "Recommended Proposal for Acquisition of Bramlin by [VOG]" in November 2008, and VOG annual reports in 2010 and May 2011—all more than four years before Claimants filed their state court action. The Bramlin reports and "Recommended Proposal" referenced the Side Agreements in some detail, and the VOG report described the RBPA. Again, if Grynberg had exercised reasonable diligence, he would have discovered the existence and terms of the RBPA and CPA no later than the dates be received these documents.

XIII. Attorneys' Fees and Costs

[13] The instant arbitration commenced even later.

204. Pursuant the Article 37(4) of the ICC Rules, the Tribunal "shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties." A decision on attorneys' fees and costs is reserved for a future award.

XIV. Disposition (Partial)

205. Except for the parties' claims for arbitration costs, attorneys' fees, and expenses, all Claimants' claims are denied. Otherwise, any claim or counterclaim not expressly addressed in this Partial Award is denied.