

NO. 99-13013

CITY OF AUSTIN,
Plaintiff

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IN THE DISTRICT COURT OF

versus

TRAVIS COUNTY, TEXAS

LUMBERMEN'S INVESTMENT
CORPORATION, Defendant

126TH JUDICIAL DISTRICT

**PLEA IN INTERVENTION OF
THE STATE OF TEXAS**

The State of Texas files this plea in intervention as a Party-Plaintiff, and would respectfully show the Court as follows:

I. Dispute over Boundary of Reserve

The Plaintiff in this boundary dispute is the City of Austin ("City"), a Texas municipal corporation. The Defendant is Lumbermen's Investment Corporation ("LIC"), a Delaware corporation. The City's suit seeks to establish the proper location of a segment of the northern boundary of public land known as West Sand Beach Reserve ("Reserve"). West Sand Beach Reserve is so named because it is part of 400 acres of public land "reserved . . . for such public purposes as Congress may hereafter direct" under a joint resolution approved in 1840 by the Congress of the Republic of Texas. This Reserve land is situated on the north side of the Colorado River west of downtown Austin.

LIC owns land immediately north of the Reserve. The City's position is that LIC's ownership cannot extend south of the southern boundary of a 60-acre tract (later known as Outlot 11) patented to James Raymond in 1848. The City asserts that a subdivision plat filed by Raymond in 1885 should be used to locate the bluff line that controls Outlot 11's southern boundary. LIC says the Outlot 11 boundary was properly determined in a 1916 survey by O. E. Metcalfe. However, Metcalfe's line lies south of the Outlot 11 boundary asserted by the City. As a result LIC is claiming about two acres of what the City claims is West Sand Beach Reserve.

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II. Interest of Intervenor State in the Reserve

The State is intervening to protect its property interests in the Reserve land. Under an act of the Texas Legislature in 1945, the State sold three tracts of land to the City, including West Sand Beach Reserve. However, the State reserved ownership of certain minerals, retained a reverter in the event of a sale of the property by the City, and restricted the land to use for public purposes. These interests are set out in the 1945 Patent to the City (Exhibit 1 to Plaintiff's Original Petition).

Specifically, the land was sold with an express reservation to the State of "all of the oil, gas, and sulfur in and under said land," and the patent provided that the lands "may be leased for the development of said minerals by the Commissioner of the General Land Office and the School Land Board." In further accord with the legislative act, the Patent provided:

The Grant hereby made to the City of Austin is made for public purposes and in the event of sale by the City of Austin, of the property herein granted, all parts thereof so sold shall revert to the State.

Under Natural Resources Code § 31.068, the Commissioner of the General Land Office and the Attorney General of Texas have standing to enforce the limits in the Patent.

Prayer for Relief

Intervenor requests that the parties take notice of the filing of this Plea in Intervention and that on final hearing Intervenor have judgment against LIC:

1. recognizing that the City and State own, as part of West Sand Beach Reserve, all the disputed land lying south of the 60-acre tract (Outlot 11) patented to James Raymond in 1848,
2. awarding the costs of suit, and
3. granting such other and further relief to which State may be justly entitled.

Respectfully submitted,

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

KAREN W. KORNELL
Assistant Attorney General
Chief, Natural Resources Division

Joe Ridell

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Assistant Attorney General
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Austin, Texas 78711-2548

(512) 463-2012 (telephone)
(512) 320-0052 (telecopier)

ATTORNEYS FOR PLAINTIFF-INTERVENOR
STATE OF TEXAS

CERTIFICATE OF SERVICE

I certify that on the 9th day of January, 2001, I served a copy of this Plea in Intervention upon the parties herein by sending it by certified mail, return receipt requested, to:

Attorneys for Plaintiff
Casey L. Dobson and Elizabeth N. Miller
Scott, Douglass & McConnico, L.L.P.
600 Congress Ave., Ste 1500
Austin TX 78701

Attorney for Defendant
William B. Steele III
Locke Liddell & Sapp L.L.P.
100 Congress Ave., Ste 300
Austin TX 78701

Joe Ridell

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OF COUNSEL:
MARTIN L. ALLDAY*

WRITER'S DIRECT
DIAL NUMBER

December 15, 1999

Ms. Amalia Rodriguez-Mendoza
Travis County District Clerk
1000 Guadalupe
Austin, Texas 78701

Re: No. 99-13013; *City of Austin v. Lumbermen's Investment Corporation*; in the
126th Judicial District Court of Travis County, Texas

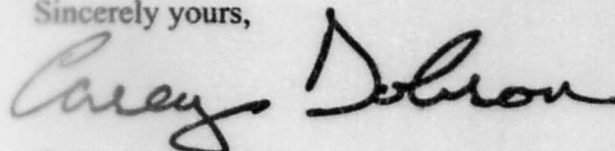
Dear Ms. Rodriguez-Mendoza:

Enclosed for filing in the above-referenced matter is the original and one copy of a
Rule 11 Agreement. Please file-stamp the extra copy and return it to me.

By copy of this letter, all counsel of record are being served a copy of this
Agreement.

Thank you for your assistance in this matter.

Sincerely yours,



Casey L. Dobson

FILED

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Amalia Rodriguez-Mendoza
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

CLD:jjf
Enclosure

cc: Jan Soifer

ENTERED
EX-100

LAW OFFICES
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& McCONNICO, L.L.P.**
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WRITER'S DIRECT
DEAL WORKS

December 7, 1999

VIA REGULAR MAIL

Jan Soifer
Locke Liddell & Sapp L.L.P.
100 Congress Ave., Suite 300
Austin, TX 78701-4042

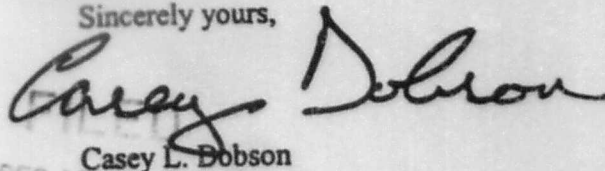
Re: No. 99-13013; *City of Austin v. Lumbermen's Investment Corporation*; in the 126th
Judicial District Court of Travis County, Texas

Dear Jan:

I received this week Lumbermen's Request for Production and Request for Disclosure directed to the City. I calendar the current due date for the City's responses to the Request for Disclosure and Responses and Objections to the Request for Production as Friday, December 31. Because of the holidays and commitments Becky Miller and I have in other cases, I would like to request an extension of our date of one month.

Pursuant to Texas Rule of Civil Procedure 11, please confirm by your signature below our agreement that the City of Austin's responses to LIC's Request for Disclosure and responses and objections to LIC's Request for Production will be considered timely filed if filed on or before, Monday, January 31, 2000. Thanks very much for your professional courtesy in this regard. Best wishes to you and your family for the holidays.

Sincerely yours,



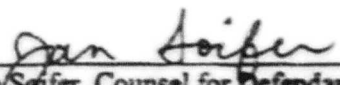
Casey L. Dobson

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CLD:jjf


DISTRICT CLERK
TRAVIS COUNTY, TEXAS

AGREED TO AS SET FORTH ABOVE PURSUANT TO TEX. R. CIV. PROC. 11:



Jan Soifer, Counsel for Defendant,
Lumbermen's Investment Corp.