

1
2
3
4
5
6
7
8

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

Couch Oil & Gas, Inc.,
Charles O. Couch,
Robin Charlet,
Kirk Porter,

Respondents.

) Order No. S-14-1417-14-SC01

) STATEMENT OF CHARGES AND NOTICE OF
) INTENT TO ENTER ORDER TO CEASE AND
) DESIST, TO IMPOSE FINES, AND TO CHARGE
) COSTS

THE STATE OF WASHINGTON TO:

**Couch Oil & Gas, Inc.
Charles O. Couch
Robin Charlet
Kirk Porter**

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents Couch Oil & Gas, Inc., Charles O. Couch, Robin Charlet, and Kirk Porter have each violated the Securities Act of Washington. These violations justify the entry of an order of the Securities Administrator against each respondent to cease and desist under RCW 21.20.390, to impose fines under RCW 21.20.395, and to charge costs under RCW 21.20.390. The Securities Administrator finds as follow:

TENTATIVE FINDINGS OF FACT

Respondents

1. Couch Oil & Gas, Inc. ("Couch Oil") is a Texas company that was incorporated in 2004 and has a principal place of business in Irving, Texas. Couch Oil is in the business of oil and gas exploration and development.
2. Charles O. Couch ("Couch") is a resident of Texas and the President and owner of Couch Oil.
3. Robin Charlet ("Charlet") is a resident of California and was, at all times relevant to this matter, a representative of Couch Oil.
4. Kirk Porter ("Porter") is a resident of California and was, at all times relevant to this matter, a representative of Couch Oil.

Other Enforcement and Civil Actions

1 5. On February 2, 1999, the Pennsylvania Securities Commission issued a Summary Order to Cease
2 and Desist against Couch and a related entity. The Commission alleged that Couch had violated the
3 securities registration section of the Securities Act of Pennsylvania. Couch was ordered to cease and desist
4 from offering and selling securities in violation of the Securities Act of Pennsylvania.

5 6. On March 18, 2005, the Wisconsin Division of Securities issued an Order of Prohibition and
6 Revocation against Couch and Couch Oil. The Division alleged that Couch and Couch Oil violated the
7 securities registration and securities salesperson registration sections of the Securities Act of Wisconsin.
8 Couch and Couch Oil consented to the entry of the order without admitting or denying the Division’s factual
9 findings.

10 7. On August 14, 2008, Couch and Couch Oil were named as defendants in a lawsuit filed by two oil
11 and gas investors. The investors alleged, among other things, that Couch and Couch Oil violated the Texas
12 Securities Act when they offered and sold oil and gas investments to the investors. On October 5, 2011, a
13 jury found that Couch Oil committed a securities act violation when it offered or sold a security to the
14 investors by means of an untrue statement or omission of a material fact. The jury did not award damages to
15 the investors and found that the investors should have discovered Couch Oil’s misrepresentations and
16 omissions by December 2004. On November 1, 2011, based on the jury’s findings, the court entered
17 judgment in favor of Couch and Couch Oil.

18 8. On July 14, 2009, the Pennsylvania Securities Commission issued a Summary Order to Cease and
19 Desist against Couch and Couch Oil. The Commission alleged that Couch and Couch Oil had violated the
20 securities registration section of the Securities Act of Pennsylvania. Couch and Couch Oil were ordered to
21 cease and desist from offering and selling securities in violation of the Securities Act of Pennsylvania.

22 9. On May 12, 2014, the United States Securities and Exchange Commission (“SEC”) filed a civil
23 enforcement action against Couch and Couch Oil in the U.S. District Court in Dallas, Texas. The SEC
24 alleged that Couch and Couch Oil violated federal securities laws when they offered and sold unregistered
25 securities in two oil and gas programs, including the Eastern Permian Basin 59 Oil Wells prospect. The SEC
26 alleged that Couch and Couch Oil fraudulently raised approximately \$9.8 million from more than 200
27 investors in at least 21 states through the offer and sale of these unregistered oil and gas securities.

Nature of the Offering

28 10. Between June 2010 and January 2011, Couch Oil, Couch, Charlet, and Porter offered and sold units
29 of fractional undivided working interests in Couch Oil’s Eastern Permian Basin 59 Oil Wells prospect (“59

1 Wells”) to Washington residents. The units were offered through a public website, and at least three
2 Washington residents responded to the offer and invested a total of \$629,375. At the time of the offer, two
3 of the Washington investors were retired and one of the investors was non-accredited. None of the
4 Washington investors had a pre-existing relationship with any of the respondents when the investment was
5 offered.

6 11. After each of the Washington investors responded to the 59 Wells offer, Charlet or Porter contacted
7 the investor by phone and email. Couch also spoke with at least one of the Washington investors. Couch
8 Oil, Couch, Charlet, and Porter represented to offerees that Couch Oil would test, drill, operate, and manage
9 the 59 oil and gas wells associated with the program, and that investors would hold a percentage working
10 interest in all of the wells associated with the program. Couch Oil would distribute monthly revenue checks
11 to investors when it sold the oil or gas produced by the wells.

12 12. Charlet and Porter provided each Washington investor with a Participation and Subscription
13 Agreement (“Subscription Agreement”). While Couch Oil stated in the Subscription Agreement that
14 investors would be treated as limited liability partners, investors had no expectation of control over the
15 administration or management of the 59 Wells program. In addition, when investors signed the Subscription
16 Agreement, they signed a Power of Attorney appointing Couch Oil as their attorney-in-fact in matters
17 related to the 59 Wells program.

18 13. Couch, Charlet, and Porter provided each Washington investor with various documents regarding the
19 59 Wells program. Porter forwarded email updates from Couch and Couch Oil to at least one Washington
20 investor. In the email updates, Couch and Couch Oil outlined their successes in testing and drilling wells,
21 including wells that would be part of the 59 Wells program. In one update, Couch represented that Couch
22 Oil had a “verified list of good oil producers.” In another, Couch stated that “one well bore should earn us
23 our initial investment back.”

24 14. Charlet provided an Estimated Projected Cash Flow Pro-forma (“Pro-forma”) to at least one
25 Washington investor. In the Pro-forma, Couch Oil represented that all 59 wells would be producing oil or
gas within twelve months. Couch Oil also represented that investors could receive \$81,533 in revenue per
1% working interest in the first fourteen months of the investment.

15 15. Couch and Porter provided an Executive Summary to at least two Washington investors. In the
16 Executive Summary, Couch Oil represented that the 59 Wells program had an estimated “30% APR
17 payback if all wells obtain estimated **minimum** daily production” (emphasis in the original). Couch Oil
18 stated that the productive life of each well would likely vary from 10 to 50 years. Couch Oil also

1 represented that it would be drilling wells with proven past production, which was “comparable to buying
2 existing production.”

3 16. Couch Oil, Couch, Charlet, and Porter failed to provide investors with a basis for the projections and
4 assertions made in the email updates, Pro-forma, and Executive Summary, and they failed to disclose the
5 assumptions upon which the claims were made. Couch Oil, Couch, Charlet, and Porter also failed to provide
6 investors with material information regarding Couch Oil, including its financial condition, its operating
7 history, and the performance of other oil and gas investments offered, managed, or operated by Couch Oil or
8 its affiliates.

9 17. Couch Oil, Couch, Charlet, and Porter failed to disclose to investors that Couch had filed for
10 bankruptcy in 1999, and that Couch and/or Couch Oil had been the subject of administrative orders issued
11 by the Wisconsin Division of Securities in 2005 and the Pennsylvania Securities Commission in 1999 and
12 2009 for the offer or sale of unregistered securities. Couch Oil, Couch, Charlet, and Porter also failed to
13 disclose to investors that, at the time of the 59 Wells offer, Couch and Couch Oil were defendants in a civil
14 lawsuit filed by oil and gas investors that alleged securities act violations in the offer and sale of securities.

15 18. Couch and Charlet represented to at least two Washington investors that the risk of investing in the
16 59 Wells program was lower than investing in a single well because the risk of a dry hole was spread over
17 59 wells and a non-producing well could be replaced with a new well. Couch Oil, Couch, Charlet, and
18 Porter failed to disclose to investors that a large number of oil and gas wells are dry holes or commercially
19 non-productive wells, and that replacing a dry or under-producing well would likely require raising
20 additional funds.

21 19. Couch Oil, Couch, Charlet, and Porter failed to provide the Washington investors with a private
22 placement memorandum or other document containing the general or specific risks of investing in an oil and
23 gas prospect. Investors were only told broadly that oil and gas investments were risky and investors could
24 lose their entire investment. The risks that Couch Oil, Couch, Charlet, and Porter failed to disclose include,
25 but are not limited to, delays in the distribution of income, equipment shortages, changes in the
marketability of the product, commercially non-productive wells, and liability for costs beyond the initial
investment.

26 20. In April 2011, Couch Oil issued the first revenue checks for the 59 Wells program. All three
Washington investors received a revenue check that was substantially less than what each had expected, and
the revenue checks became smaller in the subsequent months. By the end of 2013, Couch Oil had notified
investors that it was pursuing a buyout and termination of the 59 Wells program.

Registration Status

21. Respondent Couch Oil & Gas, Inc. is not currently registered to offer or sell its securities in the state of Washington, and it has not previously been so registered. There is no notification of exemption on file with the state of Washington.

22. Respondent Charles O. Couch is not currently registered as a securities salesperson or broker-dealer in the state of Washington, and he has not previously been so registered.

23. Respondent Robin Charlet is not currently registered as a securities salesperson or broker-dealer in the state of Washington, and he has not previously been so registered.

24. Respondent Kirk Porter is not currently registered as a securities salesperson or broker-dealer in the state of Washington, and he has not previously been so registered.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer or sale of units of fractional undivided working interests in an oil and gas prospect as described above constitutes the offer or sale of a security as defined in RCW 21.20.005(14) and RCW 21.20.005(17).

2. The offer or sale of said securities is in violation of RCW 21.20.140 because no registration for such an offer or sale is on file with the Securities Administrator, state of Washington.

3. The offer or sale of said securities is in violation of RCW 21.20.040 because Charles O. Couch, Robin Charlet, and Kirk Porter are not registered as securities salespersons or broker-dealers in the state of Washington.

4. The offer or sale of said securities was in violation of RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, Respondents made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents Couch Oil & Gas, Inc.,

1 Charles O. Couch, Robin Charlet, and Kirk Porter each shall cease and desist from violations of RCW
2 21.20.010, RCW 21.20.040, and RCW 21.20.140.

3 **NOTICE OF INTENT TO IMPOSE A FINE**

4 Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions
5 of Law, the Securities Administrator intends to order that the respondents shall be liable for and shall pay
6 fines as follows:

- 7 a. Couch Oil & Gas, Inc. shall be liable for and shall pay a fine of \$20,000;
- 8 b. Charles O. Couch shall be liable for and shall pay a fine of \$20,000;
- 9 c. Robin Charlet shall be liable for and shall pay a fine of \$5,000; and
- 10 d. Kirk Porter shall be liable for and shall pay a fine of \$5,000.

11 **NOTICE OF INTENT TO CHARGE COSTS**

12 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of
13 Law, the Securities Administrator intends to order that the respondents shall be liable for and shall pay
14 investigative costs as follows:

- 15 a. Couch Oil & Gas, Inc. shall be liable for and shall pay investigative costs of at least \$1,500;
- 16 b. Charles O. Couch shall be liable for and shall pay investigative costs of at least \$1,500;
- 17 c. Robin Charlet shall be liable for and shall pay investigative costs of at least \$500; and
- 18 d. Kirk Porter shall be liable for and shall pay investigative costs of at least \$500.

19 **AUTHORITY AND PROCEDURE**

20 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is
21 subject to the provisions of Chapter 34.05 RCW. The respondents, Couch Oil & Gas, Inc., Charles O.
22 Couch, Robin Charlet, and Kirk Porter, may each make a written request for a hearing as set forth in the
23 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
24 Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator
25 intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a
permanent order to cease and desist as to that respondent, to impose any fines sought against that
respondent, and to charge any costs sought against that respondent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

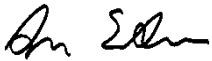
Signed and Entered this 23rd day of May 2014.



William M. Beatty
Securities Administrator

Approved by:

Presented by:



Suzanne Sarason
Chief of Enforcement

Holly Mack-Kretzler
Financial Legal Examiner

Reviewed by:



Robert Kondrat
Financial Legal Examiner Supervisor