

LAMAR D. TREADWELL

Attorney at Law (Texas)

**551 West Cordova Rd. # 720
Santa Fe, New Mexico 87505**

**Cellular / Voice Mail
505/ 660-0602**

**Telefax
806/ 763-7536**

July 21, 2008

J. Wiley George
Paul Radich

Andrews Kurth, LLP
600 Travis, Suite 4200
Houston, Texas 77002

Via: **Fax, 713/ 238-7415**
and **Fax, 713/ 220-4285**, and
PRadich@andrewskurth.com

Robert H. Holmes
Co-counsel for *4848 Aspermont, Ltd.*
2616 Thomas Ave.
Dallas, Texas 75201

Via: **Fax, 214/ 748-0396**
and, rholmes@swbell.net

RE: *In The Estate of Ida Baldwin Denison*
4222-A & 1086 TS / Consolidated; 39th District Court, Stonewall County
Offer of Settlement for abuse of process and unlawful conduct

Dear Mr. Wiley, Mr. Radich and Mr. Holmes:

As you are aware, John Denison sold 9.5 sections of ranch land to T. Boone Pickens in 2004, while a long-running Estate lawsuit was pending between John Denison and his brother Bob Denison. By filing a *Lis pendens* and *Amended Lis pendens* Notices in the records of the Stonewall County, Bob Denison notified anyone purchasing any land from the Estate, or from its Executor, or its Trustee, who was John Denison, that title to such land could not vest in a buyer until the Estate lawsuit was concluded. After learning of the sale of the ranch land by John Denison to T. Boone Pickens, Bob Denison filed pleadings requesting that the land be returned to the Estate. Subsequently, T. Boone Pickens broke the ranch up and sold various sized parcels to other purchasers.

Under long established principles of common law, and also by Texas statute, those who buy land subject to a notice of *Lis pendens* are called purchasers *pendente elite*. This type of land buyer takes a serious risk to his title because he takes title to the land subject to the outcome of the underlying litigation. If the purchaser's seller loses the lawsuit involving the land, then that buyer has no claim to title, and no defense to losing the land, which loss includes any improvements the *pendente lite* buyer may have made to the land. The term *pendente lite* is a short hand way of also stating the law that buyers of land subject to a lawsuit cannot interfere with that lawsuit.

Mr. J. Wiley George
Mr. Paul S. Radich
Mr. Robert H. Holmes

On or about October 29, 2007 *Andrews-Kurth* filed a *Plea in Intervention* in the above-referenced lawsuit on behalf of T. Boone Pickens, Donald and Judy Craddock, Philip and Lianne Pearson, and *4848 Aspermont, Ltd.*, whose titles to the respective parcels of ranch land were illegally insured under a title policy issued by *Alamo Title Insurance Co.*

It is Bob Denison's position that said *Intervention* was at all times unlawful. The subsequent actions taken by the *Intervenors* unlawfully hindered, delayed and obstructed Bob Denison's ability to fully discover and adequately prosecute his breach of fiduciary duty and related claims, which claims include the cancellation and recession of a Settlement Agreement procured by unlawful conduct in the Estate case. From day one it has been *Andrew-Kurths* and the *Intervenors* intention to unlawfully interfere in the underlying litigation by joining forces with John Denison, Isaac Castro and the *Hamlin National Bank* and then using any means, manner and method available to secure John Denison's title to the land.

On June 30, 2008 Judge Kirk finally severed and abated the *Intervenors* from the *Ida Baldwin Denison Estate* lawsuit, but considerable damage, if not irreparable damage to Bob Denison has occurred. On July 14, 2008 Judge Kirk overruled and denied the Intervener's *Motion for Reconsideration* and entered its order of severance and abatement.

For nine months Bob Denison's prosecution of the Estate litigation was interrupted causing Bob Denison to incur costs, attorneys' fees to achieve the severance of a lawsuit intervention that should never have occurred in the first place. Further, *Andrews-Kurth's* participation in the deposition process has delayed and damaged Bob Denison's prosecution of the lawsuit. Whether that damage is irreparable will only be determined after a jury trial on the merits is held in the Estate lawsuit. However, any failure of Bob Denison to fully prevail on the merits of his claims will be pleaded as additional damages against the *Andrews-Kurth, Intervenors* and *Alamo Title Insurance*.

Based on past events, it appears that *Andrews-Kurth, et al.* regardless of the order of severance and abatement, will continue, on behalf of their *Intervenors*, to interfere in the Estate litigation by supporting, aiding, and assisting Isaac Castro, John Denison and the *Hamlin National Bank*. Therefore, Bob Denison hereby demands that the *Intervenors, Alamo Title Insurance* and *Andrews-Kurth* enter into a permanent injunction, agreeing to cease and desist from further interference, of any nature in the Estate Litigation, under a liquidated damages penalty provision of five million dollars, with joint and severable liability if a violation occurs. Based upon the past aggressiveness of the unlawful behavior of *Intervenors*, and their apparent intent to appeal Judge Kirk's ruling of

Mr. J. Wiley George
Mr. Paul S. Radich
Mr. Robert H. Holmes

severance and abatement, it appears that *Intervenors* are intending to continue to cause Bob Denison to lose title to the ranch land, by all means possible.

Andrews-Kurth, in spite of knowing that the *Lis pendens* Statute and long standing common law requiring it to not interfere in the Estate litigation, nonetheless intentionally did so. *Andrews-Kurth, et al.* interfered in the Estate litigation by repeatedly misrepresenting the facts and the applicable law to Judge Kirk. To be clear, although a general right to intervene exists, the existence of the *Lis pendens* is an absolute bar to intervention. Thus, the *Plea in Intervention* was brought in an improper manner to accomplish a purpose for which it was not allowed resulting in damage to Bob Denison.

Andrews-Kurth, et al. abused process by filing a declaratory judgment action, by filing a motion for summary judgment, by filing multiple written discovery requests, by participating obstructively in depositions, by suborning fraud, and by participating contentiously in court hearings to confuse and complicate the facts and issues before the Court. Further, abuse of process was repeatedly committed by *Andrews-Kurth, et al.* when they repeatedly undertook to resist Bob Denison's attempts to extricate the *Intervenors* from the Estate litigation. Consequently, *Andrews-Kurth, et al.*'s efforts did in fact spawn multiplicity of lawsuits, as *4848 Aspermont Ltd* filed suit against *Alamo Title Insurance* and others for fraud. Unfortunately, this may not be all the abuse of process conduct that *Intervenors, Andrews-Kurth* and *Alamo Title Insurance* have engaged in, facilitated, or conspired to commit.

Since the *pendente lite* buyers had to take the risk of losing the title to their land based on the outcome in the Estate lawsuit, by intervening in the Estate lawsuit *Andrews-Kurth, et al.* used process to obtain the collateral advantage of not "taking title subject to the result in the underlying litigation." Other collateral advantages secured include *Alamo Title Insurance*'s attempt to avoid liability on multiple title insurance claims. And, in terms of champerty and maintenance, *Andrews-Kurth, et al.* has unlawfully aided, abetted, assisted, facilitated, or conspired to maintain John Denison, Isaac Castro and *Hamlin National Bank* in their litigation for the purpose of securing the ranch land to *Alamo's* insureds. *Alamo Title Insurance*'s illegal conduct, in this regard, includes violating the Texas Department of Insurance's P-11 Rule and regulations prohibiting the practice of "insuring around."

By pushing for a scheduling order, when discovery issues and an interpretation of the *Last Will and Testament of Ida Baldwin Denison* was pending before the Court, and as the Court had intended to reach such issues before proceeding, *Andrews-Kurth, et al.* engaged in an aggressive attempt to mislead the Court into cutting short – truth and justice in this case.

Mr. J. Wiley George
Mr. Paul S. Radich
Mr. Robert H. Holmes

As such, Bob Denison makes the following offer of settlement of his claims against *Andrews-Kurth*, the *Intervenors*, and *Alamo Title Insurance*.

1. That *Andrews-Kurth*, *Alamo Title Insurance* and the *Intervenors* pay Bob Denison the sum of \$250,000, as mitigation damages for their nine months of unlawful interference (abuse of process) in the Estate Litigation case.
2. That the aforementioned permanent injunction be entered into with an indemnity bond posted, or letter of guaranty, or other assurance acceptable to Bob Denison signed by all tortfeasors, as a prohibition on the further unlawful activity of champerty and maintenance, with a liquidated damages provision of five million dollars.
3. That any claims for any unlawful conduct not yet revealed, not yet disclosed, or as of yet, undiscovered by Bob Denison, either such conduct be revealed and subject to discussion of damages, or if it is not disclosed then such conduct is not covered by this offer of settlement.

Andrews-Kurth et al.'s unlawful insertion in to this lawsuit has created an "unfair" fight in the Estate litigation for the purpose of achieving a *manifestly unjust result*. Since Bob Denison has no adequate remedy at law for *Andrews-Kurth et al.*'s continuing unlawful conduct in the Estate lawsuit, he requests an immediate answer to this offer of settlement, or he will have no choice but to file his lawsuit for abuse of process and tortious conduct.

Very truly,



Lamar Treadwell

Email: Bob Denison