

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 N. ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Cherokee Energy Company, L.L.C.,
Appalachian Energy Partners 2001-D, L.L.P.,
Martin R. Twist and
Forrest Hammond,

Respondents.

ODS File No. 03-045

ORDER IMPOSING CIVIL PENALTY

Pursuant to Section 405 of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2002), an investigation was conducted by the Oklahoma Department of Securities (Department) into the activities of Cherokee Energy Company, L.L.C. (Cherokee), Appalachian Energy Partners 2001-D, L.L.P. (Appalachian), Martin R. Twist (Twist) and Forrest Hammond (Hammond) (collectively, the "Respondents"), in connection with the offer and/or sale of certain limited liability partnership interests in the state of Oklahoma.

Following the institution of administrative proceedings, Respondents Cherokee and Twist submitted an offer of settlement, consent and undertaking (Offer of Settlement and Undertaking), incorporated herein by reference, to the Administrator of the Department (Administrator) for the purpose of resolving the issues raised as a result of the investigation. Solely for the purpose of this proceeding and without admitting or denying the findings contained in this Order Imposing Civil Penalty (Order), Respondents consent to the entry of this Order and the imposition of a civil penalty as described herein and voluntarily waive their right to notice and hearing as required by the Act, the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules) and the Oklahoma Administrative Procedures Act, Okla. Stat. tit. 75, § 250 *et. seq.*

Findings of Fact

1. At all times material hereto, Cherokee was represented to be an Indiana limited liability company engaged in the business of exploring for and producing oil and gas.

2. At all times material hereto, Appalachian was represented to be an Indiana limited liability partnership engaged in the business of exploring for and producing oil and gas.

3. At all times material hereto, Cherokee was represented to be the managing general partner of Appalachian.

4. At all times material hereto, Twist was the President and CEO of Cherokee.

5. At all times material hereto, Hammond was an Assistant Vice President of Cherokee.

6. In or about October, 2002, Respondents Cherokee, Twist and Hammond began to offer, in the state of Oklahoma, limited liability partnership interests in Appalachian (the "L.L.P. Interests").

7. The L.L.P. Interests were initially offered in the state of Oklahoma by telephone contact to persons with no substantive pre-existing business relationship with any of the Respondents.

8. In connection with the offer of the L.L.P. Interests, Hammond represented, to at least one resident of the state of Oklahoma, that there were no risks associated with the wells to be drilled by Appalachian.

9. In connection with the offer and sale of the L.L.P. Interests, Twist represented, to at least one resident of the state of Oklahoma, that Cherokee was registered with the United States Securities and Exchange Commission (S.E.C.) under "506D" and that the principal amount of an investment of Forty Thousand Dollars (\$40,000.00) would be returned to the investor in three to six months.

10. In connection with the offer and sale of the L.L.P. Interests, at least one resident of the state of Oklahoma received a package of documents containing copies of newspaper articles, a subscription agreement, a document entitled "Program Highlights" and geographic maps of various regions of the state of West Virginia (collectively referred to as the "Sales Literature").

11. Respondents made untrue statements of material fact in connection with the offer and sale of the L.L.P. Interests by stating that the investment involved "no risk" and that Cherokee was registered with the S.E.C.

12. Respondents omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading including, but not limited to, the following:

- a. any general or specific risk factors associated with the exploration of, drilling for, or production of oil and gas or with the specified area of exploration including, but not limited to,

potential liability and tax implications associated with an investment in the L.L.P. Interests;

- b. any disclosure regarding the basis for calculation of returns on investment described by Twist or contained in the Sales Literature;
- c. any adequate disclosure regarding possible conflicts of interest between Cherokee and the purchasers of the L.L.P. Interests; and
- d. any adequate disclosure regarding of the illiquid nature of the investment.

13. At all times material hereto, the L.L.P. Interests were not registered under the Act.

14. At all times material hereto, Twist and Hammond were not registered as agents under the Act.

15. It is in the public interest to issue an order to cease and desist against Respondents.

Authorities

1. Section 2 of the Act provides in pertinent part:

(v) "*Security*" means any:

* * *

(11) investment contract; or

* * *

(17) interest in oil, gas, or mineral leases, except that transactions involving leases or interest therein, between parties, each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business, and the execution of oil and gas leases by land, mineral, and royalty owners in favor of a party or parties engaged in the business of exploring for or producing oil and gas or other valuable minerals shall be deemed not to involve a security.

2. Section 101 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading,
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

3. Section 201 of the Act provides in part:

(a)(1) it is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is so registered under this act or unless the person is exempt from registration as provided in paragraph (2) or (3) of this subsection.

* * *

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered or is exempt from registration.

4. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in this state unless:

- (1) it is registered under this act or the security or transaction is exempted under Section 401 of this title; or
- (2) it is a federal covered security.

Conclusions of Law

1. The L.L.P. Interests are securities as defined by subsection (v) of Section 2 of the Act.

2. Respondents offered and sold securities in the state of Oklahoma.

3. Respondents offered and sold unregistered securities in the state of Oklahoma, in violation of Section 301 of the Act.

4. Respondents made untrue statements of material fact, in connection with the offer and/or sale of securities in the state of Oklahoma, in violation of subsection (2) of Section 101 of the Act.

5. Respondents omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, in connection with the offer and/or sale of securities in the state of Oklahoma, in violation of subsection (2) of Section 101 of the Act.

6. Respondents Twist and Hammond transacted business in the state of Oklahoma as agents without being registered under the Act, in violation of Section 201 of the Act.

7. Respondent Cherokee employed agents in the state of Oklahoma who were not registered under the Act, in violation of Section 201 of the Act.

8. The Administrator has the authority pursuant to Section 406 of the Act to impose a civil penalty.

Order

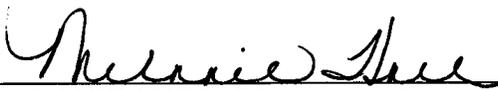
The Administrator, after review of the foregoing and having found it in the public interest, does hereby accept Respondents' Offer of Settlement and Undertaking, attached hereto and incorporated herein by reference, and **ORDERS** that Respondent Cherokee pay a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) and that Respondent Twist pay a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

Payment shall be made: (i) at the time described in the Offer of Settlement and Undertaking and this Order; (ii) by certified check, bank cashier's check or bank money order made payable to the Oklahoma Department of Securities; and (iii) submitted under a cover letter identifying Cherokee and Twist as Respondents in this proceeding and the file number of the matter (ODS file 03-045), to the Oklahoma Department of Securities, First National Center, Suite 860, 120 North Robinson, Oklahoma City, Oklahoma 73102.

It is further **ORDERED** that any disqualification caused by this Order in connection with the use of the Uniform Limited Offering Exemption (ULOE) is hereby waived pursuant to Rule 660:10-11-50 of the Rules.

WITNESS MY HAND and the Official Seal of the Oklahoma Department of Securities this 11th of December, 2003.

(SEAL)



MELANIE HALL, DEPUTY ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES