ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:	)	
	)	**ORDER TO CEASE AND DESIST**
Cunningham Energy LLC,	)	
James Lockhart,	)	**File No. 20165031**
Kevin Thibeau,	)	
Jan Peter Bolton,	)	
Scott Johnson, and	)	
Douglas Hardwick,	)	
	)	
Respondents.	)	

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division") has been authorized and directed by the Securities Commissioner of South Carolina (the "Securities Commissioner") to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the "Act"); and

WHEREAS, the Division received information regarding alleged securities-related activities of Cunningham Energy, LLC ("Cunningham"), James Lockhart ("Lockhart"), Kevin Thibeau ("Thibeau"), Jan Peter Bolton ("Bolton"), Scott Johnson ("Johnson"), and Douglas Hardwick ("Hardwick") (collectively, the "Respondents"); and

WHEREAS, based on the information received, the Division decided it was necessary and appropriate to open an investigation pursuant to S.C. Code Ann. § 35-1-602 to determine whether the Respondents had violated, were violating, or were about to violate, the Act; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings of fact and conclusions of law:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. § 35-1-601(a).

II. FINDINGS OF FACT

2. Respondent Cunningham is a West Virginia limited liability corporation with a principal business address of 3230 Pennsylvania Avenue, Charleston, West Virginia 25302.
3. Respondent Lockhart, during the time period herein, acted as an Account Executive with

Cunningham. Lockhart's last known residential address is 301 Colinas Boulevard, Irving, Texas 75039.

4. Respondent Thibeau, during the time period herein, acted as Director of Investor Relations with Cunningham. Thibeau's last known residential address is 7732 Oak Country Lane, Mansfield, Texas 76062.

5. Respondent Bolton, during the time period herein, acted as an Account Executive with Cunningham. Bolton's last known residential address is 8609 San Joaquin Trail, Fort Worth, Texas 76118.

6. Respondent Johnson, during the time period herein, acted as an Account Executive with Cunningham. Johnson's last known residential address is 2805 Garden Oaks Place, Grand Prairie, Texas 75052.

7. Respondent Hardwick, during the time period herein, acted as an Account Executive with Cunningham. Hardwick's last known residential address is 1311 Rocky Creek Lane, Allen, Texas 75002.

8. During the period June 22, 2012 to March 8, 2013, twelve (12) known South Carolina residents (collectively "the Investors") invested approximately $918,075.00 in ten (10) energy-related drilling projects managed by Respondent Cunningham.

9. Prior to the first investment, the Investors were sent a chart depicting the opportunity to make a one-hundred and twenty percent (120%) return on their investment over the first 5 years and a 10 percent return for the next 15-25 years.

10. During the period June 22, 2012 to March 8, 2013, a number of South Carolina residents (which includes but is not limited to the Investors), were cold-called by Respondents Lockhart, Thibeau, Bolton, Johnson, and Hardwick to purchase units of "working interest" in projects managed by Respondent Cunningham.

11. After being cold-called, each of the Investors invested in one or more of the Cunningham-managed drilling project opportunities.

12. Respondent Lockhart sold at least twenty-one (21) separate investments in Cunningham-managed drilling project opportunities to Investors during the period April 10, 2012, to May 23, 2016.

13. Respondent Thibeau sold at least one (1) investment in a Cunningham-managed drilling project opportunity to an Investor on or around May 11, 2012.

14. Respondent Bolton sold at least one (1) investment in a Cunningham-managed drilling project opportunity to an Investor on or around September 8, 2014.

15. Respondent Johnson sold at least at least one (1) investment in a Cunningham-managed drilling project opportunity to an Investor on or around October 30, 2013.

16. Respondent Hardwick sold at least four (4) investments in Cunningham-managed drilling project opportunities to Investors during the period of July 25, 2012, to March 20, 2017.

17. In connection with the above sales to Investors of working interests in projects managed by Respondent Cunningham, Respondent Cunningham paid commissions in the following amounts to the agents involved: Respondent Lockhart approximately $70,529.40; Respondent Thibeau approximately $1,566.40; Respondent Bolton approximately $8,466.40; Respondent Johnson approximately $1,000.00; and Respondent Hardwick approximately $9,462.50

18. Respondents Thibeau, Bolton, Johnson, and Hardwick, on behalf of Respondent Cunningham, provided the Investors with promotional material and subscription agreements.

19. The promotional material and subscription agreements referenced above describe the investments offered to the Investors as participation in units of interest in joint ventures to be formed under West Virginia partnership law to engage primarily in the business of participating in the drilling of oil wells and natural gas.

20. Other than in terms of providing investment money, none of the Investors was asked to or expected to participate in any meaningful way in the joint offering(s) in which they invested, and none did.

21. At the time of the offers and sales of the interests above, none of the individual Respondents was registered with the Division as an agent and none of the individual investments, each of which individually constitutes a security, was registered with the Division.

22. Further, no claim of exemption or notice filing was made on behalf of any of the offerings or any of the Respondents in connection with the offerings.

III. CONCLUSIONS OF LAW

23. The South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.*, governs the offer and sale of securities in this State.

24. Pursuant to S.C. Code Ann. § 35-1-102(29), "Security," *inter alia*, constitutes any note, certificate of interest or participation in profit-sharing agreement, investment contract, stock or fractional undivided interest in oil, gas or other mineral rights.

25. Pursuant to S.C. Code Ann. § 35-1-301, it is unlawful for a person to offer or sell a security in this State unless (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under §§ 35-1-201 through 35-1-203 or (3) the security is registered pursuant to the Act.

26. Pursuant to S.C. Code Ann. § 35-1-402(a), it is unlawful for an individual to transact business in this State as an agent unless the individual is registered as an agent under the Act or is exempt from registration as an agent under subsection § 35-1-402(b).

27. Pursuant to S.C. Code Ann. § 35-1-402(d), it is unlawful for an issuer engaged in offering securities in this State to employ or associate with an agent who transacts business in this State on behalf of the issuer unless the agent is registered under the Act or exempt from registration.

28. Respondent Cunningham, through the individual Respondents above, sold interests in oil wells and natural gas, which constitute "securities," as defined by S.C. Code Ann. § 35-1-102(29). To wit, the investments were "securities" because they each, individually, constitute "fractional undivided interests in oil rights," as well as investment contracts, certificates of interest or participation in profit-sharing agreements, and other items traditionally known as "securities."

29. None of the securities offered and sold by the Respondents were federal covered securities and none of the securities were registered pursuant to the Act, in violation of S.C. Code Ann. § 35-1-301.

30. In connection with offering and selling Cunningham-managed drilling project opportunities to Investors as described above, Respondents Lockhart, Thibeau, Bolton, Johnson, and Hardwick violated S.C. Code Ann. § 35-1-402(a) the following numbers of times by transacting business in this State as an unregistered agent: Lockhart (21), Thibeau (1), Bolton (1), Johnson (1), and Hardwick (4).

31. Respondent Cunningham violated S.C. Code Ann. § 35-1-402(d) at least twenty-eight (28) times in connection with the offers and sales of securities to Investors by the sales agents named directly above, and at least twenty-eight (28) additional times for allowing the offer and sale of unregistered securities in this State (in connection with the transactions above).

32. It is in the public interest, for the protection of investors, and consistent with the purposes of the Act, that the Respondents be ordered to cease and desist from engaging in the above-enumerated practices and pay monetary penalties.

IV. CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

a. Respondent Cunningham, and every successor, affiliate, control person, agent, servant, and employee of Respondent Cunningham, and every entity owned, operated, or indirectly or directly controlled by or on behalf of Respondent Cunningham, **CEASE AND DESIST** from transacting business in this State in violation of the Act; and

b. Respondents Lockhart, Thibeau, Bolton, Johnson, and Hardwick, and every control person, agent, servant, and employee of any of them, and every entity owned, operated, or indirectly or directly controlled by or on behalf of any of them, **CEASE AND DESIST** from transacting business in this State in violation of the Act; and

c. Respondent Cunningham pay a civil penalty in the amount of two hundred eighty thousand dollars ($280,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed $10,000 for each violation of the Act by Respondent Cunningham, and the actual cost of investigation or proceeding; and

d. Respondent Lockhart pay a civil penalty in the amount of two hundred ten thousand dollars ($210,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed $10,000 for each violation of the Act by Respondent Lockhart, and the actual cost of investigation or proceeding; and

e. Respondent Thibeau pay a civil penalty in the amount of ten thousand dollars ($10,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed $10,000 for each violation of the Act by Respondent Thibeau, and the actual cost of investigation or proceeding; and

f. Respondent Bolton pay a civil penalty in the amount of ten thousand dollars ($10,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any

legal authority resolves this matter, pay a civil penalty in an amount not to exceed $10,000 for each violation of the Act by Respondent Bolton, and the actual cost of investigation or proceeding; and

g. Respondent Johnson pay a civil penalty in the amount of ten thousand dollars ($10,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed $10,000 for each violation of the Act by Respondent Johnson, and the actual cost of investigation or proceeding; and

h. Respondent Hardwick pay a civil penalty in the amount of forty thousand dollars ($40,000) if this Order becomes effective by operation of law, or, if the Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed $10,000 for each violation of the Act by Respondent Hardwick, and the actual cost of investigation or proceeding; and

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. §§ 35-1-604(a)(2) and (3), any exemption from registration with the Division upon which any Respondent may claim to rely under S.C. Code Ann. §§ 35-1-201(3)(C), (7), or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), is and has been **PERMANENTLY REVOKED** as of the date of this Order to Cease and Desist.

This Order does not prevent the Division or any other civil, criminal or administrative agency or any individual from seeking additional civil or criminal remedies as are available under the Act, including remedies related to the offers and sales of securities by the Respondents set forth above.

V. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

Each Respondent is hereby notified that he/it has the right to a hearing on the matters contained herein. To schedule such a hearing, the Respondent must file with the Securities Division At, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Wanda Ealy, within thirty (30) days after the date of issuance of this Order to Cease and Desist, a written Answer specifically requesting a hearing. If a written Answer and request for a hearing is received within the thirty (30) day period, the Division, within fifteen (15) days after receipt of the written answer and request, will schedule a hearing for the Respondent making the request.

In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny

each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to that Respondent by operation of law.

ENTERED, this the 8th day of May, 2018.

ALAN WILSON
SECURITIES COMMISSIONER

By: Tracy Meyers
TRACY A. MEYERS
Deputy Securities Commissioner

ISSUANCE REQUESTED BY:

IAN P. WESCHLER
Assistant Attorney General
Securities Division
Rembert C. Dennis Building
1000 Assembly Street
Columbia, South Carolina 29201

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 20165031

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated May 9, 2018, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Edwin J. Tomko
1717 Main Street Suite 4200
Dallas, Texas 75201

Document(s): Order to Cease and Desist

Mailed May 9, 2018 from Columbia, South Carolina.

I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By: Wanda Ealy
Wanda Ealy
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on this 9 day of May, 2018.

Notary Public for South Carolina

My commission expires: 7/2/18

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Cunningham Energy, LLC
3230 Pennsylvania Avenue
Charleston, West Virginia 25302

Document(s): Order to Cease and Desist

Mailed May 9, 2018 from Columbia, South Carolina.

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James Lockhart
301 Colinas Boulevard
Irving, Texas 75039

Document(s): Order to Cease and Desist

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Kevin Thibeau
7732 Oak Country Lane
Mansfield, Texas 76062

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Jan Peter Bolton
8609 San Joaquin Trail
Fort Worth, Texas 76118

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Scott Johnson
2805 Garden Oaks Place
Grand Prairie, Texas 75052

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Douglas Hardwick
1311 Rocky Creek Lane
Allen, Texas 75002

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