

Action No. 1001-06764

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**GEOCAP ENERGY CORPORATION and  
EUROMAX RESOURCES LTD.**

Plaintiffs

- and -

**TWIN BUTTE ENERGY LTD.**

Defendant

**STATEMENT OF CLAIM**

1. The Plaintiff, Geocap Energy Corporation ("GeoCap"), is a corporation registered pursuant to the laws of Alberta.
2. The Plaintiff, Euromax Resources Ltd. ("EurOmax"), is a corporation registered pursuant to the laws of British Columbia and extra-provincially registered in Alberta.
3. The Defendant, Twin Butte Energy Ltd. ("Twin Butte"), is a corporation registered pursuant to the laws of Alberta.
4. The Plaintiffs and Defendant are parties to an agreement entitled "Participation Agreement Sawn Lake Area, Alberta" dated December 4, 2002, (the "Participation Agreement").
5. Pursuant to the terms of the Participation Agreement, at all material times the Plaintiffs and Defendant were each working interest owners in a natural gas well known as Sawn Lake 102/01-35-090-13W5M (the "1-35 Well").

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6. Pursuant to the terms of the Participation Agreement, the beneficial working interest owners and their respective ownership interests in the 1-35 Well were the following:

- (a) Twin Butte Energy Ltd. 20%
- (b) Penn West Petroleum Ltd. 25%
- (c) Sutton Energy Ltd. 25%
- (d) GeoCap Energy Corporation 25%
- (e) EurOmax Resources Ltd. 5%

7. It was well known to Twin Butte and Twin Butte acted at all material times on the basis that the beneficial working interest owners and their respective ownership interests in the 1-35 Well were as set out in the preceding paragraph.

8. Twin Butte was at the material time the operator of the 1-35 Well under the Participation Agreement (the "Operator") and Twin Butte, as Operator, owed contractual, fiduciary and other duties to the working interest owners, including the Plaintiffs, which duties included but were not limited to the following:

- (a) those duties and responsibilities as set out in the provisions of the 1990 Canadian Association of Petroleum Landmen Operating Procedure (the "1990 CAPL Operating Procedure") the terms of which were incorporated into the Participation Agreement;
- (b) to operate the 1-35 Well in a reasonable and prudent fashion and in the interests of all of the working interest owners, including the Plaintiffs;
- (c) to perform any work on or in connection to the 1-35 Well in a reasonable, safe and diligent fashion and in accordance with good engineering practice and accepted industry standards;
- (d) to expressly refrain from any action or perform any work to or in connection with the 1-35 Well that poses serious risk:
  - (i) to the safety of any person working on the 1-35 Well;
  - (ii) to the safety of any person in the vicinity of the 1-35 Well;

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- (iii) of harm to the environment; or
  - (iv) of harm or damage to the 1-35 Well;
  - (e) to provide full, complete and timely information as to the operations of the 1-35 Well to the working interest owners, including the Plaintiffs;
  - (f) to account to all working interest owners, including the Plaintiffs, for all revenues derived from and expenditures incurred in connection with the 1-35 Well;
  - (g) to not incur nor commit any expenditures in excess of \$25,000 on behalf of the working interest owners without the express written authorization of the working interest owners;
  - (h) to promptly advise the working interest owners, including the Plaintiffs, of the nature of any event or regulatory requirement necessitating the Operator to incur an expenditure without obtaining the approval for expenditure of the working interest owners and to promptly advise of the anticipated cost associated with such action; and
  - (i) such other duties as may be established at trial.
9. Immediately prior to August 24, 2008, Twin Butte wrongfully attempted to remove fluid from the 1-35 Well by injecting high pressure natural gas through the annulus between the tubing and production casing in an effort to lift the liquid through the tubing to surface and allow the natural gas to flow (such actions being referred to hereinafter as "Unloading the 1-35 Well") thereby causing a surface casing vent flow. Twin Butte's actions as described were in direct breach of the duties owed to the working interest owners, including the Plaintiffs, in that:
- (a) Twin Butte knew or ought to have known that the 1-35 Well had previously undergone a casing repair and that the 1-35 Well was equipped with a casing patch;
  - (b) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well would never have worked given the depth of the 1-35 Well and the pressure that would have been required to Unload the 1-35 Well;

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- (c) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well was not accepted standard practice in any circumstance, especially in the case of a well equipped with a casing patch;
  - (d) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted a serious risk to the life and safety of its workers undertaking the procedure;
  - (e) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted a serious risk to the life and safety of any person in the vicinity of the 1-35 Well;
  - (f) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted serious risk or harm to the environment;
  - (g) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted serious risk to the future productive life and viability of 1-35 Well itself; and
  - (h) Twin Butte knew or ought to have known that its procedure for Unloading the 1-35 Well constituted serious risk of harm and damage to the working interest owners.
10. The actions undertaken by Twin Butte were not undertaken out of necessity or for the benefit of the working interest owners. Instead, the Plaintiffs state that Twin Butte further breached its duties to the working interest owners, including the Plaintiffs, in Twin Butte's assessment of the need for the repair work having regard to all of the circumstances and specifically the following:
- (a) Twin Butte was fully aware that the 1-35 Well never had a surface casing vent flow history;
  - (b) Twin Butte was fully aware that prior to any surface casing vent flow appearing, its workers had injected high pressure gas down the annulus of the 1-35 Well which was equipped with a casing patch;

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- (c) Twin Butte either knew or failed to recognize that the injected high pressure gas was the actual cause of the surface casing vent flow;
  - (d) Twin Butte failed to critically assess the surface casing vent flow and misdiagnosed a failed casing patch;
  - (e) Twin Butte performed unnecessary repairs and operations; and
  - (f) Twin Butte failed to advise the working interest owners of any of its wrongful actions leaving them to wrongly believe that there was in fact a surface casing vent flow issue in need of emergency repair.
11. Ultimately, Twin Butte did not respond in a prudent technical way and in such a manner as to reduce unnecessary downhole operations and to return the 1-35 Well to production at minimum cost and with minimum delay but instead was grossly negligent in its conduct.
12. Twin Butte breached its duties to the working interest owners, including the Plaintiffs, was grossly negligent, and misled the working interest owners, including the Plaintiffs, in the following manner:
- (a) By failing to initially disclose the fact that Twin Butte injected high pressure natural gas through the annulus between tubing and production casing on August 24, 2008, causing a surface casing vent flow; and
  - (b) By representing that the certain repairs being undertaken were required for regulatory compliance, even after the surface casing vent flow dissipated and Twin Butte knew that the surface casing vent flow had been downgraded to "Non-Serious" and would only require annual monitoring and reporting to the ERCB.
13. Twin Butte, as Operator, breached both its fiduciary duties and its duties to the working interest owners, including the Plaintiffs, under the Participation Agreement and the 1990 CAPL Operating Procedure, in conducting operations in a grossly negligent manner, failing to seek proper authority for expenditures on the 1-35 Well and in failing to keep the working interest owners informed of the operations in respect of such well.

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14. Twin Butte first acted unreasonably, imprudently and dangerously in Unloading the 1-35 Well, and then, unreasonably, imprudently and without providing the working interest owners with full and complete information, directed authorization for expenditure for operations to the 1-35 Well which were neither warranted nor necessary. Twin Butte conducted such operations in a manner that was far from consistent with the actions of a good and prudent operator.
15. But for Twin Butte's breach of its duties owed to the Plaintiffs and Twin Butte's gross negligence in wrongfully injecting high pressure gas into the 1-35 Well and its conduct thereafter, the 1-35 Well would still have been capable of production and would still have been producing and generating revenue for the working interest owners, including the Plaintiffs.
16. As a result of Twin Butte's breach of its duties and its gross negligence, the working interest owners, including the Plaintiffs, suffered damages including:
  - (a) loss of the 1-35 Well and all costs incurred to drill and equip the Well;
  - (b) loss of production and revenue from the 1-35 Well;
  - (c) the costs to be incurred to drill a well to replace the 1-35 Well;
  - (d) the costs to abandon the 1-35 Well; and
  - (e) such further damages and losses as may be proven at trial.
17. The Plaintiff proposes that the trial of the within action be held at the Court House in Calgary, Alberta.
18. The Plaintiff further states that the trial of the within action will not exceed 25 days of trial time.

**WHEREFORE THE PLAINTIFFS CLAIMS AGAINST THE DEFENDANT ON A JOINT AND SEVERAL BASIS:**

- (a) Damages in the sum of \$1,440,000.00 representing the loss of the 1-35 Well and all costs incurred to drill and equip the Well;
- (b) Damages in the sum of \$900,000.00 representing loss of production and revenue of from the 1-35 Well;
- (c) Damages in the sum of \$750,000.00 representing the cost to drill a well to replace the 1-35 Well;
- (d) Damages in the sum of \$60,000.00 representing the costs to abandon the 1-35 Well;
- (e) Such other damages and losses as may be proven at trial; total \$3.15MM
- (f) Interest pursuant to the Judgment Interest Act, R.S.A. 2000, c.J-1 and amendments thereto and regulations thereunder;
- (g) Costs; and
- (h) Such further and other relief as this Honorable Court may deem necessary.

DATED at the City of Calgary, in the Province of Alberta, this 6<sup>th</sup> day of May, 2010; AND DELIVERED BY Messrs. FLEMING LLP, Barristers and Solicitors, Solicitors for the Plaintiff, whose address for service is in care of the said solicitors at 900, 926 - 5<sup>th</sup> Avenue SW, Calgary, Alberta, T2P 0N7, Attention: Predrag Anic, tel: (403) 266-7627.

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 6 day of May, 2010.

K. MCAUSLAND 

CLERK OF THE COURT

NOTICE TO THE DEFENDANT

No. 1001-06764 A.D. 2010

TO:  
**TWIN BUTTE ENERGY LTD.**

IN THE COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

You have been sued. You are the Defendant. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench of Alberta in Calgary, Alberta. You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service of the Plaintiff named in this Statement of Claim.

**BETWEEN:**

**GEOCAP ENERGY CORPORATION  
and EUROMAX RESOURCES LTD.**  
Plaintiffs

- and -

**TWIN BUTTE ENERGY LTD.**  
Defendant

**WARNING:** If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court judgment against you if you do not file or do not give a copy to the Plaintiff, or do either thing late.

**STATEMENT OF CLAIM**

The Statement of Claim is filed by

**FLEMING LLP**

Solicitors for the Plaintiff, who resides at Calgary, Alberta and whose address for service is in care of the said Solicitors.

The Defendant, insofar as is known to the Plaintiff, reside in Calgary, Alberta.

**FLEMING LLP**  
Barristers & Solicitors  
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Attn: Predrag Amic

CLERK OF THE COURT #35841PA

MAY 8 6 2010  
CALGARY, ALBERTA