

Quicksilver Resources, Inc.
v.
BreitBurn Energy Partners, L.P., et al

Cause No. 048-233656-08
In the District Court of
Tarrant County, Texas
48th Judicial District

Expert Report of
Mr. Daniel J. Mackell
Cottage Capital, LLC
December 21, 2009

**Re: Cause No. 048-233656-08; Tarrant County, Texas; 48th Judicial District
Quicksilver Resources, Inc. (“Quicksilver”, “Plaintiff”, or “KWK”) v. BreitBurn
Energy Partners, L.P. (“BBEP”), et al (“Defendants”)**

I. Scope of Engagement

I have been asked to provide expert investment banker analysis and expert witness testimony in regard to certain disclosures relating to the above referenced case, Quicksilver Resources, Inc. v. BreitBurn Energy Partners, L.P., et al. Specifically, I have performed an analysis of publicly available documents and certain other documents provided to me in order to assess the timing, fullness and meaning of certain disclosures by Provident Energy Trust (“Provident” or “PVX”) and BBEP with respect to Provident’s strategic alternative intentions, the relationship between PVX and BBEP, and to assess what KWK either knew of or should have known about PVX’s intentions with regard to its relationship with BBEP based on those disclosures.

II. Credentials

I am the CEO of Cottage Capital, LLC which is an investment banking advisory firm based in CT and NY. I was most recently Managing Director responsible for Direct Principal Finance & Origination of transactions at Marathon Asset Management. I worked directly with Chief Executive Officers, Chief Financial Officers and Treasurers of corporations to propose and consummate capital market transactions. I joined Marathon Asset Management in 2004, having spent most of my career at Donaldson, Lufkin & Jenrette as an Investment Banker in their Corporate Finance Department and was Head of the Building Products Group advising companies on M&A transactions, capital market financing transactions, and numerous restructurings. I earned a Bachelor of Arts degree in Economics from Georgetown University, a Masters Degree in Economics from New York University, and a M.B.A. in Finance from the Wharton School at the University of Pennsylvania (1987). I am being compensated at a rate of \$X00/ hour for my time and my fees are not contingent on the outcome of this matter.

Attached as Appendix A to this report is my curriculum vitae.

III. Documents Considered

I have reviewed and/or considered numerous documents with respect to my analysis. Documents reviewed and/or considered include: SEC filings since 2006 of the three relevant public companies, KWK, PVX and BBEP (and some peers); press releases; analyst reports; documents produced by certain investment banks involved in the litigation; Minutes of the Board of Directors of PVX and BBEP; the case filings (Pleadings in the case); and certain related depositions. A listing of documents considered and/or reviewed is attached in Appendix B.

IV. Summary of Facts & Claims

On September 11, 2007 KWK entered into an agreement to sell certain gas related assets to BBEP in exchange for cash and common units in BBEP, (the “Quicksilver Transaction”). The Quicksilver Transaction closed November 1, 2007.

At the time of the Quicksilver Transaction, PVX owned 96% of the General Partner (“GP”) of BBEP. Prior to the Quicksilver Transaction, PVX owned approximately 50% of the BBEP units, and after the Quicksilver Transaction, PVX’s ownership decreased to approximately 22% as a result of the dilution. On February 5, 2008, PVX announced its intent to pursue a sale of its ownership interest in BBEP and the GP. Following a formal bid process, on June 17, 2008, BBEP announced that it had entered into an agreement to purchase PVX’s ownership interest in BBEP and the GP.

Quicksilver brought suit against BBEP, PVX and others claiming, among other things:

1. That the Defendants fraudulently induced KWK’s investment in BBEP by improperly making misleading statements and material omissions related to the relationship between PVX and BBEP, and
2. That only after the closing of the Quicksilver Transaction did KWK learn that PVX was contemplating selling its interest in BBEP.

V. Analysis

I performed an analysis of documents and other materials in order to assess the timing, fullness and meaning of certain disclosures by PVX and BBEP and how such disclosures reflect on the reasonableness of the positions taken by KWK in this litigation with regard to such disclosures.

KWK Contention 1: That the Defendants fraudulently induced KWK's investment in BBEP by improperly making misleading statements and material omissions related to the relationship between PVX and BBEP.

Given my investment banking experience and the full and frequent disclosure by PVX and BBEP, it is my opinion that this contention by KWK is unreasonable. KWK's claim is purported to be based on representations in BBEP public filings and in meetings with BBEP management with regard to BBEP's importance to PVX as part of its business strategy as a U.S. acquisition vehicle. However, a review of PVX's own repeated public disclosures prior to the Quicksilver Transaction would have revealed that PVX "management is also **actively engaged in strategic planning** to determine the best course of action for Provident under the proposed new tax regime." (PVX, 6-K, EX-99.2 Management's Discussion & Analysis p. 22 3/8/2007).

In my experience, when a company discloses that it is "investigating strategic planning" or "pursuing strategic alternatives" or "investigating its options" this is a clear and direct message to investors and to the investment banking community that the company (or part or a percentage of the company) is for sale, a merger candidate or considering other corporate finance transactions.

Given the clear disclosure that PVX disseminated, it would be well understood in the investment community and to any sophisticated investor, in my opinion, that PVX was studying and evaluating all **strategic opportunities available** to it, given proposed changes in the Canadian Income Trust tax announced October 31, 2006 (the "SIFT tax") and PVX's desire to preserve its Mutual Fund Trust status. In fact, on August 10, 2007, PVX specifically disclosed it was well positioned to consider "a variety of potential responses" to the impact of the SIFT tax.

Based on these disclosures, KWK should have known prior to entering the Quicksilver Transaction that PVX was likely involved in an evaluation of PVX's involvement and the nature of its involvement with BBEP. See Table 1 below:

Table 1

Source Document	Date	Pursuing Strategic Alternatives Disclosure Given October 31, 2006 - Canadian Income Trust Proposal Changes
<p>PVX 6-K EX-99.2 Management's Discussion & Analysis p. 22</p>	<p>3/8/2007</p>	<p>The Canadian government made an unexpected announcement on October 31, 2006, stating its intention to introduce a substantial new 31.5 percent tax on income trust distributions beginning in 2011. This announcement caused a severe negative market reaction early in November. The government remains committed to this course of action in spite of compelling evidence of the very positive impact that energy trusts in particular have on the Canadian energy industry, on the economy in general, and on government tax revenues.</p> <p>Since the original announcement, the government has also clarified the rules around the extent to which a trust is allowed to grow before 2011 without triggering immediate taxable status. A trust can double in size before 2011, and trusts can merge without penalty. This is positive, suggesting that Provident's near term business plan and growth objectives will not be impacted by the taxation announcement.</p> <p>Provident remains active in the efforts to try to convince the government to modify its proposal or to exempt energy trusts. As well as working with government, management is also actively engaged in strategic planning to determine the best course of action for Provident under the proposed new tax regime. With diverse businesses and a history of innovation, the Trust is well positioned to identify creative solutions. While it will take time to fully examine all options, management remains committed to making Provident a premier energy income and growth investment.</p>
<p>PVX 40-F p. 56</p>	<p>3/30/2007</p>	<p>Management believes that the October 31 Proposals could impair the value of the Trust Units, which would be expected to increase the cost to the Trust of raising capital in the public capital markets. In addition, management believes that the October 31 Proposals could: (a) reduce the competitive advantage that the Trust and other Canadian trusts enjoy relative to their corporate peers in raising capital in a tax-efficient manner, and (b) place the Trust</p>

		and other Canadian trusts at a competitive disadvantage relative to similar industry competitors such as U.S. master limited partnerships. The October 31 Proposals may make the Trust Units less attractive as an acquisition currency. As a result, it may become more difficult for the Trust to compete effectively for acquisition opportunities. There can be no assurance that the Trust will be able to reorganize its legal and tax structure to substantially mitigate the expected impact of the October 31 Proposals.
PVX 6-K EX-99.2 Consolidated Management's Discussion & Analysis p. 28	5/9/2007	<p>In the federal budget of March 19, 2007, the Canadian government reaffirmed its intention to introduce a tax on income trust distributions to commence in 2011. This intention was originally announced on October 31, 2006. If the legislation becomes substantively enacted, Provident will record the effect on future income taxes. This effect is expected to be material.</p> <p>Provident continues to be an active member of the various lobby groups involved in educating the government on the benefits of the energy trust sector. Unitholders are encouraged to contact the government to voice their concern and opposition to this tax initiative. As well, Provident will continue to evaluate strategic opportunities that may arise as the energy sector adjusts to the planned tax changes.</p>
PVX Press release P. 6	6/13/2007	<p>Provident continues to be an active member of the various lobby groups involved in educating the government on the benefits of the energy trust sector. Unitholders are encouraged to contact the government to voice their concern and opposition to this tax initiative. As well, Provident will continue to evaluate strategic opportunities that may arise as the energy sector adjusts to the planned tax changes.</p>
PVX 6-K EX-99.1 P. 4	8/10/2007	<p>In June, the Canadian federal government passed Bill C-52, introducing the SIFT tax on income trust distributions to begin in 2011. Provident has recorded a future income tax expense accordingly. However, the rules around SIFT tax administration remain unclear, so it is difficult to estimate the impact on Provident with precision.</p> <p>Provident continues to be an active member of the various lobby groups involved in educating the government on the benefits of the energy trust sector and the potential unintended consequences of the SIFT tax. Unitholders are encouraged to contact the government to voice their concern and opposition. Provident has also focused its normal course strategic planning initiatives</p>

		upon the impact of the SIFT tax. Provident's three strong businesses, each with its own size, scale and competitive advantages, position the Trust to consider a variety of potential responses.
PVX 6-K EX-99.1 P. 10	8/10/2007	The Trust has estimated its future income taxes based on estimates of results of operations and tax pool claims and cash distributions in the future assuming no material change to the Trust's current organizational structure. The Trust's estimate of future income taxes does not incorporate any assumptions related to a change in organizational structure until such structures are given legal effect. The Trust's estimate of its future income taxes will vary as do the Trust's assumptions pertaining to the factors described above, and such variations may be material.

Note: Bold not in original, was added by me for emphasis.

KWK Contention 2: That only after the closing of the Quicksilver Transaction did KWK learn that PVX was contemplating selling its interest in BBEP.

Given my investment banking experience and the full and frequent disclosure by PVX and BBEP, it is my opinion that KWK and its advisors certainly should have understood prior to the Quicksilver Transaction that PVX could sell its interests in BBEP at any time. If PVX's continued involvement in BBEP following the Quicksilver Transaction was important to KWK, the due diligence conducted by KWK was severely lacking and well below the minimal standard of care for due diligence one would expect in connection with transactions of this magnitude.

Since the BBEP Initial Public Offering, BBEP has stated clearly in SEC filings (see below) that its interests and PVX's interests may diverge and **in fact**, in some cases, "**may be in conflict**". After the introduction of the possibility of the SIFT tax in Canada, the consistent and often repeated disclosure that PVX was **evaluating strategic opportunities** is a clear and undeniable message to investors and the market that PVX was conducting a strategic review of its assets, which might or might not result in the sale of its interests in BBEP or the company or any

number of other possible outcomes. This is indeed the whole point of a review of strategic opportunities - to consider all available options.

BBEP's 2006 10-K states that "we are PVX's primary acquisition vehicle for its upstream operations in the U.S." That representation neither states nor implies that PVX would forever retain its ownership interests in BBEP, or that PVX would forever seek acquisitions in the U.S. at all. In fact, neither PVX nor BBEP ever made any representation in any public filing that I have reviewed that PVX would retain its investment in BBEP indefinitely. To the contrary, BBEP repeatedly disclosed that PVX was free to sell its interests in BBEP at any time.

Thus, it is my opinion, given the disclosures by both PVX and BBEP prior to the Quicksilver Transaction, that PVX's future plans with regard to its businesses, including BBEP, would be driven by PVX's review of strategic opportunities in the wake of the SIFT tax announcement, pursuant to its fiduciary obligations to PVX's unitholders, and any conclusion to the contrary would be irrational. See Table 2 below:

Table 2

Source Document	Date	
BBEP S-1 P. 31	5/12/2006 Thru 10/02/2006; 6 filings	<p>Our general partner and its affiliates own a controlling interest in us and may have conflicts of interest with us and limited fiduciary duties to us, which may permit them to favor their own interests to your detriment. Our partnership agreement limits the remedies available to you in the event you have a claim relating to conflicts of interest.</p> <p>Following the offering, affiliates of Provident and BreitBurn Corporation will own 72.70% of our common units and will own and control our general partner, which controls us. Although our general partner has a fiduciary duty to manage us in a manner beneficial to us and our unitholders, the directors and officers of our general partner have a fiduciary duty to manage our general partner in a manner beneficial to Provident. Furthermore, certain directors and officers of our general partner may be directors or officers of affiliates of our general partner, including Provident. Conflicts of interest may arise between Provident and its affiliates, including our general partner, on the one hand, and us and our unitholders, on the other hand. As a result of these conflicts, our general partner may favor its own interests and the interests of its affiliates over the</p>

		<p>interests of our unitholders. Please read "—Our partnership agreement limits our general partner's fiduciary duties to unitholders and restricts the remedies available to unitholders for actions taken by our general partner that might otherwise constitute breaches of fiduciary duty." These potential conflicts include, among others, the following situations:</p> <ul style="list-style-type: none"> • We have agreed that Provident and its affiliates will have a preferential right to acquire any third party upstream oil and gas properties outside the United States. • Neither our partnership agreement nor any other agreement requires Provident or its affiliates (other than our general partner) to pursue a business strategy that favors us. Directors and officers of Provident and its affiliates have a fiduciary duty to make decisions in the best interest of its unitholders, which may be contrary to our interests. • Our general partner is allowed to take into account the interests of parties other than us, such as Provident and its affiliates, in resolving conflicts of interest, which has the effect of limiting its fiduciary duty to our unitholders....
BBEP S-1 P. 37	5/12/2006 Thru 10/02/2006; 6 filings	<p>Our general partner's interest in us and the control of our general partner may be transferred to a third party without unitholder consent.</p> <p>Our general partner may transfer its general partner interest to a third party in a merger or in a sale of all or substantially all of its assets without the consent of the unitholders. Furthermore, there is no restriction in our partnership agreement on the ability of Provident to transfer its equity interest in our general partner to a third party. The new equity owner of our general partner would then be in a position to replace the board of directors and officers of our general partner with their own choices and to influence the decisions taken by the board of directors and officers of our general partner.</p>
BBEP S-1 P. 37	5/12/2006 Thru 10/02/2006; 6 filings	<p>The market price of our common units could be adversely affected by sales of substantial amounts of our common units in the public markets, including sales by our existing unitholders.</p> <p>After this offering, we will have 21,975,758 common units outstanding, which includes the 6,000,000 common units we are selling in this offering that may be resold in the public market immediately. All of our common units that were outstanding prior to our initial public offering will be subject to resale restrictions under 180-day lock-up agreements with our underwriters. Each of the lock-up arrangements with the underwriters may be waived in the discretion of RBC Capital Markets Corporation and Citigroup Global Markets Inc. Sales by any of our existing unitholders of</p>

		<p>a substantial number of our common units in the public markets following this offering, or the perception that such sales might occur, could have a material adverse effect on the price of our common units or could impair our ability to obtain capital through an offering of equity securities. In addition, our general partner has agreed to provide registration rights to these holders, subject to certain limitations.</p>
BBEP 424B4 P. 143	10/05/2006	<p>After the sale of the common units offered by this prospectus, and assuming that the underwriters' option to purchase additional common units is not exercised, our general partner and its affiliates will hold, directly and indirectly, an aggregate of 15,975,758 common units. The sale of these common units could have an adverse impact on the price of the common units or on any trading market that may develop.</p> <p>Under our partnership agreement, our general partner and its affiliates have the right to cause us to register, under the Securities Act and applicable state securities laws, the offer and sale of any common units that they hold. Subject to the terms and conditions of our partnership agreement, these registration rights allow our general partner and its affiliates or their assignees holding any common units to require registration of any of these common units and to include any of these common units in a registration by us of other units, including common units offered by us or by any unitholder. Our general partner will continue to have these registration rights for two years following its withdrawal or removal as our general partner. In connection with any registration of this kind, we will indemnify each unitholder participating in the registration and its officers, directors, and controlling persons from and against any liabilities under the Securities Act or any applicable state securities laws arising from the registration statement or prospectus. We will bear all costs and expenses incidental to any registration, excluding any underwriting discounts and commissions. Except as described below, our general partner and its affiliates may sell their common units in private transactions at any time, subject to compliance with applicable laws.</p> <p>We, the officers and directors of our general partner, our general partner and its affiliates have agreed not to sell any common units for a period of 180 days from the date of this prospectus. Please read "Underwriting" for a description of these lock-up provisions.</p>

BBEP 10-K P. 28	4/2/2007	<p>Our general partner and its affiliates own a controlling interest in us and may have conflicts of interest with us and limited fiduciary duties to us, which may permit them to favor their own interests to your detriment. Our partnership agreement limits the remedies available to you in the event you have a claim relating to conflicts of interest.</p> <p>Affiliates of Provident and BreitBurn Corporation control our general partner, which controls us. The directors and officers of our general partner have a fiduciary duty to manage our general partner in a manner beneficial to Provident. Furthermore, certain directors and officers of our general partner may be directors or officers of affiliates of our general partner, including Provident. Conflicts of interest may arise between Provident and its affiliates, including our general partner, on the one hand, and us and our unitholders, on the other hand. As a result of these conflicts, our general partner may favor its own interests and the interests of its affiliates over the interests of our unitholders. Please read “—Our partnership agreement limits our general partner’s fiduciary duties to unitholders and restricts the remedies available to unitholders for actions taken by our general partner that might otherwise constitute breaches of fiduciary duty.” These potential conflicts include, among others, the following situations:</p> <ul style="list-style-type: none"> • We have agreed that Provident and its affiliates will have a preferential right to acquire any third party midstream or downstream assets located in the United States and any third party upstream oil and gas properties or midstream or downstream assets outside the United States. • Neither our partnership agreement nor any other agreement requires Provident or its affiliates (other than our general partner) to pursue a business strategy that favors us. Directors and officers of Provident and its affiliates have a fiduciary duty to make decisions in the best interest of its unitholders, which may be contrary to our interests. • Our general partner is allowed to take into account the interests of parties other than us, such as Provident and its affiliates, in resolving conflicts of interest, which has the effect of limiting its fiduciary duty to our unitholders....
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Note: Bold not in original, was added by me for emphasis.

Additional Considerations

Forward Looking Statements

Forward looking statement disclaimers are a standard part of most public filings. Potential investors are warned not to attribute undue significance to statements in those filings that indicate or imply any particular result or course of action in the future. Sophisticated investors, and certainly investment bankers know that they should not and cannot reasonably interpret statements in public disclosures regarding current conditions and certain performances as an indication that those conditions and certain performances will continue to exist in the future.

PVX's disclosures not only contain customary language warning investors not to rely on forward looking statements; PVX's forward looking statements disclaimers are actually specific to PVX's acquisition strategies and the effects of the proposed SIFT tax legislation. In addition, every public filing made by BBEP on which KWK purportedly relied, according to KWK's pleadings, contains similar forward looking statement disclaimers. Any suggestion that PVX would retain its interest in and involvement with BBEP indefinitely is contrary to and ignores these disclaimer(s) which PVX and BBEP make regarding forward looking statements.

Source Document	Date	Forward Looking Statements
PVX 6-K EX-99.2 Management's Discussion & Analysis p. 1	3/8/2007	...Forward-looking statements or information in this analysis include, but are not limited to, business strategy and objectives,...acquisition and disposition plans and the timing thereof,...NGL processing and marketing business. These statements are only predictions. Actual events or results may differ materially....Undue reliance should not be placed on these forward-looking statements, as there can be no assurance that the plans, intentions or expectations upon which they are based will occur. By its nature, forward-looking information involves numerous assumptions, known and unknown risks and uncertainties, both general and specific, that contribute to the possibility that the predictions, forecasts, projections and other forward-looking statements will not occur. In addition to other assumptions identified in this analysis, assumptions in respect of forward-looking statements have been made regarding, among other things:...

		<ul style="list-style-type: none"> • Provident’s acquisition strategy, the criteria to be considered in connection therewith and the benefits to be derived therefrom;... • the impact of Canadian governmental regulation on Provident, including the effect of proposed taxation of trust distributions;... <p>Although Provident believes that the expectations reflected in the forward-looking statements are reasonable, there can be no assurance that such expectations will prove to be correct. Provident can not guarantee future results, levels of activity, performance, or achievements. Moreover, neither the Trust, Provident nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements.</p>
<p>BBEP 10-K P. 4</p>	<p>4/02/2007</p>	<p>This cautionary note is provided pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are included in this report and may be included in other public filings, press releases, our website and oral and written presentations by management. Statements other than historical facts are forward-looking and may be identified by words such as “expects,” “anticipates,” “intends,” “plans,” “believes,” “estimates,” “forecasts,” “could,” “will” and words of similar meaning. Examples of these types of statements include those regarding:...</p> <ul style="list-style-type: none"> • revenues, earnings, cash flows, liabilities, capital expenditures and other financial measures, • anticipated liquidity, ... • other statements regarding future events, conditions or outcomes. <p>Although these statements are based upon our current expectations and beliefs, they are subject to known and unknown risks and uncertainties that could cause actual results and outcomes to differ materially from those described in, or implied by, the forward-looking statements. In that event, our business, financial condition, results of operations or liquidity could be materially adversely affected and investors in our securities could lose part or all of their investments. These risks and uncertainties include, for example: ...</p> <ul style="list-style-type: none"> • business and financial strategy;... • governmental regulation of the oil and natural gas industry; • developments in oil-producing and natural gas-producing

		<p>countries;</p> <ul style="list-style-type: none"> • strategic plans, expectations and objectives for future operations; and • other factors discussed in our Risk Factors section in Part I, Item 1A of this 10-K.
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In summary, any conclusion by KWK based on public disclosures that PVX intended to remain an investor in and involved with BBEP indefinitely, or for some period of years, given PVX's disclosures regarding the SIFT tax and its review of strategic alternatives, BBEP's risk factor disclosures, and PVX's and BBEP's forward looking statements disclaimers, would be, in my opinion and based on my experience, irrational and unfounded.

Due Diligence Process for the Quicksilver Transaction

Persons contemplating substantial investments should (and do generally) perform due diligence on the target of their potential investment. A **basic** due diligence checklist for a potential acquisition or substantial equity investment would include at a minimum the following items:

BUSINESS OVERVIEW:

- Board presentations, minutes from Board meetings, JV's, organization charts
- Industry & Competition, Product offerings, customer end markets
- Calls with key customers, suppliers and partners

OPERATIONS OVERVIEW:

- Product distribution, Sales & Marketing, Property & Equipment

FINANCIAL REVIEW:

- Audited Statements, auditors work papers, letters to management,
- Projections, detailed BS and IS reviews

OWNERSHIP- all related parties analysis and agreements

MANAGEMENT & EMPLOYEES

LEGAL, REGULATORY and OTHER

Generally, due diligence for an all cash deal to sell assets (as the original Quicksilver Transaction was structured) is minimal (i.e., does the buyer have the cash to consummate the deal). However, in a deal in which equity consideration is to be received, the level of standard due diligence should increase dramatically. While it does appear some abbreviated due diligence may have been done by KWK and its advisors (review of public documents and press releases), that level of due diligence is not consistent with what a sophisticated investor in the industry should perform if the future involvement of a key sponsor (such as a majority unitholder or GP) is material to the transaction.

If the continued involvement of PVX with BBEP was crucial to KWK's investment, a standard level of due diligence would have clearly revealed that PVX was undertaking a review of strategic alternatives and opportunities and that such review could lead to a number of different outcomes, depending on the conclusions from the strategic review, the process and market conditions. At a minimum, KWK or its advisors should have contacted PVX to ascertain PVX's views on its future business strategies or the status of the strategic alternatives review that had been underway at PVX for some time. If necessary, KWK should have offered to have entered into a confidentiality agreement in order to review PVX's board meeting minutes or presentations and other materials regarding its strategic review. If PVX had been unwilling to share this information, KWK should have requested that PVX agree to a lock-up of its units as part of the Quicksilver Transaction. Based on my review, KWK took none of these actions.

In light of these shortcomings, it is difficult for me to believe that PVX's future involvement in BBEP was of material importance to KWK at the time of the Quicksilver Transaction.

VI. Conclusion

A number of conclusions are drawn from the above analysis:

- Given my investment banking experience and the full and frequent disclosure by PVX and BBEP, it is my opinion that the contention by KWK that they were fraudulently induced into the Quicksilver Transaction is unreasonable.

- Given my investment banking experience and the full and frequent disclosure by PVX and BBEP, it is my opinion that KWK and its advisors certainly should have understood prior to the Quicksilver Transaction that PVX could sell its interests in BBEP at any time.
- It is my opinion, given the disclosures by both PVX and BBEP prior to the Quicksilver Transaction, that PVX's future plans with regard to its businesses, including BBEP, would be driven by its review of strategic opportunities in the wake of the SIFT tax announcement, pursuant to its fiduciary obligations to PVX's unitholders, and any conclusion to the contrary would be irrational.
- Any suggestion that PVX would retain its interest and involvement with BBEP indefinitely is contrary to and ignores the disclaimer(s) which PVX and BBEP make regarding forward looking statements.
- In a deal in which equity consideration is to be received, the level of standard due diligence should increase dramatically. While it does appear some abbreviated due diligence may have been made by KWK and its advisors (review of public documents and press releases), that level of due diligence is not consistent with what a sophisticated investor in the industry should perform if the future involvement of a key sponsor (such as a majority investor of GP) is material to the transaction.
- If indeed PVX's continued involvement in BBEP following the Quicksilver Transaction was important to KWK, the due diligence conducted by KWK was severely lacking and well below the minimal standard of care for due diligence in connection with transactions of this magnitude.



Daniel J. Mackell
CEO, Cottage Capital, LLC

Appendix A

Daniel J. Mackell

PROFILE

Senior investment banking and PE/VC investment professional. At Marathon, originated \$1 billion+ private finance book. Top-tier investment banking and private equity and corporate finance experience. Significant international experience, fluent in several languages. Solid record in building a business and generating profits in up and down markets.

PROFESSIONAL EXPERIENCE

COTTAGE CAPITAL, CEO

Advisory/ Merchant Banking firm-Greenwich, CT **Dec 2008-present**

VISIONTREE SOFTWARE INC, San Diego, CA and Greenwich, CT **Dec 2008-2009** *Chief Restructuring Officer and Business Development Head*

Leading provider of patient health records (PHR) link to hospital electronic medical records (EMR's). Clients include 8 of top 10 hospitals in US. Led all capital raising efforts and new business development and partnering discussions. See www.visiontree.com

MARATHON ASSET MANAGEMENT, New York, NY & London, England **2004-2008** *Managing Director, Private & Principal Finance Origination*

Instrumental in increasing firm AUM from \$3.5 Billion to over \$13 Billion with over \$1 billion completed in private financings (including distress opportunities) as a result of superior quality deal-flow origination capabilities.

Transactions included:

- Allied Holdings (auto transport)
- Comcar (large private trucking company)
- ITWO
- Eagle Bulk Shipping
- Contech (divestiture from SPX)
- AGS Gaming
- Refco/Marex
- AZ Electronic s
- BST Safety Textiles
- DIM Apparel (Sun Capital)

RHK/TELECOM ADVISORY PARTNERS, New York, NY **2001-2004** *Managing Director*

Merchant bank and hedge fund focused on special situations and new technologies for industrial applications. Screened and selected high quality partners in highly competitive environment for portfolio companies including:

- Northrop Grumman
- Carlyle
- BNP Paribas
- France Telecom

Selected advisory clients include:

- Indigo Systems
- TRW
- JDS/Uniphase
- INPACT Semicon (France)
- Dover Corporation
- Finisar
- Tyco/Tycom
- CVC
- Riverside Global Fund

COTTAGE INVESTMENTS, INC., New York, NY
Chairman & CEO

1999-2001

Investment company making strategic control investments through a public company (Symbol: COTF). Three investments made and all **three** sold in M&A transactions:

- COTF merged with PVNG in December 2001; currently a \$25 million market cap company in the construction service and materials industry. Stock is up 300%, 3Q 2002.
- Health Information Publications, Inc: assets divided and sold in January 2002 to Yahoo and A.D.A.M., Inc.
- Webphotos Inc.: sold in June, 2001 to iWon.com

DONALDSON, LUFKIN & JENRETTE, New York, NY
1987-1999

Head of Building Products Group Investment Banking Department
(1996-1999)

Client Coverage Group with over \$ 3 billion in financings and M&A transactions completed for clients included:

- Stanley Works
- Triangle Pacific
- Fedders Corporation,
- Foamex
- Black & Decker
- Presley Homes
- Mueller Industries
- Champion Enterprises
- Premdor
- Walter Industries

ADDITIONAL POSITIONS HELD:

Head of Building Products Group (1996-1999)
Director-Latin America Corporate Finance- (1994-1996)
Head of Brazil and Argentina (1991-1993)
Vice President - High Yield Group (1987-1990)
Associate (Generalist) - Corporate Finance

MANUFACTURERS
HANOVER TRUST, New
York, NY

Assistant Vice President- Brazil and Argentina **1979-1984**
Lending Officer-International Division

EDUCATION

UNIVERSITY OF PENNSYLVANIA, Wharton School of Business-**MBA**-Finance (Katherine Sharpe Scholarship),

NEW YORK UNIVERSITY- **MA**- Economics

GEORGETOWN UNIVERSITY- **BA**- Economics and Portuguese 3.54 GPA
Deans list, Senior Leadership Award and Alpha Sigma Nu Honor Society

COMMUNITY ACTIVITIES AND OTHER

Chairman of the Board, Rebuilding Together/Christmas-in-April*Stamford/Greenwich
Interviewer for Georgetown University
Old Greenwich-Riverside Soccer Coach

Fluent in Portuguese and Spanish. Converse in Italian and French.

