

State of Missouri
Office of Secretary of State

Case No. AP-06-20

IN THE MATTER OF:

PETRO-AMERICA PRODUCING
OIL AND GAS WELLS, INC.;
JAMES KOSANKE;
and ROBERT HARRIS,

Respondents.

Serve all at:

1001 N. Sam Rayburn Frwy.
Suite #111
Sherman, Texas 75090

**FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING CIVIL
PENALTIES AND COSTS OF INVESTIGATION**

On the 1st day of September, 2006, the Enforcement Section of the Securities Division (the "Division" or the "Securities Division"), by and through Patrick T. Morgan, Chief Counsel, submitted a Motion for Costs of Investigation (the "Motion"). After reviewing the Motion, and notice to Respondents and having provided Respondents the time required by law to request a hearing on this matter, the Commissioner of Securities issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

A. The Respondents

1. At all times relevant to this Order, Petro-America Producing Oil and Gas Wells, Inc. ("Petro-America") was a company operating in the State of Texas with an address of 1001 N. Sam Rayburn Frwy., Suite #111, Sherman, Texas 75090. Petro-America purportedly engages in the business of selling oil and gas interests.
2. At all times relevant to this Order, James Kosanke ("Kosanke") was the President and Treasurer of Petro-America and had a business address of 1001 N. Sam Rayburn Frwy., Suite #111, Sherman, Texas 75090.
3. At all times relevant to this Order, Robert Harris ("Harris") was the Vice President and Sales Manager of Petro-America and had a business address of 1001 N. Sam Rayburn Frwy., Suite #111, Sherman, Texas 75090.
4. As used in this Order, the term "Respondents" refers to Petro-America, Kosanke and Harris.

B. Missouri Resident

5. On Wednesday, October 12, 2005, Respondents ran an advertisement in *The Wall Street Journal*. The advertisement stated:

4 OIL / 5 GAS WELLS

Invest with \$12,500.
Completed, Producing,
Leased and Managed.
CALL: 1-800-439-1354

(Emphases in original.)

6. On October 13, 2005, a Missouri Resident ("MR") telephoned Petro-America and left a telephone message in response to the October 12, 2005 advertisement of *The Wall Street Journal*.
7. On October 17, 2005, MR received a phone call from Harris in response to the message left with Petro-America on October 13, 2005. During this conversation, Harris questioned MR's investment experience relating to the oil and gas industry. MR informed Harris that MR had some knowledge in the field and that MR had previously invested in an oil and gas program.
8. Harris told MR that MR could lose MR's entire investment if MR invested in Petro-America. Further, Harris stated that MR could earn a return of "a couple of grand a month" and that the oil and gas wells in question are expected to "produce nine (9) barrels a day." Among other things, MR agreed to have Harris send MR a package outlining the investment offering.

9. On or about October 18, 2005, MR received a package from Petro-America by priority mail from the United States Postal Service outlining Petro-America's investment program as discussed with Harris in the October 17, 2005 telephone conversation.
10. Among other things, the packet included:
- A three-page introduction letter ("Introduction Letter");
 - A document outlining a projection of the monthly returns based on oil prices. Specifically, highlighted in yellow marker was a monthly return of \$1,951.00 if oil prices were \$60.00 per barrel;
 - Two (2) separate documents: one titled, "4 REFURBISHED OIL WELLS," and the other, "5 REFURBISHED GAS WELLS," located in Caddo Parish, Louisiana.
 - A four-page document titled, "Bill of Sale & Purchase Agreement" (the "Agreement"). The Agreement indicates that the "total offering is for 9 wells at a total price of \$400,000.00 for 100% WI, being 60% NRI"; and
 - Numerous copies of color photos of the alleged oil wells and gas wells.
11. The Introduction Letter opened by thanking the reader for requesting the information "advertise[d] in the Wall Street Journal." The Introduction Letter then continued:

Our main object is to make you 50% . . . return on your investment and much more. This is not a drilling program. Drilling for Oil is very risky. I will repeat this statement again. THIS IS NOT A DRILLING PROGRAM. Last year we were offering to the investors a 3 wells program for an investment of \$10,000.00, which was a very good investment. This investment program is greater than that.

AT THIS POINT WE NEED TO MAKE A CORRECTION. IN OUR AD WE STATED THAT THESE WELLS WERE PRODUCING OIL AND GAS WELLS. AT ONE POINT THESE WELLS WERE PRODUCING BUT NOT NOW. THESE WELLS NOW ARE REFERRED TO AS REFURBISHED WELLS (REWORKED WELLS). WE WILL HAVE TO BRING THESE WELLS BACK UP TO PRODUCTION. FOR AN INVESTMENT OF 12,500 YOU WILL OWN A 3.12 % INTEREST IN NINE (9) REFURBISHED WELLS. FOUR (4) REFURBISHED OIL WELLS AND FIVE (5) REFURBISHED GAS WELLS.

(Emphasis in original.) The Introduction letter then proceeded to describe the "four oil well & five gas well lease[s]." The Introduction Letter predicted that "[i]f each of these wells produce a minimum of 9 barrels per day at the Fredricksburg Formation . . . [then the participant's] monthly check will be \$1,748.00 per month." The Introduction Letter also suggested that this could be one of the "wisest" and "profitable investment[s]" that the participant could make. The Introduction Letter continued:

FOR AN INVESTMENT OF \$12,500.00 YOU WILL OWN A 3.12% INTEREST IN 4 REFURBISHED OIL WELLS AND 5 REFURBISHED GAS WELLS. We highly recommend that you purchase 2 units at 6.24% for an Investment of \$25,000.00 your [sic] rate of return will double. It's required that you speak to me personally before you invest Mr. James E. Kosanke . . .

THERE ARE WELLS IN THIS FIELD THAT HAVE BEEN PRODUCING FOR OVER FIFTY (50) YEARS. THIS LITERATURE WILL NOT IMPRESS YOU BUT THE RESULTS WILL.

Your Business Partner,

J. E. Kosanke /s/

J.E. Kosanke, President
BankOne
A/B/A No. 111000614
Account Name – Petro America Producing Oil & Gas Wells

(Emphasis in original.)

12. The Agreement also contained a section requiring that the "purchaser" attest that he or she is:

an "Oil and Gas industry, or related industry, company or individual", and or Petroleum Professional, and as such, being a knowledgeable buyer of oil and gas properties, Is exempt from qualifying as an investor, and as such is exempt from any filing requirements of the "S.E.C." as show in the "Securities act of 1933, sect. 4, sub. Sec. 2, rule 146, sched. "D".

13. Since MR's initial phone conversation with Harris on October 17, 2005, MR received at least 8 additional follow-up phone messages from Harris. During these messages, Harris, among other things, encouraged MR to invest in the 4 oil well and 5 gas well programs.
14. On or about January 22, 2006, MR received a phone message from Kosanke. Among other things, Kosanke identified himself as the President of Petro-America. He also stated that:
 - a. He was following up on the literature that Petro-America sent MR concerning the 4 oil wells and 5 gas wells;
 - b. "[O]nly a few positions were left available for investing";
 - c. MR could see returns of \$2,000 per month on MR's \$12,500 investment subject to the prices of oil and the performance of the wells' production;
 - d. Kosanke highly recommended that MR acquire "a position as it's the best oil investment he [Kosanke] has seen"; and
 - e. If MR were interested, MR should invest and that Kosanke would send MR additional literature on the investment program
15. MR did not invest with Petro-America, nor is MR currently in communication with Petro-America, Kosanke, or Harris.

C. The Division's Correspondence with Petro-America

16. On or about December 20, 2005, the Missouri Securities Division received information which indicated that Respondents had allegedly offered or sold securities in the State of Missouri.
17. On March 15, 2006, the Division sent a letter (the "March 15th letter") via certified mail, to Respondents requesting a claim of exemption from registration; exception from definition of a security upon which Respondents relied in offering or selling any unregistered securities in or from the State of Missouri; or whether Respondents were offering and selling a federal covered security. The letter also requested information about any offers to Missouri residents and advised Respondents that failure to provide a written statement on or before March 29, 2006, could result in further proceedings to prohibit Respondents from offering or selling securities in Missouri.
18. On March 27, 2006, the Division received a letter from Kosanke dated March 22, 2006. The letter responded to the Division's March 15th letter. In his letter, Kosanke, among other things, stated:
 - a. That Petro-America "has not sold nor contacted Missouri residents for sale [*sic*] oil and gas well securities in Missouri."
 - b. That "I became associated with Petro-America on 9/1/02 and purchased Mineral Leases of the Southwest on 8/1/05. Rest assured that if sales in the STATE of Missouri are contemplated Petro-America will submit the appropriate documents prior to contacting residents of MISSOURI." (Emphasis in original.)
19. On March 28, 2006, a representative of the Division received a telephone call from Kosanke. Kosanke stated he had received the Division's March 15th letter. Among other things, Kosanke stated that:
 - a. To the best of his knowledge, he or his business manager, Robert Harris, had not conducted any business in or from the state of Missouri;
 - b. He did place an advertisement in *The Wall Street Journal*, but that no one from the State of Missouri ever invested with Petro-America as a result of the advertisement.
 - c. He filed a "Reg D 504" with the United States Securities and Exchange Commission and that the offerings should be exempt under the federal rule. Additionally, he stated he filed the form in early or mid-2005.

D. Additional Findings of Facts

20. A check of the records maintained by the Missouri Commissioner of Securities revealed no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities allegedly offered by Respondents in Missouri.
21. Respondents were not registered to offer or sell securities in the State of Missouri.
22. On June 9, 2006, Patrick T. Morgan, Chief Counsel for the Division, submitted a Petition for Cease and Desist Order, Civil Penalties, and Costs of Investigation Under Section 409.6-604, RSMO SUPP. 2005.
23. On July 6, 2006, the Commissioner issued an Order to Cease and Desist and Order to Show Cause why Civil Penalties and Costs Should Not Be Imposed. On that same date, notice and a copy of such Order was sent to Respondents by Certified U.S. Mail, pursuant to Section 409.6-604(b), RSMo.

24. On August 1, 2006, the Commissioner received a letter from Respondent Kosanke, dated July 27, 2006, in which Kosanke presented facts that he requested the Commissioner to consider “during your determination and final disposition of the matter.” Kosanke’s July 27 letter did not request a hearing, in any manner reference a hearing, nor even use the word “hearing” and did not comply with or follow the state regulations addressing the process for request a hearing (15 MO CSR 30-55.020(1)).
25. The Commissioner received no further communication or contact from Respondents.
26. As stated above, on September 1, 2006, Mr. Morgan, on behalf of the Division, submitted the Motion.

II. STATUTORY PROVISIONS

27. Section 409.6-601(a), RSMo, provides that the Missouri Securities Act of 2003 “shall be administered by the commissioner of securities”
28. Section 409.1-102(1), RSMo, defines an “agent” as “an individual, other than a broker dealer, who . . . represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.”
29. Section 409.1-102(17), RSMo, defines an “issuer” as “a person that issues or proposes to issue a security”
30. Section 409.1-102(26), RSMo, reads as follows.

“**Sale**” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and “**offer to sell**” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

(Emphasis in original.)

31. Section 409.1-102(28), RSMo, defines a “security” to include a “fractional undivided interest in oil, gas, or other mineral rights.”
32. Section 409.3-301, RSMo, states “[i]t 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 sections 409.2-201 to 409.2-203; or
 - (3) The security is registered under this act.
33. Section 409.4-402(a), RSMo, makes it “unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under” Section 409.4-402(b), RSMo.
34. Section 409.4-402(d), RSMo, states that it is “unlawful for . . . an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of . . . issuers unless the agent is registered under [Section 409.4-402(a), RSMo] or exempt from registration under” Section 409.4-402(b), RSMo.
35. Section 409.5-503(a), RSMo, reads as follows: “In a[n] . . . administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.”
36. Section 409.6-604(a), RSMo, reads as follows:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act . . . the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act

37. Section 409.6-604(b), RSMo, reads as follows.

An order under subsection (a) is effective on the date of issuance. . . . If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law.

38. Section 409.6-604(c), RSMo, reads in part: “The final order may make final, vacate, or modify the order issued under subsection (a).”

39. Section 409.6-604(d), RSMo, reads: “In a final order under subsection (c), the commissioner may impose a civil penalty up

to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.”

40. Section 409.6-604(e), RSMo, reads in part: “In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act These funds may be paid into the investor education and protection fund.”
41. Section 409.6-610, RSMo, reads in part as follows:
- (a) Sections 409.3-301 . . . [and] 409.4-402(a) . . . do not apply to a person that . . . offers to sell a security unless the offer to sell . . . is made in this state
 - (c) For the purpose of this section, an offer to sell . . . a security is made in this state, whether or not either party is then present in this state, if the offer: . . .
 - (2) Is directed by the offeror to a place in this state and received at the place to which it is directed.
42. Neither the Missouri Securities Act of 2003 nor the Missouri Code of State Regulations pursuant to Section 409.2-203, RSMo, recognize an offering under SEC Rule 504 in Missouri as either (1) a federal covered security or (2) a security, transaction, or offer exempted from registration under Sections 409.2-201 to 409.2-203, RSMo.

III. CONCLUSIONS OF LAW

43. The Commissioner has jurisdiction in this proceeding and over these Respondents under Section 409.6-601(a), RSMo.
44. The transaction described in paragraphs 5, 10, 11, and 13 was a “fractional undivided interest in oil, gas, or other mineral rights” and thus a “security” under Section 409.1-102(28), RSMo.
45. The facts described in paragraphs 5 and 8-14 are “attempt[s] or offer[s] to dispose of, or solicitation[s] of an offer to purchase” the securities described above and are thus “offers to sell” a security under Section 409.1-102(26), RSMo, in the State of Missouri.
46. Based upon the facts in paragraphs 1, 2, 11, 14, and 19, Kosanke acted as an “agent” as defined under Section 409.1-102(1), RSMo, for Petro-America in the State of Missouri.
47. Based upon the facts in paragraphs 1, 3 and 7-13, Harris acted as an “agent” as defined under Section 409.1-102(1), RSMo, for Petro-America in the State of Missouri.
48. Based upon the facts in paragraphs 1, 5, 7-14, and 19, Petro-America acted as an “issuer” as defined under Section 409.1-102(17), RSMo, in the State of Missouri.

Count I

Offer of an Unregistered, Nonexempt Security

49. Respondents violated Section 409.3-301, RSMo, when they offered a security to MR when that security was not (1) a federal-covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-202, RSMo, or (3) registered under the Missouri Securities Act of 2003 when they offered unregistered, nonexempt fractional undivided interests in oil or gas wells to MR as described above in paragraphs 5 and 8-14.

Count II

Acting as an Unregistered, Nonexempt Agent

50. Kosanke violated Section 409.4-402(a), RSMo, when he acted as an agent in the State of Missouri when he was neither registered under the Missouri Securities Act of 2003 nor exempt from registration under Section 409.4-402(b), RSMo.

Count III

Acting as an Unregistered, Nonexempt Agent

51. Harris violated Section 409.4-402(a), RSMo, when he acted as an agent in the State of Missouri when he was neither registered under the Missouri Securities Act of 2003 nor exempt from registration under Section 409.4-402(b), RSMo.

Count VII

Employing or Associating with an Unregistered, Nonexempt Agent

52. Petro-America violated Section 409.4-402(d), RSMo, when Petro-America engaged in offering the above-described securities in Missouri while associating with Kosanke and Harris who, while acting as unregistered, nonexempt agents under section 409.4-402(a), RSMo, transacted business in Missouri on Petro-America’s behalf.

53. This Order is in the public interest.

ORDER

NOW, THEREFORE, it is hereby ordered that that the July 6, 2006 Order in this AP-06-20 is **FINAL**.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo, the Commissioner will determine whether to grant in a final order the Enforcement Division's petition for an imposition of a civil penalty of \$10,000, whole or in part, against each Respondent for the above violations unless Respondents request a hearing and show cause why such penalties should not be imposed.

IT IS FURTHER ORDERED that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. Offering or selling the above-described securities in the State of Missouri unless those securities are registered under the Missouri Securities Act of 2003 in accordance with the provisions of Section 409.3-304, RSMo; and
- B. Violating or materially aiding in the violation of Section 409.4-402(a), RSMo, by transacting business as an agent for Petro-America without being registered as an agent under the Missouri Securities Act of 2003.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo, Respondent Petro-America Producing Oil and Gas Wells, Inc., shall pay to the State of Missouri a civil penalty in the amount of Two Thousand Dollars (\$2,000) within thirty (30) days from the date of service of this Order. Respondent Petro-America's payment shall be by cashier's check or money order payable to the Missouri Secretary of State. Respondent Petro-America shall deliver its payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo, Respondent James Kosanke shall pay to the State of Missouri a civil penalty in the amount of One Thousand Dollars (\$1,000) within thirty (30) days from the date of service of this Order. Respondent Kosanke's payment shall be by cashier's check or money order payable to the Missouri Secretary of State. Respondent Kosanke shall deliver his payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo, Respondent Robert Harris shall pay to the State of Missouri a civil penalty in the amount of One Thousand Dollars (\$1,000) within thirty (30) days from the date of service of this Order. Respondent Harris' payment shall be by cashier's check or money order payable to the Missouri Secretary of State. Respondent Harris shall deliver his payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that pursuant to §409.6-604(e), RSMo., Respondents Petro-America Producing Oil and Gas Wells, Inc., James Kosanke and Robert Harris, shall pay the additional, total sum of Three Thousand Six Hundred Fifty Two Dollars (\$3,652) as reimbursement for the costs of the investigation and administration of this matter. This amount shall be sent to the Secretary of State within thirty (30) days from the date of service of this Order, and made payable to the Missouri Secretary of State's Investor Education and Protection Fund. Respondents shall deliver the payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102. Respondents Petro-America Producing Oil and Gas Wells, Inc., James Kosanke and Robert Harris, shall be jointly and severally liable for this amount.

IT IS FURTHER ORDERED that pursuant Section 409.6-604(f), RSMo., this matter shall be referred to the Attorney General's Office to collect the fines and costs described in this Final Order, as necessary.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 5TH DAY OF SEPTEMBER, 2006.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2006, a copy of the foregoing notice, order and petition was mailed by certified U.S. Mail, postage prepaid, to the Respondents in this matter.

Beth Perkins
Administrative Aide