

CAUSE NO. 2006-46490

AMPRO ENERGY, L.P.

IN THE DISTRICT COURT OF

v.

TMS ENERGY SERVICES and TMS  
ENERGY SERVICES AS ASSIGNEE  
OF ANNE WEISS AND JOHN  
CHACKO

v.

THOMAS SOBEY AND THOMAS  
SOBEY, D/B/A TMS ENERGY  
SERVICES, ASSIGNEES OF  
A&R GENERAL CONTRACTORS,  
INC., ABILENE BOWLING LANES,  
ALTAMESA CHURCH OF CHRIST,  
ANTIQUÉ & CRAFT MALL OF  
PASADENA, ARAMARK UNIFORM  
SERVICES, BROOKDALE  
CORPORATION, CENTRAL  
TRANSPORTATION SYSTEMS,  
CINCO J., INC., CITY MEAT STEAK  
COMPANY, INC., COUNTRY STORE  
MARKET, CRAIG'S FURNITURE,  
DALLAS HOTELS ATE, LLC, DARIO  
VILLEGAS, EL BUCKNER BAZAAR,  
EL CHARRO RESTAURANTS, INC.,  
EL PALENQUE RESTAURANTS,  
FAMILY CATHEDRAL OF PRAISE,  
FELTER INTERNATIONAL, INC.,  
GROVES INDUSTRIAL SUPPLY CORP.,  
HEALTH SERVICES MANAGEMENT  
OF TEXAS, LLC, AMERICAN BUFFET,  
CHINA RIVER BUFFET, ASHFORD  
LUCKY VILLAGE, FOUNTAINVIEW  
LUCKY VILLAGE, GOLDEN RIVER  
BUFFET, LUCKY HOUSE, LUCKY  
VILLAGE, WOODLANDS HOUSE,  
MIPTT, LLC (EAST COAST), HILTON  
FURNITURE, INTEC SYSTEMS, INC.,  
KOCOMOGO III, L.P., WHITESTONE  
GOLF CLUB, LOST CREEK GOLF  
CLUB, MIKE'S SUPERMARKET, MIRA

VISTA OFFICE CENTER, LTD., MT. §  
ROSE CHURCH OF GOD IN CHRIST, §  
THE OUTLET MALL, PETTIGREW §  
ASSOCIATES, INC., PLEASANT RIDGE §  
CHURCH OF CHRIST, RUDY'S MEAT §  
MARKET, SCHLOTZSKY'S DELI, §  
SIX FLAGS MALL, SOUTH §  
MCARTHUR CHURCH OF CHRIST, §  
SUNBELT GROUP LP, TIGER TOTE §  
FOOD STORES, INC., TOMBALL §  
RETIREMENT CENTER, USA RV §  
PARK, WSPI, LLC, ZAINA §  
CORPORATION §

v. §

HARRIS COUNTY, TEXAS §

AMPRO ENERGY LP, SUCCESSOR §  
TO AMPRO ENERGY, INC., AND §  
AMPRO ENERGY GP, LLC, AS §  
GENERAL PARTNER OF AMPRO §  
ENERGY LP, AND AMY GASCA, §  
INDIVIDUALLY, TXU CORP., §  
TXU PORTFOLIO MANAGEMENT §  
COMPANY LP, D/B/A TXU §  
WHOLESALE, AND TXU PORTFOLIO §  
OPTIMIZATION, AS GENERAL §  
PARTNER OF TXU PORTFOLIO §  
MANAGEMENT COMPANY LP, D/B/A §  
TXU WHOLESALE §

133<sup>RD</sup> JUDICIAL DISTRICT

**THOMAS SOBEY AND THOMAS SOBEY D/B/A TMS ENERGY SERVICES**  
**ORIGINAL ANSWER, COUNTER-CLAIM, THIRD-PARTY CLAIM,**  
**APPLICATION FOR TEMPORARY RESTRAINING ORDER, APPLICATION**  
**FOR TEMPORARY AND PERMANENT INJUNCTION, RULE 193.7**  
**DOCUMENT PRODUCTION NOTICE, RE-ALIGNMENT OF THE PARTIES**  
**REQUEST FOR JURY TRIAL AND REQUEST FOR DISCLOSURES**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW THOMAS SOBEY, AND THOMAS SOBEY D/B/A TMS  
ENERGY SERVICES, ASSIGNEE OF A&R GENERAL CONTRACTORS, INC.,  
ABILENE BOWLING LANES, ALTAMESA CHURCH OF CHRIST, ANTIQUE &

CRAFT MALL OF PASADENA, ARAMARK UNIFORM SERVICES, BROOKDALE CORPORATION, CENTRAL TRANSPORTATION SYSTEMS, CINCO J., INC., CITY MEAT STEAK COMPANY, INC., COUNTRY STORE MARKET, CRAIG'S FURNITURE, DALLAS HOTELS ATE, LLC, DARIO VILLEGAS, EL BUCKNER BAZAAR, EL CHARRO RESTAURANTS, INC., EL PALENQUE RESTAURANTS, FAMILY CATHEDRAL OF PRAISE, FELTER INTERNATIONAL, INC., GROVES INDUSTRIAL SUPPLY CORP., HEALTH SERVICES MANAGEMENT OF TEXAS, LLC, AMERICAN BUFFET, CHINA RIVER BUFFET, ASHFORD LUCKY VILLAGE, FOUNTAINVIEW LUCKY VILLAGE, GOLDEN RIVER BUFFET, LUCKY HOUSE, LUCKY VILLAGE, WOODLANDS HOUSE, MIPTT, LLC (EAST COAST), HILTON FURNITURE, INTEC SYSTEMS, INC., KOCOMOGO III, L.P., WHITESTONE GOLF CLUB, LOST CREEK GOLF CLUB, MIKE'S SUPERMARKET, MIRA VISTA OFFICE CENTER, LTD., MT. ROSE CHURCH OF GOD IN CHRIST, THE OUTLET MALL, PETTIGREW ASSOCIATES, INC., PLEASANT RIDGE CHURCH OF CHRIST, RUDY'S MEAT MARKET, SCHLOTZSKY'S DELI, SIX FLAGS MALL, SOUTH MCARTHUR CHURCH OF CHRIST, SUNBELT GROUP LP, TIGER TOTE FOOD STORES, INC., TOMBALL RETIREMENT CENTER, USA RV PARK, WSPI, LLC, ZAINA CORPORATION, (hereinafter "TMS") complaining of AMPRO ENERGY LP, SUCCESSOR TO AMPRO ENERGY, INC., AND AMPRO ENERGY GP, LLC, AS GENERAL PARTNER OF AMPRO ENERGY LP, AND AMY GASCA, INDIVIDUALLY, TXU CORP., TXU PORTFOLIO MANAGEMENT COMPANY, LP, D/B/A TXU WHOLESALE, AND TXU PORTFOLIO OPTIMIZATION COMPANY LLC, AS GENERAL PARTNER OF

TXU PORTFOLIO MANAGEMENT COMPANY, LP, D/B/A TXU WHOLESALE, (sometimes collectively referred to as “Defendants”), and files this Original Answer, Counter-Claim, Third-Party Claim, Application for Temporary Restraining Order, Applications for Temporary and Permanent Injunction, Rule 193.7 Document Production Notice, Re-Alignment of the Parties, Request for Jury Trial and Request for Disclosures and would show unto the Court as follows:

**I.  
GENERAL DENIAL**

1. Pursuant to the Texas Rules of Civil Procedure (“TRCP”), TMS, as Defendant, generally denies, each and every, all and singular, the allegations contained in Petitioner’s Petition for Declaratory Judgment and all subsequent Petitions and demands strict proof thereof.

**II.  
SPECIAL DENIAL**

2. TMS specially pleads that Petitioner lacks standing.
3. TMS specially denies that Petitioner has a judicial interest.
4. TMS specially denies that a justiciable controversy exists in regards to Petitioner’s declaratory action.
5. TMS specially pleads that there is a lack of all necessary parties on the grounds that all parties to the agreement must be made a party to a declaratory action.

**III.  
AFFIRMATIVE DEFENSES**

6. In asserting the following defenses, TMS does not admit that the burden of proving the allegations or denials contained in the defenses is upon the Defendant, but, to the contrary, asserts that the burden of proving the facts relevant to many of the defenses and the

burden of proving the inverse of the allegations contained in many of the defenses is upon the Petitioner. Moreover, by asserting any defense, TMS does not admit any liability, but, to the contrary, specifically denies any and all allegations of liability in the Petitioner's lawsuit. Without admitting liability as to any of the Petitioner's claims, the TMS asserts the following affirmative defenses:

- a. TMS pleads the affirmative defense that Petitioner lacks standing to challenge the validity of agreements in which Petitioner is not a party to.
- b. TMS pleads the affirmative defense that Petitioner has no judicial interest in the validity of agreements in which Petitioner is not a party to.
- c. TMS pleads the affirmative defense that no justiciable controversy exists.

#### **IV. BACKGROUND FACTS**

7. The Respondents, Counter-Plaintiffs and Third-Party Plaintiffs, THOMAS SOBEY AND THOMAS SOBEY, D/B/A TMS ENERGY SERVICES, ("TMS") for good and valuable consideration, are the Assignees of rights and interests of certain Electricity Sales Agreements entered between A&R GENERAL CONTRACTORS, INC., ABILENE BOWLING LANES, ALTAMESA CHURCH OF CHRIST, ANTIQUE & CRAFT MALL OF PASADENA, ARAMARK UNIFORM SERVICES, BROOKDALE CORPORATION, CENTRAL TRANSPORTATION SYSTEMS, CINCO J., INC., CITY MEAT STEAK COMPANY, INC., COUNTRY STORE MARKET, CRAIG'S FURNITURE, DALLAS HOTELS ATE, LLC, DARIO VILLEGAS, EL BUCKNER BAZAAR, EL CHARRO RESTAURANTS, INC., EL PALENQUE RESTAURANTS, FAMILY CATHEDRAL OF PRAISE, FELTER INTERNATIONAL, INC., GROVES INDUSTRIAL SUPPLY CORP., HEALTH SERVICES MANAGEMENT OF TEXAS, LLC, AMERICAN BUFFET, CHINA

RIVER BUFFET, ASHFORD LUCKY VILLAGE, FOUNTAINVIEW LUCKY VILLAGE, GOLDEN RIVER BUFFET, LUCKY HOUSE, LUCKY VILLAGE, WOODLANDS HOUSE, MIPTT, LLC (EAST COAST), HILTON FURNITURE, INTEC SYSTEMS, INC., KOCOMOGO III, L.P., WHITESTONE GOLF CLUB, LOST CREEK GOLF CLUB, MIKE'S SUPERMARKET, MIRA VISTA OFFICE CENTER, LTD., MT. ROSE CHURCH OF GOD IN CHRIST, THE OUTLET MALL, PETTIGREW ASSOCIATES, INC., PLEASANT RIDGE CHURCH OF CHRIST, RUDY'S MEAT MARKET, SCHLOTZSKY'S DELI, SIX FLAGS MALL, SOUTH MCARTHUR CHURCH OF CHRIST, SUNBELT GROUP LP, TIGER TOTE FOOD STORES, INC., TOMBALL RETIREMENT CENTER, USA RV PARK, WSPI, LLC, ZAINA CORPORATION (collectively referred to as "Assignors"), and Counter-Defendant AMPRO ENERGY L.P. Accordingly, Plaintiff TMS Energy Services is the present holder of said rights and interests, and the party entitled to sue thereon.

8. Petitioner and Counter-Defendant AMPRO ENERGY L.P., ("AmPro") was a provider of electricity to various entities.

9. Third-Party Defendant AMPRO ENERGY GP, LLC, ("AmPro GP") is the general partner of Defendant AMPRO ENERGY L.P. Third-Party Defendant AMY GASCA, ("Gasca") is the sole Member/Manager of this Defendant.

10. Third-Party Defendants TXU CORP., and TXU PORTFOLIO MANAGEMENT COMPANY LP, D/B/A TXU WHOLESAL, (collectively referred to as "TXU") was the provider of wholesale electricity to Counter-Defendant AmPro. Third-Party Defendant TXU PORTFOLIO OPTIMIZATION COMPANY, LLC, is the general partner of

Third-Party Defendant TXU PORTFOLIO MANAGEMENT LP, D/B/A TXU WHOLESALE.

11. Counter-Defendant AmPro and Third-Party Defendant TXU had entered into a wholesale agreement by which TXU provided AmPro with wholesale electricity.

12. In and around 2004, Counter-Defendant AmPro contracted with each Assignor to provide retail electricity to each Assignor, for various periods of time--up to sixty (60) months--at variable rates.

13. In late 2005, Third-Party Defendant AmPro GP decided that it would be financially beneficial for Counter-Defendant AmPro to withdraw from the Texas retail electricity market and cease providing electric service to its customers.

14. On or about December 2005, Counter-Defendant AmPro notified all Assignors, in writing, that Counter-Defendant AmPro would discontinue providing electricity to all of its customers and all Assignors, on December 20, 2005.

15. Upon information and belief, Third-Party Defendant TXU assisted Counter-Defendant AmPro in unwinding the bilateral wholesale agreements entered into between the two defendants; thus allowing Counter-Defendant AmPro to breach the retail supply agreements Counter-Defendant AmPro entered into with each Assignor.

16. Counter-Defendant AmPro, with assistance from Third-Party Defendant TXU, unilaterally terminated the agreements it had entered into with each Assignor, thus effecting a breach of each contract entered into with the Assignors.

17. As a result of Counter-Defendant AmPro's breach of the agreement, each Assignor was required to enter into replacement electricity contracts for a higher price, thus damaging Assignors.

18. Also, Third-Party Defendant TXU is the holder of, and in control of a certain escrow account created from the gains assignable to Counter-Defendant AmPro from the unwinding of the wholesale supply contracts. See Exhibit A. Said escrow accounts were created and maintained to compensate the Assignors who would successfully present claims for Counter-Defendant AmPro's breaches of these agreements.

19. Additionally, in unwinding the wholesale supply contracts, Third-Party Defendant TXU also benefited as it kept and profited a percentage of the gains realized from unwinding the contracts.

20. Furthermore, upon information and belief, Third-Party Defendant Gasca has been withdrawing money from the escrow account for her own personal expenses.

**V.  
DISCOVERY LEVEL**

21. TMS pleads that discovery should be conducted in accordance with a tailored discovery plan Level 3 under Texas Civil Procedure Rule 190.4.

**VI.  
PARTIES AND SERVICE OF CITATION**

22. Respondent, Counter-Plaintiff and Third-Party Plaintiff, Thomas Sobey, and Thomas Sobey, d/b/a TMS Energy Services, ("TMS") is an individual and a sole proprietorship residing in Harris County, Texas. TMS, for good and valuable consideration, is the Assignee of the rights and interests in certain contracts entered into with Counter-Defendant AmPro Energy L.P., by and between Assignors A&R General Contractors, Inc., Abilene Bowling Lanes, Altamesa Church of Christ, Antique & Craft Mall of Pasadena, Aramark Uniform Services, Brookdale Corporation, Central Transportation Systems, Cinco J., Inc., City Meat Steak Company, Inc., Country Store Market, Craig's Furniture, Dallas

Hotels, ATE, LLC, Dario Villegas, El Buckner Bazaar, El Charro Restaurants, Inc., El Palenque Restaurants, Family Cathedral of Praise, Felter International, Inc., Groves Industrial Supply Corp., Health Services Management of Texas, LLC, American Buffet, China River Buffet, Ashford Lucky Village, Fountainview Lucky Village, Golden River Buffet, Lucky House, Lucky Village, Woodlands House, MIPTT, LLC (East Coast), Hilton Furniture, Intec Systems, Inc., Kocomogo III, L.P., Whitestone Golf Club, Lost Creek Golf Club, Mike's Supermarket, Mira Vista Office Center, Ltd., Mt. Rose Church of God in Christ, The Outlet Mall, Pettigrew Associates, Inc., Pleasant Ridge Church of Christ, Rudy's Meat Market, Scholtzsky's Deli, Six Flags Mall, South McArthur Church of Christ, Sunbelt Group LP, Tiger Tote Food Stores, Inc., Tomball Retirement Center, USA RV Park, WSPI, LLC, Zaina Corporation (collectively referred to as "Assignors").

23. Petitioner and Counter-Defendant AmPro Energy L.P., is a Texas Limited Partnership, and the successor to AmPro Energy Inc., and may be served with citation of process by and through Amy Gasca, its President, at its offices at 19747 Hwy. 59 North, Suite 250, Humble, Texas 77338, or wherever they may be found.

24. Third-Party Defendant AmPro Energy GP LLC, is a Texas Limited Liability Company, and is the General Partner of Defendant AmPro Energy L.P., and may be served with citation of process by and through Member/Manager Amy Gasca, at its offices 19747 Hwy. 59, Suite 250, Humble, Texas 77338, or wherever they may be found.

25. Third-Party Defendant Amy Gasca, is an individual residing in the State of Texas and may be served with citation of process at 19747 Hwy. 59 North, Suite 250, Humble, Texas 77338, or wherever she may be found.

26. Third-Party Defendant TXU Corp. is a Domestic Corporation, and may be served with citation of process by and through its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201, or wherever they may be found.

27. Third-Party Defendant TXU Portfolio Management Company, LP, d/b/a TXU Wholesale, is a Texas Limited Partnership, and may be served with citation of process by and through its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201, or wherever they may be found.

28. Third-Party Defendant TXU Portfolio Optimization Company LLC, is a Foreign Limited Liability Company, doing business in the State of Texas, and the General Partner of Defendant TXU Portfolio Management Company, LP, d/b/a TXU Wholesale, and may be served with citation of process by and through its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201, or wherever they may be found.

## **VII. JURISDICTION AND VENUE**

29. The Court has jurisdiction over Ampro Energy LP, because said Counter-Defendant is a Texas Limited Partnership and is amenable to service by a Texas Court.

30. The Court has jurisdiction over AmPro Energy GP LLC, because said Third-Party Defendant is a Texas Limited Liability Company, and is amendable to service by a Texas Court.

31. The Court has jurisdiction over Amy Gasca because said Third-Party Defendant is an individual residing in the State of Texas.

32. The Court has jurisdiction over TXU Corp., because said Third-Party Defendant is a Texas Corporation, and is amendable to service by a Texas Court.

33. The Court has jurisdiction over TXU Portfolio Management Company LP, d/b/a TXU Wholesale, because said Third-Party Defendant is a Texas Limited Partnership and is amenable to service by a Texas Court.

34. The Court has jurisdiction over TXU Portfolio Optimization Company, LLC, because said Third-Party Defendant has done business in, has continuing contacts with Texas, and is amenable to service by a Texas Court.

35. The Court has jurisdiction over the controversy because, as a proximate result of the actions and/or omissions of the Defendants, TMS, as Assignee, incurred damages in excess of the minimum jurisdictional limits of this Court.

36. Venue is proper in Harris County, Texas.

#### **VIII. CAUSES OF ACTION**

**Count 1: Temporary Restraining Order Against Defendants Ampro Energy, L.P., AmPro Energy GP LLC, Amy Gasca, TXU Corp., TXU Portfolio Management Company LP, d/b/a TXU Wholesale and TXU Portfolio Optimization Company, LLC.**

37. TMS, as Counter-Plaintiff and Third-Party Plaintiff, is entitled to an immediate temporary restraining order to maintain the status quo until a trial on the merits can be had. The status quo is the last, actual, peaceable, non-contested status of the parties that preceded the controversy.

38. To preserve the status quo, it is essential that the Court act immediately. TMS has a probable right to relief based on the egregious conduct of Defendants. As a result of such conduct Defendants, Plaintiff, as Assignee, is experiencing imminent harm. The damage to TMS, as Assignee, is permanent and irreparable, as electricity prices continue to

escalate, and specific performance is unavailable as Defendant AmPro no longer provides electric services.

39. The escrow account maintained is for the benefit of TMS, as Assignee. Without protecting the escrow account, TMS may not be able to recover its damages. The damage to TMS, as Assignee, is and will be permanent and irreparable, as there are no other means of recovering damages from Defendants.

40. TMS is likely to succeed at trial, as the conduct of Defendants is egregious and in direct violation of the laws of the State of Texas.

41. The exigent circumstances surrounding the withdrawal of funds from the escrow account warrant the issuance of the Temporary Restraining Order *ex parte*. TMS has forwarded correspondence to Defendants AmPro and TXU regarding notice of claims. However, no substantive response has come from any Defendant.

42. Defendants AmPro, AmPro GP and Gasca will continue to deplete the escrow account created for the benefit of Plaintiff, as Assignee.

43. TMS requests this Court to enter a Temporary Restraining Order *ex parte*, pending this Court's ruling on TMS's Application for Temporary Injunction, that orders:

- a. Defendants AmPro, AmPro GP and Gasca to stop withdrawing funds from the escrow account;
- b. Defendants immediately return all funds withdrawn from the escrow account for purposes other than that of compensating Plaintiff, as Assignee;
- c. Defendant TXU not release any funds held within the escrow account to any other Defendant, or to any other entity; and

d. Defendants provide an accounting to Plaintiff for all funds withdrawn from the escrow account.

**Count 2: Temporary and Permanent Injunctive Relief against Defendants Ampro Energy, L.P., AmPro Energy GP LLC, Amy Gasca, TXU Corp., TXU Portfolio Management Company LP, d/b/a TXU Wholesale and TXU Portfolio Optimization Company, LLC.**

44. TMS has demonstrated a likelihood of success on the merits and that a balancing of equities favors the issuance of a temporary and eventual permanent injunction against Defendants. TMS, as Assignee, will be irreparably damaged by actions and omissions of Defendants. TMS has demonstrated no adequate remedy at law.

45. Moreover, this Court should enjoin Defendants from using, depleting, withdrawing and/or issuing funds from the escrow account, for purposes other than this cause of action, as this is the only source of funds available to satisfy a judgment against Defendants. Should Defendants be allowed to continue using, depleting, withdrawing and/or issuing funds from this escrow account, it would in effect render a judgment ineffectual. *See* Tex. Civ. Prac. & Rem. Code §65.011.

**Count 3: Breach of Contract against Ampro Energy, L.P. and Ampro Energy GP, LLC.**

46. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

47. Defendant AmPro, and Defendant Ampro GP, as General Partner, entered into a valid, enforceable contract with each Assignor. TMS, as Assignee, has authority and standing to sue for breach of contract. Assignors fully performed their end of the bargain. Defendant AmPro breached their agreements with Assignors, and as a result, TMS, through Assignors, has been injured.

**Count 4: Fraudulent Misrepresentation against Ampro Energy, L.P. and Ampro Energy GP, LLC and Gasca.**

48. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

49. Defendants AmPro, AmPro GP and Gasca, represented to Assignors that it could perform in accordance with the contract entered into between Assignors and Defendant AmPro. Such representations were material and false. Defendants had an interest in these transactions, and made such representations knowing of the falsity of such representations, or made the representations recklessly, as a positive assertion, and without knowledge of its truth. Defendant made such representations with the intent that Assignors would rely upon and act upon them. Such representations caused TMS's, as Assignee, injuries.

**Count 5: Fraudulent Inducement against Ampro Energy, L.P. and Ampro Energy GP, LLC and Gasca.**

50. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

51. Defendants AmPro, AmPro GP and Gasca, misrepresented its ability to perform in accordance with the contracts made the basis of this litigation. Such misrepresentations were material and false. Defendants had an interest in these contracts, and made such misrepresentations knowingly of the falsity of such representations, or made the representations recklessly, as a positive assertion, and without knowledge of its truth. Defendant made such misrepresentations with the intent that Assignors would rely upon and act upon them. Such representations caused TMS's, as Assignee, injuries.

**Count 6: Frivolous Pleadings against Ampro Energy.**

52. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

53. TMS alleges and sues for violation of Rule 13 of the Texas Rules of Civil Procedure and Section 9.011 of the Texas Civil Practice and Remedies Code.

54. The declaratory suit brought by Counter-Defendant Ampro Energy as Petitioner is groundless, brought in bad faith and for the purpose of harassment.

55. Further, Counter-Defendant lacks standing to file this declaratory action, has no justiciable interest, and there is no controversy as to the assignment agreements.

56. Additionally, Counter-Defendant may not use a declaratory judgment action to determine potential tort liability.

**Count 7: Tortious Interference with Existing Contract.**

57. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

58. Defendant AmPro entered into valid and enforceable agreements with each Assignor. Defendant TXU willfully and intentionally interfered with the contracts between Defendant AmPro and each Assignor. Such interference was the proximate cause of each Assignor's damages.

**Count 8: Conspiracy.**

59. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

60. Defendants AmPro, AmPro GP, Gasca, and TXU worked in combination, with the objective to assist or help Defendant AmPro unwind and/or breach its contracts with each Assignor, in violation of the laws of the State of Texas. One or both Defendants

committed acts in furtherance of this conspiracy, to which the Assignor's were proximately harmed.

**IX.  
PIERCING THE CORPORATE VEIL**

61. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

62. TMS alleges and will prove that the corporate veil of Defendant AmPro GP, LLC, should be pierced and any protection provided by the corporate structure and entity should be disregarded.

63. Defendant AmPro GP is the alter ego of Defendant Gasca. Defendant Gasca is the sole Member/Manager of Defendant AmPro GP; however more specifically, Defendant Gasca is the owner of Defendant AmPro GP. The corporation was organized and operated as a mere tool or business conduit of Defendant Gasca. Defendant Gasca has a direct financial interest in Defendant AmPro GP, and is the owner, and has direct control of Defendant AmPro GP, and is directly liable for Defendant AmPro's actions and omissions. Moreover, as Defendant AmPro GP is the alter ego of Defendant Gasca, there is such a unity between the two that the separateness of the corporation has ceased to exist.

64. As the corporation form of Defendant AmPro GP has been completely disregarded by Defendant Gasca, holding only the corporate defendant liable would result in an injustice to TMS.

65. Furthermore and alternatively, the corporate veil should be pierced as the corporate form was used as a sham to perpetuate a fraud. Defendants fraudulently induced Assignors to enter into electricity contracts Defendants, knowing that Defendants were not

able to honor the terms of the agreement. As a result of such fraud, TMS, through Assignors, was harmed and the Defendants directly benefited from such harm.

**X.  
ATTORNEY FEES AND EXPENSES**

66. TMS incorporates, as though fully set forth herein, each and every allegation in the above paragraphs.

67. As a result of Defendants' breach of contract and improper conduct, TMS has been compelled to retain the law firm of ESSMYER & TRITICO, L.L.P., to bring this claim.

68. TMS asks this Court to award to him, as provided for in Section 38.001 of the Texas Civil Practice and Remedies Code, and/or as otherwise allowed by law, reasonable and necessary attorneys' fees, expert witness fees, costs for copies of depositions, and cost of court.

69. Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, TMS seeks its reasonable and necessary attorneys fees and costs of litigation.

70. Pursuant to Section 9.012 of the Texas Civil Practice and Remedies Code, TMS seeks it reasonable and necessary attorney's fees and costs of litigation.

**XI.  
DAMAGES**

71. TMS incorporates, as though fully set forth herein, each and every allegation in paragraphs above.

72. TMS, through Assignors has suffered and/or will suffer monetary damages, including actual, consequential, compensatory, special and incidental, which are unliquidated, in an amount that exceeds the minimum jurisdictional limits of this Court.

73. TMS requests also that this Court award exemplary damages, as provided for under section 41.003 of the Texas Civil Practices and Remedies Code, based on Defendants' having made the false representations with actual awareness of the falsity of those statements. TMS further seeks to recover exemplary damages based on Defendants' violations of the Texas Deceptive Trade Practices Act.

74. Pursuant to Section 9.012 of the Texas Civil Practice and Remedies Code, TMS seeks its reasonable expenses incurred responding to Petitioner's suit.

75. TMS is also entitled to actual damages, including but not limited to economic injury damages.

76. TMS is also entitled to equitable relief as allowed by law.

**XII.  
NOTICE THE DOCUMENTS WILL BE USED**

77. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, TMS hereby gives notice that all documents produced by the Defendants will be used at any pretrial proceeding or at the trial of this case.

**XIII.  
CONDITIONS PRECEDENT**

78. All conditions precedent have occurred.

**XIV.  
MISNOMER**

79. TMS further states that if a party is misnamed it is a misnomer.

**XV.  
RE-ALIGNMENT OF THE PARTIES**

80. TMS requests that this Honorable Court re-align the parties to make the current Respondent and Counter-Plaintiff, TMS, the true plaintiff in this cause of action;

while simultaneously making the current Petitioner and Counter-Defendant, Ampro Energy, LP, the true defendant in this case. TMS requests such action due to the frivolousness of Ampro Energy LP's allegations, and the true damages of TMS, as Assignee.

**XVI.  
REQUEST FOR JURY TRIAL**

81. TMS, Respondent and Counter-Plaintiff in the above-entitled and numbered cause, and pursuant to the Texas Constitution Article 1, Section 15, respectfully makes this demand for a trial by jury and tenders the required fee.

**XVII.  
REQUEST FOR DISCLOSURES**

82. Pursuant to Rule 194, each party is requested to disclose, within 50 days of receipt of this request, the information or material described in Texas Rule of Civil Procedure 194.2 (a) through (l).

**XVIII.  
PRAYER**

WHEREFORE, PREMISES CONSIDERED, TMS requests that all Defendants be cited to appear and answer, and that TMS have the following:

1. A temporary restraining order against Defendants as set forth above;
2. A temporary and permanent injunction against Defendants as set forth above;
3. Judgment against the Defendants for sum established by proof at trial that is within the jurisdictional limits of this Court;
4. Actual, consequential, special incidental and compensatory damages;
5. Exemplary damages against the Defendants;

6. Judgment for reasonable attorneys' fees and costs of court as specified above;
7. Prejudgment interest as provided by law;
8. Post judgment interest as provided by law;
9. Costs of suit; and
10. All other damages, general and special, in law and in equity to which TMS may show himself justly entitled to.

Respectfully submitted

**ESSMYER & TRITICO, L.L.P.**

By: \_\_\_\_\_  
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ATTORNEYS FOR TMS

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the following document was forwarded to the following counsel of record on this \_\_\_\_\_ day of August 2006, pursuant to the Texas Rules of Civil Procedure:

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