

CAUSE NO. \_\_\_\_\_

DIAMOND OFFSHORE SERVICES	§	IN THE DISTRICT COURT OF
COMPANY & DIAMOND OFFSHORE	§	
(USA) L.L.C.	§	
Plaintiffs,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
HSBC BANK USA, N.A., HSBC MEXICO	§	
S.A. & CONADAT ISAIAS	§	
GOMEZ BERMAN	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF THIS COURT:

COME NOW DIAMOND OFFSHORE SERVICES COMPANY AND DIAMOND OFFSHORE (USA) L.L.C. ("Plaintiffs and/or Diamond") and file Plaintiffs' Original Petition against Defendants, HSBC BANK USA, N.A., HSBC MEXICO S.A. (collectively "HSBC") and CONADAT ISAIAS GOMEZ BERMAN ("Gomez").

**Discovery Control Plan**

1. Plaintiff Diamond requests Discovery Control Plan – by Order (Level 3) in accordance with Texas Rule of Civil Procedure 190.4.

**Overview**

2. This is a fraud and breach of contract case. Defendants Gomez and his co-conspirators engaged in fraud by conspiring to embezzle from Diamond's HSBC bank accounts. After Diamond discovered the embezzlement, and after Defendant HSBC confirmed that fraud had been committed, HSBC offered to pay Diamond the amount that

was removed from Diamond's account in the embezzlement scheme. Diamond accepted HSBC's offer. HSBC then reneged on its agreement with Diamond.

#### **Parties**

3. Plaintiff Diamond Offshore Services Company is a Delaware corporation with its principal place of business in Houston, Harris County, Texas.

4. Plaintiff Diamond Offshore (USA) L.L.C. is a Delaware corporation with its principal place of business in Houston, Harris County, Texas.

5. Defendant, HSBC Bank USA, N.A. is a Virginia corporation with its principal place of business in Buffalo, New York. It may be served at its offices located at One HSBC Center, 24<sup>th</sup> Floor, Buffalo NY, 14203.

6. Defendant, HSBC Mexico S.A. is a foreign corporation, with its principal place of business in Mexico City, Mexico. It can be served with process by serving HSBC Bank USA, N.A. at One HSBC Center, 24<sup>th</sup> Floor, Buffalo NY, 14203.

7. Defendant Conadat Isaias Gomez Berman is an individual residing in Texas. He may be served at his home address, 1615 Sebastian Street, Mission, Texas 78572 or anywhere he may be found.

#### **Jurisdiction and Venue**

8. This Court has jurisdiction over this matter. By way of example, the matter exceeds the jurisdictional limits of this court, HSBC regularly conducts business in the State of Texas and is therefore subject to the general jurisdiction of its Courts, and this court has jurisdiction over Gomez, a Texas resident.

9. Venue is proper in this Court. By way of example, venue is proper under Texas Civil Practice and Remedies Code, Section 15.002.

## **Facts**

10. In 2003, Gomez became Plaintiffs' Mexico Administrator. As such, Gomez lived and worked in Ciudad del Carmen, Mexico, administering shore-based operations for Plaintiffs' drilling rigs working in the southern Gulf of Mexico. As the administrator, Gomez had access to Plaintiffs' bank accounts, accounts payables, checks, vendors and money.

11. Plaintiffs bank with HSBC Bank USA N.A. and HSBC Mexico S.A. Each week, Gomez would cause a "cash statement" to be emailed to Plaintiffs' main office (in Houston, Texas) requesting money to cover checks written the following week from Plaintiffs' HSBC accounts in Mexico. Each week, based upon Gomez's request, Plaintiffs would cause pesos (MP\$) to be purchased and electronically transferred from their US accounts to their Mexico HSBC accounts to cover expenses. The money Plaintiffs transferred would be received in the HSBC bank branch in Campeche, Mexico and used to pay Plaintiffs' expenses related to its operations. HSBC's Campeche branch was managed by Emisael Suarez.

12. Unbeknownst to Plaintiffs, Suarez, Gomez and others conspired to embezzle a portion of the transferred sums from Plaintiffs' bank accounts. In furtherance of the conspiracy, Gomez requested money in weekly cash reports to cover the amounts they would embezzle from Plaintiffs' accounts. In reliance on these representations, Diamond would wire money into its HSBC accounts in Mexico. Gomez would process fraudulent invoices and write checks on Plaintiffs' accounts, allegedly paying the fraudulent invoices. Then Gomez would contact Suarez and travel to the HSBC bank that Suarez managed, where Suarez would endorse the checks and cause it to be deposited in an

account created for Gomez, rather than to the payee of the check. Thus, funds that Gomez solicited from Plaintiffs were withdrawn from their accounts under false pretenses and deposited into Gomez's account. Plaintiffs could not discover this fraud unless it scrutinized the back of the deposited checks, as only the back of the check showed that the money was not deposited into the payee's account, but rather into Gomez's. It was not customary for Plaintiffs to receive copies of the backs of its checks. After the check was deposited into Gomez's account, funds were transferred into accounts for the benefit of Gomez, Suarez and others.

13. In June 2009, facts arose causing Plaintiffs to investigate whether a financial impropriety had occurred. Gomez was no longer working with Plaintiffs' operations in Mexico, and Suarez had been transferred to different HSBC branch bank. During the investigation, Plaintiffs obtained copies of the front and back of many of its checks written in 2006. After analyzing the backs of the checks deposited into Gomez's account, Plaintiffs realized, for the first time, that a theft had occurred.

14. Plaintiffs requested and received numerous checks and assistance from HSBC, using Plaintiffs' relationship with HSBC Bank USA N.A. to facilitate its request of checks from HSBC Mexico S.A. When Plaintiffs had gathered sufficient facts, it contacted HSBC Bank USA N.A. and reported the fraud. In response, HSBC Bank USA N.A. launched an internal investigation and put Plaintiffs in contact with Marcial Lujan ("Mr. Lujan"), an attorney for HSBC in Mexico. HSBC represented that Lujan could respond to Plaintiffs' inquiries "in the most effective manner." HSBC Bank USA N.A. represented to Plaintiffs that Mr. Lujan was HSBC's "legal point person for this matter."

15. Plaintiffs dealt with Mr. Lujan for much of the investigation, from time to time involving HSBC Bank USA N.A. when Mr. Lujan was unresponsive. At the conclusion of the investigation, Plaintiffs and HSBC began discussing HSBC's reimbursement of Plaintiffs' losses. Beginning November 10, 2009, HSBC and Plaintiffs discussed the amount of Plaintiffs' reimbursement.

16. HSBC initially offered to compensate Plaintiffs for half of the losses that resulted from the conspiracy and fraud. Plaintiffs rejected that offer but agreed to continue discussions. Plaintiffs responded with a new demand. The next week, Mr. Lujan offered, on behalf of HSBC, to compensate Plaintiffs for the full amount of funds that were embezzled from Plaintiffs' accounts, MP\$14,633,342. Mr. Lujan further represented that the entire transaction would be completed and the funds transferred by year end 2009. Plaintiffs accepted HSBC's offer of MP\$14,633,342 and sent Mr. Lujan an email memorializing their agreement.

17. The following day, Mr. Lujan contacted Plaintiffs and claimed that he did not have the authority to offer the MP\$14,633,342 he had offered the day before and that Diamond accepted. Instead, he said he only had authority to offer the amount HSBC initially offered to Plaintiffs – half of the amount embezzled.

### **Causes of Action**

#### *Fraud, Fraudulent Concealment, and Conspiracy to Defraud*

18. Plaintiffs incorporate paragraphs 1-17 as if fully set forth herein.

19. Gomez and HSBC's employee Suarez made representations and omissions regarding amounts due to vendors and the actual payee of Plaintiffs' checks. These

representations and non-disclosures were false and Gomez and Suarez knew they were false or recklessly disregarded their truth or falsity.

20. Based on their representations, Plaintiffs provided funds to the accounts to which Gomez and Suarez had access. Thus, Plaintiffs relied on Gomez's and Suarez's representations and non-disclosures to Plaintiffs' detriment.

21. As a proximate result of Gomez and Suarez's misrepresentations and non-disclosures, Plaintiffs were damaged in an amount in excess of the jurisdictional limits of this court, for which it now sues.

22. The discovery rule applies to the facts of this case, delaying accrual of Plaintiffs' fraud cause of action, because of the fraud and fraudulent concealment of Gomez and HSBC's employee Suarez.

23. Because the nature of the embezzlement committed by Gomez and Suarez was inherently undiscoverable and objectively verifiable, the discovery rule applies to toll any applicable statutes of limitations.

#### *Breach of Contract*

24. Plaintiffs incorporate paragraphs 1-23 as if fully set forth herein.

25. HSBC breached its contract with Plaintiffs. All conditions precedent to this action have occurred.

26. Plaintiffs have incurred breach of contract damages in the amount of MP\$14,633,342, as well as direct, special and incidental damages in excess of the minimum jurisdictional limits of this Court, for which it now sues.

#### *Attorneys Fees & Interest*

27. Plaintiffs incorporate paragraphs 1-26 as if fully set forth herein.

28. Pursuant to applicable law and statutes, including but not limited to Civil Practices & Remedies Code, Section 38.001, Plaintiffs request that its attorney's fees and costs be awarded, along with pre-and post judgment interest.

**Jury Trial Requested**

29. Plaintiffs request a jury trial and tender the appropriate fee.

**Request for Disclosure**

30. Pursuant to Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose, within 30 days of service of this request (plus 20 days), the information and material described in Rule 194.2.

**Prayer**

31. Therefore, Plaintiffs Diamond Offshore Services Company and Diamond Offshore (USA) L.L.C. respectfully requests that this Court cite HSBC Bank USA N.A., HSBC Mexico S.A. and Conadat Isaias Gomez Berman to appear and answer and that on final trial, award Plaintiffs judgment for the full amount of their damages, attorney's fees, costs, applicable pre and post judgment interest, and for such other and further relief at equity and law to which Plaintiffs may be justly entitled.

Respectfully submitted,

By:

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