

# EXHIBIT H

IN THE DISTRICT COURT

EUNICER BENCKENSTEIN, WALTER  
G. RIEDEL III, AND ROY WINGATE,  
INDEPENDENT CO-EXECUTORS OF  
THE ESTATE OF NELDA C. STARK.  
D E C E A S E D. E U N I C E R.  
BENCKENSTEIN, INDEPENDENT  
EXECUTRIX OF THE ESTATE OF H.J.  
LUTCHER STARK. DECEASED. AND  
WALTER G. RIEDEL III. GENERAL  
MANAGER OF THE NELDA C. AND  
H.J. LUTCHER STARK FOUNDATION

OF ORANGE COUNTY, TEXAS

V.

IDA MARIE STARK. INDIVIDUALLY  
AND AS INDEPENDENT EXECUTOR  
OF THE ESTATE OF W.H. STARK II.  
DECEASED. ET AL.

260<sup>th</sup> JUDICIAL DISTRICT

AFFIDAVIT OF ROY WINGATE

STATE OF TEXAS       §  
                                  §  
COUNTY OF ORANGE   §

On this day came before me Roy Wingate, who after being duly sworn, hereby states as follows:

"My name is Roy Wingate. I reside at 345 F.M. 3247, Orange, Texas 77632. I have been a licensed attorney by the State Bar of Texas since 1958 and have practiced since 1959 in Orange, Texas. My Texas State Bar Number is 2176900. The statements contained in this Affidavit are within my personal knowledge and are true and correct. I am fully competent to testify to each of the matters contained in this Affidavit.

I represented the Nelda C. and H. J. Lutchter Stark Foundation ("the Foundation") as counsel in litigation styled *Ida Marie Stark, Individually and as Independent Executor of the Estate of W. H. Stark*

*II, Deceased, et al vs. Nelda Childers Stark, Individually and as Independent Executrix of the Estate of H. J. Lutcher Stark, Deceased, et al*, bearing Cause No. D-SS0162-C in the 260<sup>th</sup> Judicial District Court of Orange County, Texas ("the Previous Litigation"). This case was commenced by the filing of Plaintiffs' Original Petition in 1988 and lasted until the case was settled in early 1991 and final judgment entered on March 5, 1991.

During the pendency of the Previous Litigation, one of my tasks as attorney for the Foundation was to coordinate and oversee the production of documents pursuant to the written discovery requests of the plaintiffs (Defendants in the pending litigation) and agreements of counsel. I personally reviewed hundreds of thousands of pages of documents furnished to me by both sides in the Previous Litigation and others. I participated directly in the discovery process by being physically present at and overseeing the inspection and photocopying of these documents by counsel for the plaintiffs.

The document inspection process involved our producing documents which were stored at several locations for the plaintiffs to inspect. The persons most involved for the plaintiffs were Mary Ann Dougherty, a paralegal for Mr. Michael Gallagher who was the lead counsel for the plaintiffs. Also involved were Olin Boudreaux, an associate of Mr. Gallagher and Bob Garret, an investigator for the law firm of Fisher, Gallagher, Perrin and Lewis. Mr. Gallagher was present on occasion. Documents which were stored in the vault at the Stark Offices had begun to be copied when I became involved. After I was retained, the plaintiffs made three separate sweeps through the documents. There were file cabinets and other materials in the Stark Offices. In the Dr. Pepper Building were documents which related primarily to Vinton Petroleum Company and Orange Investment Company. In the current file room at the Stark Building were eleven or twelve file cabinets and other materials which were inspected. At the old Stark building were several rooms with cabinets, boxes and drawers which contained documents. In the carpenter shop were many cabinets full of files. There were many boxes which contained distribution slips and cancelled checks. In addition, we went as a team to the offices of Boise Cascade in De Ridder, Louisiana, where we spent approximately six weeks inspecting and copying documents relating to The Lutcher & Moore Lumber Company. This company had been purchased by Boise Cascade before the Prior Litigation.

We set up a copy room at the carpenter shop and hired a copying company to make copies, to place Bates stamp numbers on the documents to be copied and to ensure quality control. As documents were inspected either side would mark the document for copying and when that was done the copying company would Bates stamp the document and make two copies, one for each side. Although not rigidly followed, most of the documents from a specific location bore an identifying letter prefix. For example, the letter "B" was affixed to various ledgers, the letters "A" and "C" on documents from the vault, the letter "D" from the Dr. Pepper building, the letter "E" from the Old Stark Building, the letter "G" to the art files which were in the vault, the letter "L" to the Lutcher & Moore Lumber Company files at Boise Cascade, and the letter "T" to documents from the current file room. The letter "V" was for vouchers. "M" was for cardex cards and files from the museum. "S" was for Foundation financial documents. Some large ledgers from Boise Cascade were sent to Houston for copying, but the Previous Litigation settled before those were received here. To my knowledge, there was no editing of the files before their production. Mr. Ralph Carrigan of Baker & Botts was lead counsel for the defendants and he made it clear that he wanted everything shown to the plaintiffs unless privilege was claimed and in that event he notified the plaintiffs of such. Approximately 400,000 pages of documents were copied out of many more than that which were produced and inspected by the plaintiffs.

One of my other tasks as counsel for the Foundation in the Previous Litigation was to assist in answering written interrogatories, requests for admissions, and requests for production propounded by the plaintiffs and to examine documents produced by the plaintiffs for the purpose of answering these discovery requests. As part of that task I personally reviewed many documents and court filings and worked with title examiners in connection with many properties owned by members of the Stark family or entities in which members of the Stark Family had an interest for the specific purpose of drafting responses to written discovery requests. I also evaluated the claims made by the plaintiffs in the Previous Litigation that certain assets were concealed from them in the Estate of Nita Hill Stark and answered questions about the relevance of specific properties to those claims.

Copies of documents which were produced and copied in the Previous Litigation have been stored on the premises of the

defendants (Plaintiffs herein). Some copies were also retained by defendants' counsel, Baker & Botts. Since the filing of the pending action in July, 2000, I have reviewed copies of many of the documents that were produced and copied in the Previous Litigation, and which were retained by the defendants' offices and at the offices of their counsel, Baker & Botts. Upon my entry into this case as a party and upon inspection of the documents retained, I recognized them as parts of the documents produced and copied in the Previous Litigation. Each of the statements below is based on my personal knowledge and my review of true and correct copies of the documents produced in the Previous Litigation.

The documents produced by the defendants to the plaintiffs in the Previous Litigation were usually marked sequentially by a Bates number with a letter prefix. This identical number also appears on each of the attached copies. Each of the documents produced by counsel for the plaintiffs in the Previous Litigation in connection with interrogatories, requests for admissions, and requests for production propounded by the plaintiffs therein also bear a Bates number but without a letter prefix. Each Bates number set forth below on documents specifically identified in connection with this pending litigation refers to the number shown on the face of the document (or if the document had multiple pages, the number shown on the face of the first page of the document) in the Previous Litigation.

In reviewing the documents previously produced to plaintiffs (Defendants herein) in the Previous Litigation, I have located the following documents, among others, which pertain directly to the ownership of the ranch in Jackson County, Colorado owned by H. J. Lutcher Stark and, after his death, by Nelda C. Stark, and commonly referred to as Roslyn Ranch. This is the same property so described in Defendants' First Amended Original Counterclaim and Defendants' Response to Plaintiffs' Amended Motion for Summary Judgment filed in this action on or about August 15, 2001. The plaintiffs (Defendants herein) have had copies of the following documents for a full decade prior to the filing of their counterclaim herein:

1. Certified copy of Will of Frances A. Lutcher, on file in Orange County, Texas probate records (Bates No. C026468).

2. Final Report of Estate of Frances A. Lutcher, together with all schedules and attachments (Bates No. C026920 through C027130).
3. Deed from Lizzie K. Howd to Mrs. H. J. Lutcher (Frances A. Lutcher), dated August 15, 1907, covering 560 acres of land, bearing Bates No. T728424.
4. Deed from Ludwig C. Janssen to H. J. L. Stark, dated October 10, 1941, covering 160 acres of land, bearing Bates No. T728181.
5. Deed from Hans Holm to H. J. Lutcher Stark, dated June 13, 1942, covering 160 acres of land, bearing Bates No. T728189.
6. Warranty Deed from Nelda C. Stark, as Independent Executrix of the Estate of H. J. Lutcher Stark, Deceased to Nelda C. Stark, Individually, dated effective August 13, 1971 (acknowledged on July 11, 1977), bearing Bates No. T728077.
7. Correction Deed from Nelda C. Stark, Independent Executrix of the Estate of H. J. Lutcher Stark, Deceased to Nelda C. Stark, Individually, dated effective August 31, 1971 (acknowledged October 28, 1977), bearing Bates No. T728097.
8. Deed from N. B. Hunt and Caroline L. Hunt to Nelda C. Stark, dated May 16, 1978, bearing Bates No. T728227.
9. Quitclaim Deed from N. B. Hunt and Caroline L. Hunt to Nelda C. Stark, also dated May 16, 1978, bearing Bates No. T728230.
10. Deed from Frank D. Risner and Ruth A. Risner to Nelda C. Stark, dated July 31, 1985, bearing Bates No. T728436.

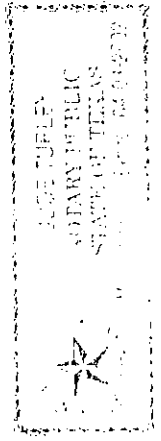
- 11. Deed from Frank D. Risner and Ruth A. Risner to Nelda C. Stark, dated August 6, 1982, bearing Bates No. T728440.
- 12. Deed from Donelson Brothers, Inc. to Nelda C. Stark, dated July 8, 1985, bearing Bates No. T728438."

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Roy Wingate  
ROY WINGATE

THE STATE OF TEXAS  
COUNTY OF ORANGE

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by Roy Wingate.



Edge Curley  
NOTARY PUBLIC, STATE OF TEXAS

WILL.



THE STATE OF TEXAS, ::  
COUNTY OF ORANGE ::

IN THE NAME OF GOD, AMEN:

I, Frances A. Lutcher, of Orange County, Texas, being in good health and of sound and disposing mind and memory, but calling to mind the frailty and uncertainty of human life and desirous of settling my worldly affairs and directing how the estate with which it has pleased God to bless me shall be disposed of after my decease while I have strength and capacity so to do, do hereby make and publish this my last will and testament hereby expressly and in all things revoking all other wills heretofore made by me.

FIRST.

I direct that my just debts and funeral expenses shall by my executor hereinafter named be paid out of my estate as soon after my death as to him shall be found convenient.

SECOND.

I direct that as soon after my death as possible my executor shall take possession of my entire properties left by me at the time of my death and shall dispose of such as he may see proper at such times as he may see proper and for such price and upon such terms as he may see proper and shall pay to the parties entitled thereto in the order named the special bequests hereinafter made to them.

THIRD.

As soon after my death as is convenient I direct that my executor shall deliver to the persons to whom the same are hereinafter given all properties mentioned and bequeathed, delivering the same in person to the persons entitled thereto hereunder.

FOURTH.

I hereby give and bequeath to my beloved daughter, Miriam Stark, wife of W. H. Stark of Orange County, Texas, my personal and real estate

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diamonds; my purple sapphire set with diamonds; my cameo set; one Twentieth Century diamond ring; one emethyst and dismond LaValliere; one chain with nine diamonds; one diamond ring with two diamonds; being the one I bought from Julia Moss; one black watch with diamonds, and diamond black chain; one cameo pin; one blue Japanese coat; one gold and silver vase; with jewels; my old diamond ear rings, and one string of smethyst; the portraits of my father and mother now in my residence at Orange; one string of amethise beads; one opal pin and string of opal beads; one gold band bracelet, one black purse set with pearls; one muff and one stole of chinchilla; one platinum diamond bracelet; one large cameo pin, "Aurora Borealis"; one small opal ring; one single pearl ring; all presents of every kind of personal or household character heretofore given to me by my said daughter, Miriam Stark.

FIFTH.

I give and bequeath to my beloved daughter, Carrie Brown, widow of E. W. Brown, of Orange County, Texas, one Twentieth Century diamond ring; one diamond crescent containing father's diamond stud; <sup>37-130</sup> one gold bracelet with three diamonds; one mourning bracelet; one black locket with pearls and chain, one bar pin of pearls and diamonds; onyx locket with Grandpa's picture; my black opal pin; my three mourning pins; all pictures of myself and Babette together except picture in the parlor; <sup>1250-3500</sup> ring and pin containing three stones given me by Mr. Lutcher except the two and stones which were in the earrings and go to Miriam M. Stark; and all oil paintings painted by her, the said Carrie Brown, and given by her to me; and all presents of every kind of a personal or household character at any time heretofore given by my said daughter, Carrie Brown, to me.

SIXTH:

I give and bequeath to my grandson, H.J. Lutcher Stark, one black diamond; one ruby, being the one now in a ring with two pear-

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shaped diamonds; the big prayer rug; his grandfather's portrait; one Satsuma vase; with monkey; one piece of ivory called "Japanese Girl"; my gold locket set with single diamond; my original watch.

SEVENTH:

I give and bequeath to my granddaughter Nita Stark, wife of Lutoher Stark, of Orange, Texas, my diamond necklace; one wreath of daimonds; one jade LaValliere; one jade bracelet; one jade ring; one gold bracelet with pictures; one LaValliere with pear-shaped diamond and pin; one amethyst bracelet; one amethyst pin; one little finger ring containing one dark pearl and two pearls set with diamonds; one bracelet set with garnets; very old; my suit trimmed with chinchilla; one diamond LaValliere with three discs; one black diamond brooch; filigree work with diamonds; my set of ermine furs; one long watch chain with ten diamonds; my string of pearls and my gold watch set with diamonds; and enamelled green.

EIGHTH:

I give and bequeath to my grandson, Lutoher Brown, of Orange, Texas, one pear-shaped diamond, being one now set in a ring of one ruby and two pear-shaped diamonds. ✓

NINTH:

I give and bequeath to my grandson, Edwar W. Brown, Jr., of Orange, Texas, one pear-shaped diamond being one now set in a ring with one ruby and two pear-shaped diamonds. ✓

TENTH:

I give and bequeath to my great-granddaughter, Brownie Babette Moore, daughter of Fannie Moore and R. A. Moore, of Orange, Texas, to be delivered by my executor to her on her sixteenth birthday, should she then be living, one ring with three pink pearls with diamonds; and on her seventh birthday, if she is then living, one ring with two diamonds, one yellow and one white; and on her eighteenth birthday,

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if she is then living, my gold bracelet, set with emerald\_ and diamonds; one diamond ring with three diamonds; her miniature set with pearls; the portrait of myself and Babette; my rose point dress; and point lace fan; one chataleine, and one box of trinkets.

In the event my said great-granddaughter, Brownie Babette, should die before coming into possession of any of the things given to her by this will and hereinbefore enumerated then upon her death the miniature of Babette set with pearls and the portrait of myself and Babette mentioned above shall be immediately given by my executor to her grandmother, Carrie L. Brown, who shall thereafter own the same: and the remaining things herein willed Babette shall be given by me executor to my oldest living great-granddaughter, if I should then have one, to be her inheritance from me; but if I should at that time not have a living great-granddaughter, then all of said things shall cease to be a special bequest and shall become a part of my general property and pass under the other provisions of this will.

ELEVENTH:

I give and bequeath to Mrs. Helen Fowler, formerly Helen Achenbach, one ring with three topaz and one bracelet with three diamonds.

TWELFTH:

I give and bequeath to my friend, Mrs. Ida Achenbach, of Orange, Texas, my set of garnets and the sum of One Hundred (\$100.00) Dollars per month so long as she lives and remains unmarried, which said sum of money shall be paid to her regularly each month by my executor.

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THIRTEENTH:

I give and bequeath to Mrs. Weichoff of Williamsport, Pennsylvania, One Hundred (\$100.00) Dollars per month so long as she may live and direct that my executor pay this sum of money to her regularly each month during her lifetime.

FOURTEENTH:

I direct that my executor pay regularly each month out of my estate to Liffie Eslinger, daughter of Mary Eslinger, of Williamsport, Pennsylvania, the sum of One Hundred (\$100.00) Dollars, per month so long as she remains single.

FIFTEENTH:

I give and bequeath to Mrs. Louisa Wilber, of Williamsport, Pennsylvania, One Hundred (\$100.00) Dollars per month until her death and direct that my executor pay said sum to her regularly each month so long as she may live.

SIXTEENTH:

I give and bequeath to Mrs. Albert Lucher, of Williamsport, Pennsylvania, the wife of my deceased husband's brother, the sum of One Hundred (\$100.00) Dollars per month so long as she may live, and direct that my executor pay said sum to her regularly each month during her life time.

SEVENTEENTH:

I give and bequeath to my beloved cousin, Mrs. Charlotte Hansberry of Philadelphia, Pennsylvania, the sum of One Hundred (\$100.00) Dollars per month, until her death and direct that my executor pay said sum of money to her regularly each month during her lifetime.

EIGHTEENTH:

I give and bequeath to my grandson, Edgar W. Brown, Jr., the sum of Five Thousand (\$5,000.00) Dollars, to be paid to him

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as soon after my death by my executor as he can find convenient.

NINETEENTH;

I give and bequeath to my grandson, Luther Brown, the sum of Five Thousand (\$5,000.00) Dollars to be paid to him as soon after my death as convenient by my executor.

TWENTIETH:

I give and bequeath to my servant, Rose Hamilton, if she is in my service at the time of my decease, the sum of One Thousand (\$1,000.00) Dollars, to be paid to her by my executor, but if the said Rosa Hamilton is not living at said time or is not at the time of my death in my employ then this bequest shall be null and void.

TWENTY-FIRST:

I give and bequeath to my servant, Fannie Williams, if she is in my service at the time of my decease, the sum of Five Hundred (\$500.00) Dollars, to be paid to her by my executor; but if the said Fannie Williams should not then be living or should not be in my employ at the time of my death then this bequest shall be null and void.

TWENTY-SECOND:

I give and bequeath to Mr. Clough, my watchman, if he is still in my service at the time of my death, the sum of Five Hundred (\$500.00) Dollars, to be paid to him by my executor; but in the event he is not/<sup>then</sup> living, or is not in my employ at the time of my death, then this bequest shall be null and void.

TWENTY-THIRD:

I give and bequeath to my florist, Joseph Kastizenski, if he should be in my employ at the time of my death the sum of One Thousand (\$1,000.00) Dollars to be paid to him by my executor, but in the event he is not then living or is not in my employ at the time of my death, then this bequest shall be null and void.

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TWENTY-FOURTH:

I give and bequeath to my chauffeur, Herbert Fielder, if he is in my employ at the time of my death, the sum of One Thousand (\$1,000.00) Dollars to be paid to him by my executor; but if he is not then living or if he should not be in my employ at the time of my death, then this bequest shall be null and void.

TWENTY-FIFTH:

I give and bequeath to my beloved daughter, Miriam Stark, wife of W.H.Stark, of Orange, Texas, the sum of One Million (\$1,000,000.00) Dollars, to be paid to her by my executor as soon after my death as can be conveniently done.

TWENTY-SIXTH:

I give and bequeath to my beloved daughter, Carrie Brown, the sum of One Million (\$1,000,000.00) Dollars, to be paid to her by my executor as soon after my death as can be conveniently done.

TWENTY-SEVENTH:

I give and bequeath to my grandson, H.J.Lutcher Stark, all of the residue and remaining portion of my estate after the payment of the bequests and delivery of the gifts mentioned and enumerated herein, where ever the same may be situated, whatever the character thereof may be, real, personal, or mixed, including stocks, notes, bonds, houses, personal property of all kinds, including my ranch and everything connected therewith in Colorado; my home in Orange, Texas, and everything therein and appurtenant thereto, of every character and to include everything of every character of which I may die possessed, whether the same be real, personal, or mixed, or wherever the same may be situated, or whatever its value or nature may be, not intending to exclude anything of any character by reason of anything said herein but intending to pass to him the entire residue of my estate after

the payment of the special bequests hereinbefore mentioned and

made; the same to be his after the payment of said special bequests fully, finally and in fee simple.

TWENTY-EIGHTH:

I hereby nominate and appoint my grandson, H.J.Lutcher Stark of Orange, Texas, to be the sole executor of this my last will and testament and I direct that he serve as such without pay and that no bond or security of any character be required of him as such executor and I specially authorize my said executor to sell and dispose of any portion of my estate or all of same as he may see proper at public or private sale and in the manner, for the price, and upon the terms, that to him may seem best and proper, for the purpose of carrying out the provisions and all of the provisions of this will.

TWENTY-NINTH:

All bequests made by me in this will are expressly made upon the following provisions, to-wit: That should any person to whom a bequest is made herein contest this will or engage in any character of contest or attack thereon, or institute any litigation over my estate in contradiction of the terms of this will, such bequest to such person or persons shall immediately become null and void and the property or properties bequeathed to them shall become a part of the corpus of my estate as though no such bequest had ever been made.

THIRTIETH:

It is my direction that no other acti\_n be had in the courts in the administration of my estate other than the probate of this will and the return of an inventory, appraisement and list of claims.

In witness whereof I hereunto set my hand this 17th day

of February, A. D. 1919, in the presence of Joe Lucas, and

**X. G. Pearls** lawful witnesses, who attest the same as witnesses at my request and in my presence and in the presence of each

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other.

F. A. Lutcher

The above instrument is now here subscribed by Mrs. Frances A. Lutcher, the testator, in our presence as witnesses and we as witnesses thereto in her presence and at her request and in the presence of each other subscribe our names hereto as attesting witnesses to such instrument.

Joe Lucas.

A. G. Pearce.

Filed: Oct. 31, 1924

A. H. Coale, Clerk Co. Court,  
Orange County, Texas.

The following words on the original will, on second page, first and second lines thereof, were erased with pencil, to-wit: "My old diamond finger ring and breast pin."

A. H. Coale

County Clerk.

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THE STATE OF TEXAS |  
COUNTY OF ORANGE |

I, W. A. Gunning, Clerk, County Court, in and for Orange County, Texas, do hereby certify that the above and foregoing is a true and correct copy of Will, In Re: Estate of Frances A. Lutcher, Deceased, Cause No. 665, filed October 31, 1924, as the same appears of record in my office in Vol. "J", Pages 295-299, Probate Minutes, Orange County, Texas.

Given under my Hand and Seal of Office, This the 2nd day of March, A. D. 1939.

W. A. Gunning, Clerk  
County Court, Orange  
County, Texas.

By Sadie Stephens, Deputy

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