

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

TERRI MORSE BACHOW, individually and
on behalf of all others similarly situated,

Plaintiff,

-against-

SWANK ENERGY INCOME ADVISERS,
LP, SWANK CAPITAL, LLC, JERRY
SWANK, MARK W. FORDYCE, CPA,
BRIAN R. BRUCE, RONALD P. TROUT,
and EDWARD N. McMILLAN,

Defendants.

No. 3-09CV0262-K

**[PROPOSED] ORDER APPOINTING LEAD PLAINTIFF, AND
APPROVING LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**

1. Upon consideration and review of the lead plaintiff motion filed herein, the Court hereby appoints Terri Morse Bachow as Lead Plaintiff for the Class, consisting of all purchasers of Cushing MLP Total Return Fund (the "Fund") shares from September 1, 2008, to December 19, 2008, inclusive (the "Class Period"). Terri Morse Bachow satisfies the requirements for Lead Plaintiff pursuant to Section 21D(a)(3)(B)(iii) of the Private Securities Litigation Reform Act of 1995 ("PSLRA").

2. Pursuant to §21D(a)(3)(B)(v) of the PLSRA, Terri Morse Bachow has selected and retained the law firms of Stanley, Mandel & Iola, L.L.P., and Wolf Haldenstein Adler Freeman & Herz LLP as Co-Lead Counsel in this action. The Court approves the selection of Stanley, Mandel & Iola, L.L.P., and Wolf Haldenstein Adler Freeman & Herz LLP to serve as Co-Lead Counsel for the Class.

3. Co-Lead Counsel for the Class shall have the following responsibilities and duties, to be carried out either personally or through counsel whom Co-Lead Counsel shall designate:

- (a) the briefing and argument of motions;
- (b) the conduct of discovery proceedings;
- (c) the examination of witnesses in depositions;
- (d) the selection of counsel to act as spokesperson at pretrial conferences;
- (e) to call meetings of the plaintiffs' counsel as they deem necessary and appropriate from time to time;
- (f) to conduct all settlement negotiations with counsel for defendants;
- (g) to conduct and/or direct the pretrial discovery proceedings and the preparation for trial of this matter and to delegate work responsibilities to selected counsel as may be required; and,
- (h) to supervise any other matters concerning the prosecution, resolution or settlement of this action.

4. No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any plaintiff in the Class without the approval of Co-Lead Counsel, so as to prevent the filing of duplicative pleadings or service of duplicative discovery by plaintiffs. No settlement negotiations shall be conducted without the approval of Co-Lead Counsel.

5. Co-Lead Counsel shall have the responsibility of receiving and disseminating Court orders and notices, other than as may be served through this Court's ECF System.

6. Co-Lead Counsel shall be the contact between plaintiffs' counsel and defendants' counsel, as well as the spokesperson for plaintiffs' counsel, and shall direct and coordinate the activities of plaintiffs' counsel.

7. Other than as served through the Court's ECF System: Defendants shall effect service of papers on plaintiffs by serving a copy of same on Co-Lead Counsel by overnight mail service, email, telecopy or hand delivery. Co-Lead Counsel shall serve copies of such papers on the other plaintiffs' counsel by first-class mail. Plaintiffs shall effect service of papers on defendants by serving a copy on defendants' counsel by overnight mail service, email, telecopy, or hand delivery.

8. During the pendency of this litigation, or until further order of this Court, the parties shall take reasonable steps to preserve all documents within their possession, custody, or control, including computer-generated and stored information, and materials such as computerized data and electronic mail, containing information which is relevant to the subject matter of the pending litigation.

9. The Court hereby orders that Co-Lead Plaintiff for the Class is permitted to file an amended class action complaint within 45 days of this Order.

SO ORDERED, this 20th day of April, 2009.



Ed Kinkeade
United States District Judge