

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

DENETTE JOHNSON, COURTNEY
CUBBISON MOORE, JOHN TRACY,
ROBERT HARP, ANTHONY DIZONA,
and KELLY DYER

Defendants.

CIVIL ACTION NO. H-05-0332

**CONSENT ORDER OF PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF AGAINST DEFENDANTS
DENETTE JOHNSON, COURTNEY
CUBBISON MOORE, JOHN TRACY,
ROBERT HARP, AND KELLY DYER**

On February 1, 2005, Plaintiff U.S. Commodity Futures Trading Commission ("the Commission") filed a Complaint against Denette Johnson, Courtney Cubbison Moore, John Tracy, Robert Harp, and Kelly Dyer (collectively "Defendants") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7. U.S.C. §§ 1 *et seq.* (2002).

I. CONSENTS AND AGREEMENTS

1. To effect settlement of the matters alleged in the Complaint in this action prior to a trial on the merits or further judicial proceedings, each defendant:

a. Consents to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants Denette Johnson, Courtney Cubbison Moore, John Tracy, Robert Harp, and Kelly Dyer ("Order");

b. Affirms that he or she has read and agreed to this Order voluntarily, and that no threat or promise other than as set forth specifically herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order;

c. Acknowledges service upon him or her of the Summons and Complaint in this action;

d. Consents, solely for the purposes of settlement, to the jurisdiction of the Court in this action;

e. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

f. Waives:

(a) The entry of findings of fact and conclusions of law;

(b) All claims which may be available under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and any right pursuant to EAJA to seek costs, fees and other expenses relating to or arising from this action;

(c) Any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

(d) All rights of appeal from this Order.

g. Agrees that they will not oppose enforcement of the order on the ground that it fails to comply with Rule 65(d) of the Federal Civil Rules of Civil Procedure and waives any objections based thereon;

h. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order, to assure compliance with the Order, and for any other purposes relevant to this action, even if each Defendant now or in the future resides outside the jurisdiction;

i. Agrees that no Defendant nor any agent of a Defendant under his or her control shall take any action or make any public statement denying directly or indirectly, or creating, or tending to create the impression that any allegation in the Complaint and this order are without a factual basis; provided, however, that nothing in this provision shall affect each Defendant's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Each Defendant shall take all steps necessary to ensure any agent under his or her control complies with this provision; and,

j. Agrees to cooperate with the Commission staff in the continuing litigation of this matter against any defendant not a party to this Order. As part of such cooperation, each Defendant agrees, subject to all applicable privileges, to comply fully, promptly and truthfully with any reasonable inquiries or requests for information or testimony, including but not limited to, testifying at any trial or hearing in this action subject to the provisions of subparagraph i, above, or producing written statements or trial declarations to the Commission related to any trial of the subject matter of this proceeding.

2. By consenting to the entry of this Order, Defendants neither admit nor deny the allegations contained in the Complaint.

II. ORDER FOR PERMANENT INJUNCTION

Based upon and in connection with the foregoing conduct, **IT IS HEREBY ORDERED THAT:**

1. Denette Johnson, Courtney Cubbison Moore, John Tracy, Robert Harp, and Kelly Dyer are permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Sections 6(c), 6(d), 9(a)(2), 13(a) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) and 13c(b) including:

- a. Reporting any false, misleading or knowingly inaccurate information regarding crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce; and
- b. Manipulating or attempting to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of a registered entity; and
- c. Willfully aiding, abetting, counseling, commanding, inducing or procuring the violation of any provisions of the Act, or acting in combination or concert with any other person in any such violation.

2. Denette Johnson, Courtney Cubbison Moore, John Tracy, Robert Harp, and Kelly Dyer are permanently restrained, enjoined and prohibited from applying for registration or engaging in any activity requiring such registration, or acting as a principal (as defined by the National Futures Association Registration Rule 101) of any registered

entity or person, or entity or person required to be registered provided for, however, should registration be required for trading in energy-related markets that currently is not subject to registration requirements, any of the Defendants may submit an application for registration to be considered by the Commission.

3. The injunctive provisions of this Order shall be binding on each Defendant, upon any person acting in the capacity of officer, agent, servant, or employee of each Defendant, and upon any person who receives actual notice of this Consent Order by personal service or otherwise insofar as he or she is acting in active concert or participation with each Defendant.

**III. ORDER FOR CIVIL MONETARY PENALTIES AND OTHER
ANCILLARY RELIEF**

IT IS HEREBY ORDERED that each Defendant shall comply fully with the following terms, conditions and obligations relating to the payment of a civil monetary penalty.

1. A civil monetary penalty in the amount of \$1,000,000 is jointly and severally assessed against Defendants and is due and owing upon entry of the Order, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

2. Post-judgment interest shall accrue beginning on the date payment is due and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

3. Defendants shall pay the above penalties by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money

order made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Office of Cooperative Enforcement
Division of Enforcement
ATTN: Linda Lightner
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

4. Defendants shall accompany payment of the penalty with a cover letter that identifies the Defendants, and the name and docket number of this proceeding.

Defendants shall simultaneously transmit a copy of the cover letter and the form of payment to:

Director,
Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

IV. MISCELLANEOUS PROVISIONS

1. Notices. All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

- a. Notice to Plaintiff Commission:
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
- b. Notice to Defendant Denette Johnson:
c/o Robert Sussman, Esq.
Locke Liddell & Sapp LLP
3400 JPMorgan Chase Tower
600 Travis
Houston, Texas 77002.

- c. Notice to Defendant Courtney Cubbison Moore:
c/o Christopher Flood, Esq.
914 Preston Street
Suite 800
Houston, TX 77002
- d. Notice to Defendant John Tracy:
c/o David Gerger, Esq.
Gerger and Associates
700 Louisiana Street
Suite 2300
Houston, TX 77080
- e. Notice to Defendant Robert Harp:
c/o Curt Webb, Esq.
Beck, Redden & Secrest
1221 McKinney
Suite 4500
Houston, TX 77010
- f. Notice to Defendant Kelly Dyer:
c/o Matthew Hennessy, Esq.
DeGuerin, Dickson & Hennessy
7th Floor, Republic Building
1018 Preston Avenue
Houston, TX 77002

2. Successors and Assigns. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

3. Counterparts. This Order may be executed by the parties in counterparts and by facsimile.

4. Entire Agreement, Amendments and Severability. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court.

5. Invalidation. If any provision of this Order, or if the application of any provisions or circumstances is held invalid, the remainder of the Order and the

application of the provisions to any other person or circumstance shall not be affected by the holding.

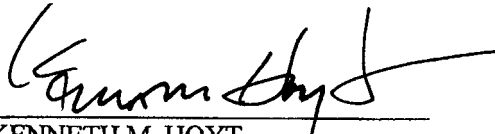
6. Waiver. The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

7. Acknowledgments. Each Defendant understands and acknowledges that this Consent Order must be accepted and ratified by the Commission before it becomes final.

Upon being served with copies of this Order after entry by the Court, each Defendant shall sign an acknowledgment of such service and serve such acknowledgment on the Court and the Commission within seven (7) calendar days.


8. Continuing Jurisdiction of this Court. The Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

DONE AND ORDERED at Houston, Texas this 7th day of Nov., 2007.


KENNETH M. HOYT
United States District Judge

Consented to and
Approved for Entry by:

Dated: Washington, D.C.:


Joseph Konizecki
John Dunfee
Tracey Wingate
Paul Hayeck
Attorneys for Plaintiff

Dated: Houston, Texas:

Robert Sussman
Attorney for Defendant Denette Johnson

Dated: Houston, Texas

Denette Johnson

Dated: Houston, Texas

Christopher Flood
Attorney for Defendant Courtney Cubbison
Moore

Dated: Houston, Texas

Courtney Cubbison Moore

Dated: Houston, Texas: _____
David Gerger
Attorney for Defendant John Tracy

Dated: Houston, Texas _____
John Tracy

Dated: Houston, Texas: _____
Curt Webb
Attorney for Defendant Robert Harp


Dated: Houston, Texas _____
Robert Harp

Dated: Houston, Texas: _____
Matthew Hennessy
Attorney for Defendant Kelly Dyer

Dated: Houston, Texas _____
Kelly Dyer

Joseph Konizeski
John Dunfee
Tracey Wingate
Paul Hayeck
Attorneys for Plaintiff

Dated: 9/18/07
Houston, Texas:


Robert Sussman
Attorney for Defendant Denette Johnson

Dated: 9/19/07
Houston, Texas:


Denette Johnson

Dated: Houston, Texas

Christopher Flood
Attorney for Defendant Courtney Cubbison
Moore

Dated: Houston, Texas

Courtney Cubbison Moore

Dated: Houston, Texas:

David Gerger
Attorney for Defendant John Tracy

Dated: Houston, Texas

John Tracy

Dated: Houston, Texas:

Curt Webb
Attorney for Defendant Robert Harp

Joseph Korizecki
John Durfee
Tracey Wingate
Paul Hayeck
Attorneys for Plaintiff

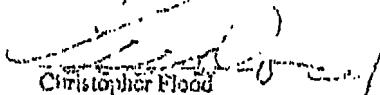
Dated: Houston, Texas:

Robert Sussman
Attorney for Defendant Denette Johnson

Dated: Houston, Texas

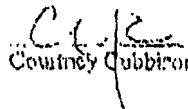
Denette Johnson

Dated: Houston, Texas



Christopher Flood
Attorney for Defendant Courtney Cubbison
Moore

Dated: Houston, Texas



Courtney Cubbison Moore

Dated: Houston, Texas:

David Gerger
Attorney for Defendant John Tracy

Dated: Houston, Texas

John Tracy

Dated: Houston, Texas:

Curt Webb
Attorney for Defendant Robert Hays

Joseph Konizeski
John Dunfee
Tracey Wingate
Paul Hayeck
Attorneys for Plaintiff

Dated: Houston, Texas:

Robert Sussman
Attorney for Defendant Denette Johnson

Dated: Houston, Texas

Denette Johnson

Dated: Houston, Texas

Christopher Flood
Attorney for Defendant Courtney Cubbison
Moore

Dated: Houston, Texas

Courtney Cubbison Moore

Dated: *September 18, 2007*
Houston, Texas:

by permission
David Gerger *David Gerger*

David Gerger
Attorney for Defendant John Tracy

Dated: *September 19, 2007*
Houston, Texas

John Tracy

John Tracy

Dated: Houston, Texas:

Curt Webb
Attorney for Defendant Robert Harp

Joseph Konizeski
John Dunfee
Tracey Wingate
Paul Hayeck
Attorneys for Plaintiff

Dated: Houston, Texas:

Robert Sussman
Attorney for Defendant Denette Johnson

Dated: Houston, Texas

Denette Johnson

Dated: Houston, Texas

Christopher Flood
Attorney for Defendant Courtney Cubbison
Moore

Dated: Houston, Texas

Courtney Cubbison Moore

Dated: Houston, Texas:

David Gerger
Attorney for Defendant John Tracy

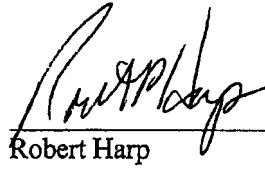
Dated: Houston, Texas

John Tracy

Dated: 9/19/07 Houston, Texas:

Curt Webb
Curt Webb
Attorney for Defendant Robert Harp

Dated: 9/18/2007 Houston, Texas


Robert Harp

Dated: Houston, Texas:

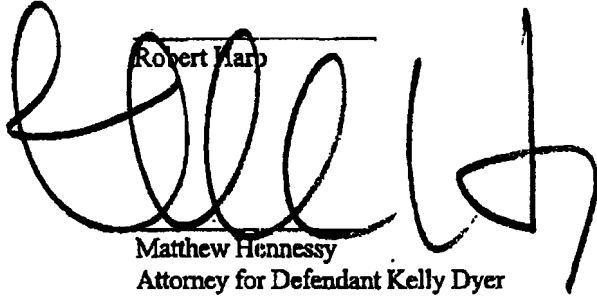
Matthew Hennessy
Attorney for Defendant Kelly Dyer

Dated: Houston, Texas

Kelly Dyer

Dated: Houston, Texas

Robert Harp



Matthew Hennessy
Attorney for Defendant Kelly Dyer

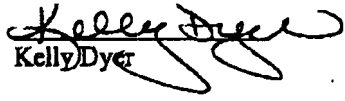
Dated: Houston, Texas:

2 Sept 07

Matthew Hennessy
Attorney for Defendant Kelly Dyer

Dated: Houston, Texas

Kelly Dyer



Kelly Dyer