

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS**

IN RE:	§	
	§	
RAAM GLOBAL ENERGY COMPANY	§	CHAPTER 11
	§	
Debtors	§	CASE NO. 15-35615
	§	(Jointly Administered)

**TECHXPLORE PARTICIPATION I, LTD.’s AND TECHXPLORE, LP’S OBJECTION
AND RIGHTS NOTICE**

TechXplore Participation I, Ltd. has a right to 25% of the sale value of the seismic data for the JASPO 3D shoot (the “Ownership Right”) that is a part of the proposed sale to the Highbridge parties (“Highbridge”) in the RAAM bankruptcy (the “Bankruptcy” and the “Sale”). Objectors object to the Sale and file this Rights Notice because TechXplore Participation I, Ltd. and TechXplore, LP seek clarification that Highbridge is bound as an assignee to a contract alluded to but not specifically referenced in the APA and, alternatively, because TechXplore Participation I, Ltd. is not receiving any payment pursuant to its Ownership Right, to cash payment for the transfer of the JASPO 3D Data.

Facts

The Sale proposes to transfer the Debtor’s interest in JASPO 3D Data to Highbridge. *See* Doc. No. 90-1, Asset Purchase Agreement between Debtors and Highbridge (the “APA”) at Exhibit F. This seismic data, obtained in a survey undertaken by the Debtors and Objectors and TechXplore, LP, covers 155.3 square acres of Newton, Orange, Jasper and Hardin counties (the “Acreage”). *See Id.*

The survey was paid for jointly by TechXplore, LP and the Debtors. As a part of the consideration for TechXplore, LP’s contributions of approximately \$4 million in value,

TechXplore, LP obtained and still possesses, 25% of the JASPO 3D Data and a right to 25% of the value of the sale of the JASPO 3D Data, its Ownership Right.

The Agreements

There are a series of agreements that have preserved the Ownership Right. The Ownership Right was first manifested in the Participation and Exploration Agreement between Century Exploration Houston, Inc., RAAM Global Energy Company and TechXplore, LP, effective August, 1 2005 (the "2005 Agreement" attached as Exhibit A). The 2005 Agreement addressed the rights and obligations of the parties regarding the JASPO 3D seismic data with its preamble stating:

WHEREAS, the Participants shall continue to acquire, process and evaluate certain three dimensional seismic data ("3D Data") in order to further identify and delineate particular geologic or geophysical anomalies or other geologic or geophysical conditions favorable to the accumulation of Hydrocarbons (as hereinafter defined) onshore Texas and Louisiana (individually a "Prospect" and collectively "Prospects"), as outlined on the plat attached hereto in Exhibit "A" (the "Exploration Area");

2005 Agreement at 1 (the Acreage is included in the Exploration Area).

The JASPO 3D Data was shot by the Debtors, not purchased from a seismic company, and thus, costs were higher on the front-end, totaling around \$ 16 million. TechXplore, LP paid approximately \$4 million of these costs for its 25% share of the acquisition of the JASPO 3D Data through a combination of a.) backend out of production and prospect fees and b.) the performance of the professional personnel of TechXplore LP (Wayne L. Adams, Russell E. Wilson and John A. Gambill), relating to the seismic data:

In addition to the proportionate costs of each Prospect, TechXplore will pay to Century its proportionate share of a Prospect fee equal to \$200,000 per Prospect for the 8/8ths interest for any Prospect drilled to a true vertical depth of 5,000 feet or greater and \$100,000 for the 8/8ths interest for any Prospect drilled to a true vertical depth of less than 5,000 feet. The Prospect fee is intended to be a partial reimbursement to Century for general and administrative costs, geological and geophysical costs and seismic acquisition and reprocessing. The Prospect fee shall attach to all Prospects generated pursuant to this Agreement, including all Prospects lying within the boundaries of the JASPO 3D AMI (as hereinafter defined); provided, however, that the amount of any such Prospect fees paid by TechXplore with respect to Prospects lying within the boundaries of the JASPO 3D AMI shall reduce the aggregate amount of costs incurred by Century which are to be recovered by it in determining "Payout", as provided in subsection 7(c) herein.

Id. at Section 2.

(b) Contributions by TechXplore. TechXplore shall dedicate the following professional personnel to the Exploration Activities and other performance contemplated by TechXplore under this Agreement: Wayne L. Adams, Russell E. Wilson and John A. Gambill. In this connection, it is acknowledged that such persons have heretofore rendered similar services pursuant to the May 9, 2003 Agreement under employment agreements with Century. As of the Effective Date the prior employment agreements between each of them and Century shall terminate and they shall enter into new employment agreements in the form attached as Exhibits "B-5", "B-6 or "B-7" hereto, respectively, for the term of this Agreement.

Id. at Section 1(b).

The "Ownership Right" was articulated in Section 7(c) of the 2005 Agreement, which has the heading "Ownership of Bayou Postillion," and states, that:

reduction). When Payout occurs for Bayou Postillion, TechXplore shall be assigned a 7.5% working interest therein in the form attached as Exhibit "E", and a license to the JASPO 3D seismic data. Once TechXplore has received said license it shall be entitled to 25% of the proceeds associated with any sales or license of the JASPO 3D shoot seismic data. The JASPO 3D will be subject to

Id. at Section 7(c). Payout did occur and TechXplore, LP did receive said “license” to the JASPO 3D Data and thus became entitled to the Ownership Right.¹

The 2005 Agreement has expired by its terms.² It was succeeded by the Participation and Exploration Agreement between TechXplore, LP, Century Exploration Houston, Inc. and RAAM Global Energy Company effective January 1, 2009 (the “2009 Agreement,” attached as Exhibit C):

WHEREAS, a number of the provisions of the prior agreements are outdated and the Participants hereby desire to enter into a new agreement, the terms of which shall comprise the present and complete understandings and circumstances of the Participants and shall supersede all the prior verbal and written agreements between them;

2009 Agreement at 1.

The 2009 Agreement preserved the Ownership Right explicitly in Section 1(a)(i):

this Agreement. As to the JASPO project TechXplore is entitled to a license to the 3D seismic data from Century granting it the right to review and work said data and to twenty-five percent (25%) of the proceeds associated with any future sales or license of the JASPO 3D Data. Said license will be delivered to TechXplore within sixty (60) days of receipt of a written request by TechXplore for same.

The 2009 Agreement expired on expired December 31, 2010.

TechXplore, LP, Century Exploration Houston, Inc., TechXplore Participation I, Ltd. and RAAM Global Energy Company entered into the Amended and Restated Participation and Exploration Agreement, effective since January 1, 2011 (the “2011 Agreement,” attached as Exhibit D).³ Part of the purpose and effect of the 2011 Agreement was to memorialize the parties

¹ Which TechXplore LP did so obtain. *See* Adams Affidavit at [], attached as Exhibit B.

² *Id.* at Sections 12; 13.

³ Another agreement, memorializing the termination of the 2009 Agreement and part of the the purpose of the 2011 Agreement was effective January 1, 2011 and titled “Termination of Participation and Exploration Agreement” is attached as Exhibit E.

rights, titles and interests relating to the JASPO 3D Data and for TechXplore, LP's right title and interest to be transferred to TechXplore Participation I, Ltd.

All rights, title and interest which TechXplore has under the Participation Agreement ... to the future sale or licensing of the JASPO 3D Data, as such rights are described in Section 1(a)(i) of the [2009] Participation Agreement, are hereby assigned, sold and transferred from TechXplore to Participation I.⁴

The 2011 Agreement also states in the section headed "Succession," that:

The terms, provisions, covenants and conditions contained in this Agreement shall apply to and inure to the benefit of and be binding upon each of the Parties hereto, as well as to their respective successors in interest and legal representatives, heirs, executors, administrators, successors and **assigns**. (emphasis added).

The Agreements and the Sale

The 2005 Agreement is listed as a contract to be assumed by the Debtors and assigned to HighBridge under File Number: CP00000676 . See APA at Schedule 6.9(a). Item CP00000676 is listed as being assumed "as amended." *Id.* The 2009 Agreement and the 2011 Agreement are not listed as being assumed and assigned and are also not listed as being "Excluded Contracts." *Id.*; See Doc. 255-1 at Schedule 2.2(e).

ARGUMENTS, AUTHORITIES AND RELIEF REQUESTED

The assumption and assignment of item CP00000676, the 2005 Agreement, "as amended," is the assumption and assignment of the terms of the 2011 Agreement. Movants request clarification through simple, appropriate language in the Sale Order.

Highbridge and the Debtors must acknowledge the Ownership Right through their transfer of the JASPO 3D Data and item CP00000676. The 2011 Agreement clearly states that all terms will apply to "assigns" of the party. Regardless, under the Code, "[a] debtor may not pick and choose those portions that it wishes to enforce and reject those that it does not deem desirable.

⁴ 2011 Agreement at Section 5(c).

That is black letter law engraved in stone. Accordingly, [an] assignee, is bound by all provisions of the contracts ... assigned to it.” *In re ATP Oil & Gas Corp.*, 517 B.R. 756, 759-60 (Bankr. S.D. Tex. 2014).⁵

The Objectors request that the Sale Order explicitly state that a.) the Debtors will assign the 2011 Agreement in the Sale or that the 2011 Agreement is the “as amended” document referenced and b.) that TechXplore Participation I, Ltd. is a counterparty to the 2011 Agreement and that c.) HighBridge is legally obligated as an “assign” to comply with TechXplore Participation I, Ltd.’s Ownership Right if and when HighBridge sells the JASPO 3D Seismic Data to another party.

Alternatively, TechXplore Participation I, Ltd. demands that Highbridge demonstrate that , under section 365(b)(1)(B), that Highbridge is willing and able to perform with its obligations under the assigned 2005 Agreement, which includes the obligation to pay TechXplore 25% of proceeds once the JASPO 3D Data is sold by Highbridge.

As a second alternative, TechXplore Participation I, Ltd. and TechXplore, LP objects to the Sale because the Sale a) contemplates selling assets that are not owned by the estate, and b.) does not contemplate consideration being paid to TechXplore Participation I, Ltd. for its Ownership Right. Because the JASPO 3D Data is lumped in with substantially all of the assets of the Debtors, there is not a value assigned to it. Per the testimony of Wayne A. Adams, TechXplore Participation I, Ltd. and TechXplore, LP submit that the value of the Ownership Right is at least \$250,000. *See Adams Affidavit at []*.

⁵*See also In re IT Group, Inc.*, 350 B.R. 166, 179 (Bankr. D. Del. 2006), quoting *In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1990) (“[A] bankruptcy court in authorizing assumptions and assignment ... must be sensitive to the rights of the non-debtor contracting party ... and the policy requiring that the non-debtor receive the full benefit of his or her bargain.”).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document has been electronically filed in the case with the Clerk of the United States Bankruptcy Court by using the CM/ECF system and was served upon all parties via the Court's electronic case filing system (ECF) on this the 11th day of January, 2016 and was served by electronic mail to the following parties:

Harry A. Perrin
hperrin@velaw.com
Reese O'Connor
roconnor@velaw.com
Vinson & Elkins
1001 Fannin Street
Suite 2500
Houston, TX 77002
Attorneys for the Debtors

Vincent P. Slusher
vince.slusher@dlapiper.com
DLA Piper (US) LLP
1717 Main, Suite 4600
Dallas, TX 75201
Attorneys for the Unsecured Creditors' Committee

Stephen E. Hessler
Stephen.hessler@kirkland.com
Steven N. Serajeddini
Steven.serajeddini@kirkland.com
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attorneys for the Highbridge Parties