

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	Case No. 15-35615—H1
	§	
RAAM GLOBAL ENERGY COMPANY, ET. AL	§	Chapter 11
	§	
DEBTORS	§	(Jointly Administered)

**LATE-FILED AND LIMITED OBJECTION OF GEOPHYSICAL PURSUIT
TO THE SUPPLEMENTAL NOTICE OF POSSIBLE ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES**
[This Objection Relates to Dkt. No. 391]

**To the Honorable Marvin Isgur,
United States Bankruptcy Judge:**

Geophysical Pursuit, Inc. (“**GPI**”), files its *Late-Filed, Limited Objection to the Supplemental Notice of Possible Assumption and Assignment of Executory Contracts and Leases* (the “**Supplemental Notice**”) [Dkt. No. 391]. In support of its limited objection (the “**Objection**”), GPI respectfully states as follows:

Summary of the Limited Objection

1. GPI is a contract counter-party to several master licensing agreements (“MLAs”) with one or more of the affiliated Debtors. The MLAs grant to the Debtors non-transferable licenses for 2D & 3D onshore / offshore geophysical and/or seismic data. The MLAs specifically licensed to the Debtors provide highly sensitive, highly confidential, copyrightable seismic data, which is covered under U.S. copyright law, the transfer of which is prohibited without GPI’s written consent. The MLAs are non-assignable executory contracts under Bankruptcy Code §365 (c)(1)(A) because, among other things, “applicable law,” (i.e., the United States Copyright Act), excuses a party, other than the Debtors, to such contract or lease from

accepting performance from or rendering performance to an entity other than the Debtor, and such party (GPI) does not consent to the assignment under the terms proposed under less than industry standard terms. GPI has not been asked to consent to any proposed assignment. At present, GPI does not consent because its terms for such consent are not included. Accordingly, GPI objects to any proposed assumption or assignment without the express written consent of GPI.

Background

2. GPI is a geophysical services company that is in the business of, *inter alia*, licensing comprehensive worldwide reservoir imaging, monitoring, and development services, including but not limited to seismic surveys to clients for the purpose of providing them with accurate measurements of subsurface geology for potential oil and gas exploration and/or production and other uses.

3. On October 26, 2015, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On October 27, 2015, the Court entered an order (Dkt. No. 22) directing joint administration of the Debtors' chapter 11 cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

4. On November 6, 2015, the Debtors filed a motion (Dkt. No. 90) (the "**Sale Motion**") to, among other things, (a) establish auction and bid procedures with respect to the sale of substantially all of their assets (the "**Sale**"), (b) schedule an auction and sale hearing with respect to the Sale, and (c) approve the sale of the assets and the assumption and assignment of certain contracts and leases relating thereto free and clear of all liens, claims, encumbrances and other interests. GPI *does not* object to the proposed sale.

5. On December 2, 2015, the Court entered an order (Dkt. No, 180) (the “**Order Granting Motion to Sell**”) approving the Bid Procedures and setting a date for the sale hearing.

6. On January 22, 2016, Debtors filed the Supplemental Notice, which provided a deadline of January 27, 2016 (**five days**) for interested parties to serve any objection to the Supplemental Notice. However, GPI has no record of receiving service of the Supplemental Notice.

The Subject MLAs

7. The Supplemental Notice added the following eight (8) GPI MLAs to the Supplemental Schedule of Added Executory Contracts (the “**Supplemental Schedule**”):¹

Prospect Name	Company Contract/Lease	Seller Party	Type of Agreement	Date	Cure Cost
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098 / Western Geco LLC 10001 Richmond Avenue Houston, Texas 77042	Supplemental Agreement re: Cameron-Vermilion-Depth 1 Project	11/7/2007	\$0.00
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098 / Western Geco LLC 10001 Richmond Avenue Houston, Texas 77042	Supplemental Agreement re: W Cameron 32(new OBC acq)	11/7/2007	\$0.00

¹ GPI MLAs includes any contract or rights that relate to the MLAs that the Debtors seek authority to assume and assign and/or transfer.

Prospect Name	Company Contract/Lease	Seller Party	Type of Agreement	Date	Cure Cost
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098 / Western Geco LLC 10001 Richmond Avenue Houston, Texas 77042	Supplemental Agreement re: W Cameron 30/31 entire OBC 3-D	11/7/2007	\$0.00
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098 / Western Geco LLC 10001 Richmond Avenue Houston, Texas 77042	Supplemental Agreement re: E Cameron OBC Svy 01 & 02	11/7/2007	\$0.00
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098 / Western Geco LLC 10001 Richmond Avenue Houston, Texas 77042	Supplemental Agreement re: Vermilion OBC Svy Phase I, II, III	11/7/2007	\$0.00
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098	Supplemental Agreement re: Cameron/Vermilion -Depth 1	11/7/2007	\$0.00
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098	Master License Agreement	5/5/2003	\$0.00
Administrative	CP00000513.001	Geophysical Pursuit, Inc. 1740 Westheimer, Suite 200 Houston, Texas 77098	Supplemental Agreement re. Atchafalaya Basin, Lafayette/St. Martin, Lafourche, Oligocene, Southeast LA Marsh, South Pass, Vermilion	5/9/2003	\$0.00

8. The Supplemental Schedule correctly states that the cure cost for the eight MLAs is \$0.00.

9. These MLAs allow use of the data only by the customer's employees and impose broad restrictions against use, disclosure, sale and transfer of the data by or to third parties. These restrictive license agreements are critical in protecting the substantial investment made by GPI in creating the data and in preserving GPI's rights under United States copyright law.

10. Under the MLAs, it was agreed that seismic data from time to time ordered by Century, and now the Debtors, would be licensed by GPI to Century on a non-exclusive basis, in accordance with the terms and conditions contained in the MLAs.

11. It was further agreed in the MLAs that the Debtors would utilize the seismic data in accordance with the terms of the MLAs, for internal purposes only, and that the Debtors

would not disclose or transfer the data and information to third parties except as provided in the MLAs.

Argument and Authority

12. While Bankruptcy Code § 365(a) generally gives the trustee, subject to court approval, the right to assume (or reject) executory contracts, and Bankruptcy Code § 365(f) generally gives a trustee the power to assign executory contracts, Bankruptcy Code § 365(c)(1)(A) provides an exception to both of those grants of authority.

13. Bankruptcy Code § 365 (c)(1)(A) states that a trustee **may not assume or assign** an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if: (a) “applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession . . .”, and (b) “such party does not consent to such assumption or assignment . . .”.

14. The Master License Agreement between GPI and the Debtors are executory contracts because, among other things, the Debtors have continuing confidentiality obligations to GPI and restrictions upon their use of the licensed seismic data under the MLAs while, at the same time, GPI has a continuing obligation to allow the Debtors to use the data, to provide the Debtors with original magnetic media for the seismic data under delineated circumstances, and to defend any legal proceedings brought against it or the Debtors claiming infringement of a patent by GPI in providing the licensed seismic data to the Debtors.

15. The “applicable law” that excuses GPI from accepting performance of the MLAs from or rendering performance to an entity other than the Debtors is United States copyright law. The Copyright Act provides protection to the authors of “original works of authorship” fixed in

“any tangible medium of expression . . . from which they can be perceived, reproduced, or otherwise communicated,” including but not limited to both published and non-published literary, pictorial, graphic, artistic, audiovisual, sound recording, architectural, and certain other intellectual works. 17 U.S.C. §102. It also applies to and protects compilations and derivative works. 17 U.S.C. §103.

16. The seismic data licensed on a non-exclusive basis by GPI to the Debtors under the MLAs are original works of authorship by GPI that are, in part, expressed in words, numbers, or other verbal or numerical symbols or indicia, such as books, periodicals, manuscripts, film, tapes, or disks, and, in part, is in the form of pictures, graphics, charts, diagrams, photographs and prints. The seismic data is in essence the pictorial and graphic results of a sound recording obtained by hydrophone which is manipulated, using sophisticated state of the art and proprietary software, to obtain a one of a kind interpretation and analysis of the recording. Further, the seismic data is in large part formed by collecting and assembling data that is selected, coordinated, or arranged in such a way, using GPIs judgment, that the resulting work as a whole constitutes an original work of authorship. Thus, the Seismic Data is clearly covered and protected by the Copyright Act.

17. In light of the foregoing, because GPI does not consent to the assumption and assignment of the Debtors’ rights under the Master License Agreement to third parties, the Debtors should be precluded under Bankruptcy Code §365 (c)(1), from doing so.

Conclusion

WHEREFORE, premises considered, GPI respectfully requests that the Court deny any authority sought by the Debtors to assume and assign or transfer any of the MLAs with GPI (including, without limitation, all contracts and rights that the Debtors are seeking to assume and

assign that relate to, or involve GPI) absent its express written consent, and grant to GPI such other and further relief to which it is justly entitled.

Dated: February 23, 2016.

Respectfully submitted,


JACKSON WALKER L.L.P.

By:  -ECF

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Certificate of Service

I hereby certify and verify that on February 23, 2016, the forgoing Limited Objection was served via CM/ECF to all parties registered to receive electronic notice.

By:  -ECF
Matthew D. Cavanaugh