

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

In re:	§	CHAPTER 11
	§	
VERTEX ENERGY, INC., ET AL,	§	CASE No. 24-90507 (CML)
	§	
Debtors.	§	

**PLAINS MARKETING, L.P.’S LIMITED OBJECTION AND RESERVATION
OF RIGHTS IN RESPONSE TO DEBTORS’ EMERGENCY MOTION AND
INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN
POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE
CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING CLAIMS
WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV)
AUTHORIZING THE USE OF CASH COLLATERAL, (V) GRANTING
ADEQUATE PROTECTION, (VI) MODIFYING THE AUTOMATIC STAY AND
SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF
(Relates to D.E. 20)**

TO THE HONORABLE CHRISTOPHER LOPEZ, UNITED STATES BANKRUPTCY
JUDGE:

Plains Marketing, L.P. (hereinafter referred to as "PLAINS") files this Limited
Objection and Reservation of Rights to Debtors’ Debtors’ Emergency Motion And
Interim Order (I) Authorizing The Debtors To Obtain Postpetition Financing, (II)
Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing
Claims With Superpriority Administrative Expense Status, (IV) Authorizing The Use Of
Cash Collateral, (V) Granting Adequate Protection, (VI) Modifying The Automatic Stay
And Scheduling A Final Hearing, And (VII) Granting Related Relief (the “DIP Motion”)
and would show the Court as follows:



I.

Background Facts

1. PLAINS is a limited partnership with its principal place of business in Houston, Texas.

2. Debtors filed the DIP Motion on September 25, 2024. The preliminary DIP Motion was heard on September 25, 2024, and a preliminary order was entered September 25, 2024, at docket entry 53.

3. PLAINS and Debtor Vertex Refining Alabama LLC (“Debtor”), as successor in interest to Shell Chemical LP, are parties to a Terminal Services Agreement originally entered into March 1, 2015, as subsequently amended numerous times (the “TSA”), whereby PLAINS provides unloading, loading and storage services for Debtor’s crude oil (“Product”) at PLAINS’ Mobile, Alabama terminal (the “Terminal”). Macquarie Energy North America Trading Inc. (“Macquarie”) claims to hold legal title to the crude held at the Terminal.

4. Pursuant to the terms of the TSA and applicable statutory, common law and contractual law, PLAINS has a first priority warehouse lien on commodity stored by Debtor at the Terminal. See, Texas Business and Commerce Code section 7.209.

5. Currently, Debtor owes PLAINS at least \$90,778.00 for unpaid prepetition invoices related to the TSA. It is projected that Debtor will owe PLAINS approximately \$250,000 for services in connection with the TSA next month. Debtor will also owe PLAINS tank cleaning charges at the expiration of the TSA.

6. As set forth in the TSA, and as provided for by applicable statutory and common law, PLAINS has a priority, perfected possessory warehouse lien for unpaid amounts. *See, e.g. In re Sharon Steel*, 176 B.R. 384, 389 (Bankr. W.D. PA. 1995); *M & I Marshall & Isley Bank v. Kinder Morgan Operating L.P.*, 368 S.W. 3d 160 (Mo.App. E.D. MO 2012).

PLAINS’S Objects to the DIP Facility Provision to the Extent it Attempts to Prime PLAINS’ Liens

7. The Court should deny approval of the DIP Motion to the extent that PLAINS’s pre- and post-petition liens are primed by the DIP Lender¹. PLAINS has a first priority possessory lien in Debtor’s commodity in its possession for all unpaid and future amounts. See section 7.209 of the Texas Business and Commerce Code.

III.

If the DIP Facility Is Intended to Prime PLAINS’ Liens, It Violates Section 364(d) Because It Unnecessarily Primes PLAINS’s Liens Without Adequate Protection.

8. Macquarie entered into a Consent to Storage and Usage Agreement effective April 1, 2022, whereby Macquarie expressly subordinated its lien on Debtors’ Product to PLAINS. PLAINS clearly has a first priority lien on the Product. The Debtors have not adequately protected PLAINS from the lost value from any proposed priming of its lien. The Debtors have the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(1). Section 364(d) requires a strong showing that the party to be subordinated is adequately protected. *See, e.g., In re LTAP US. LLLP*, No 10-14125 KG, 2011 WL 671761, at 3-4 (Bankr. D. Del. Fed. 18, 2011) (denying a motion for

¹ The loan documents acknowledge warehouse liens as Permitted Liens but do not address the priority vis a vis the DIP lenders.

priming DIP financing despite what the court admitted might be a “harsh result”). Debtors cannot meet the burden of proof that PLAINS will be adequately protected if the DIP Facility is approved and if PLAINS’ lien is primed.

WHEREFORE, PLAINS respectfully request that the proposed DIP order carve out PLAINS’ priority statutory lien and allow PLAINS to retain a priority lien to the extent of all past and future amounts owed pursuant to the TSA, either pre- or post-petition, and for such other and further relief to which PLAINS may be entitled.

Respectfully submitted this 7th day of October 2024.

Respectfully submitted,

/s/ Patricia Williams
Prewitt
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