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Local Counsel for Sequitur Permian, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

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SEQUITUR PERMIAN, LLC'S OPPOSED MOTION FOR LEAVE TO TAKE THE DEPOSITION OF BRIAN SEWARD AND BRIEF IN SUPPORT

Defendant, Counter-Plaintiff, and Third-Party Plaintiff, SEQUITUR PERMIAN, LLC ("Sequitur"), files this *Opposed Motion for Leave to Take the Deposition of Brian Seward, and Brief in Support* thereof would show unto the Court, as follows:

I.
MOTION FOR LEAVE

1. Sequitur seeks leave to conduct the fact witness deposition of Brian Seward after the discovery deadline. Good cause exists for the leave requested, as Mr. Seward's testimony is necessary for a complete factual record, and the deposition will not impact any other deadlines in this matter.

II.
BRIEF IN SUPPORT

A. BACKGROUND.

2. Mr. Brian Seward is an employee with Union Pacific Railroad. Mr. Seward has been identified as a fact witness by Plaintiff in their disclosures with the following relevant knowledge: "Mr. Seward has knowledge of the availability of rail transportation service offered by Union Pacific Railroad to move crude oil from the Permian Basin area, including Barnhart, to the Gulf Coast."[1]

3. The discovery deadline in this case was on February 28, 2021. Sequitur's attempts to schedule Mr. Seward's deposition prior to the deadline were derailed by the recent cold storm. Sequitur was able to get Mr. Seward to agree to appear for a deposition via Zoom in March 2021, more specifically, during the week of March 15th. However, Maalt has refused to acquiesce in

[1] **Exhibit A**, Appx. pg. 11.

conducting this deposition after the discovery deadline. Therefore, Sequitur seeks leave so that it may conduct the deposition of Mr. Seward prior to trial.

B. ARGUMENT & AUTHORITIES.

4. A scheduling order may be modified with good cause. FED. R. CIV. P. 16(b). Good cause exists to allow the sought deposition, for three reasons. First, the scheduling of the deposition was impacted by the recent cold storm that struck Texas, as it delayed counsel's scheduling of the depositions. Since Mr. Seward lives out of state and outside the subpoena power of this court, Sequiturs' counsel has been attempting to work with Union Pacific in scheduling the deposition of Mr. Seward. Union Pacific replied with the availability of Mr. Seward prior to the discovery deadline on February 12, 2021. Unfortunately, the correspondence was sent during the recent cold storm at a time Sequitur's counsel was without power and without the ability to communicate.[2] Once counsel returned to the office and noticed the correspondence, counsel responded with a request of dates within a reasonable time period in the month of March. When proposed March dates of March 18 or 19 were provided to Plaintiff's counsel, Maalt responded that it would not consent to the deposition after the discovery deadline.

5. Second, the deposition is important to develop a complete record at trial. This fact has been recognized by both parties in disclosing Mr. Seward as an individual with knowledge of the relevant facts.

6. Finally, taking the deposition of Mr. Seward will not impact any other deadlines and/or the trial date. In setting the discovery deadline on February 28, 2021, the Court stated that its primary concern was the effect on the Motion for Summary Judgment deadline:

> "Let's say fact discovery cutoff of February 28, 2021. Again, the reason that I want to cut that short is I want to be able to get to, again a meaningful summary judgment – I don't want our summary judgment process to be encumbered with people

[2] **Exhibit B**, Appx. pg. 27.

> saying, we still have time to discovery cutoff. That's why I'm setting it at February 28th."[3]

This concern of the Court has been diminished by the fact that both parties have filed their respective motions for summary judgment. Three of the motions are already under consideration by the Court, and the fourth was recently filed by Maalt and is set for oral hearing on April 13, 2021. None of these motions for summary judgments were, nor will be, affected by the sought deposition.

7. Finally, conducting the deposition after the discovery deadline will not prejudice Maalt. Two fact witness depositions have occurred, or are scheduled to occur, after the discovery deadline. Specifically, the deposition of Maalt's corporate representative occurred on March 5, 2021, and the deposition of Robert Wright is scheduled for March 11, 2021. Conducting these depositions after the discovery deadline has not affected any other deadlines nor has it caused any prejudice to Maalt. Likewise, the deposition of Mr. Seward would not affect any deadlines nor cause any prejudice to Maalt.

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Sequitur Permian, LLC requests that the Court grant this Motion for Leave and permit the deposition of Brian Seward and for all other and further relief to which it is entitled, whether at law or in equity. A copy of Sequitur's proposed order granting the relief requested herein is attached as **Exhibit A**.

[3] **Exhibit C**, Transcript of Scheduling Conference, Appx. pgs. 40-41.

Dated: March 10, 2021.

Respectfully Submitted,

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ATTORNEYS FOR DEFENDANT, SEQUITUR PERMIAN, LLC

CERTIFICATE OF CONFERENCE

I hereby certify that an email requesting Plaintiff's counsel availability for the sought deposition was sent on March 3, 2021. When no response was received, a phone conversation occurred on March 5, 2021, whereby Plaintiff's counsel, Jim Lanter, stated that he was opposed to the deposition.

/s/ Matthew A. Kornhauser
Matthew A. Kornhauser

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2021 a copy of the foregoing document was served through the Court's ECF system on those parties receiving ECF notice, and as indicated below on the parties reflected below.

Via Email:
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/s/ Suzanne K. Rosen
Suzanne K. Rosen

EXHIBIT “A”

N THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,[4]	§	**Case No. 20-42002-ELM-11**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

ORDER GRANTING SEQUITUR PERMIAN, LLC'S OPPOSED MOTION FOR LEAVE TO TAKE THE DEPOSITION OF BRIAN SEWARD

[4] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

ON THIS DAY, the Court considered *Sequitur Permian, LLC's Opposed Motion for Leave to Take the Deposition of Brian Seward* (the "Motion") [Adv. Docket No. ___). After giving consideration to the Motion and all related documents, the Court is of the opinion that it should be granted.

Accordingly, it is hereby ORDERED that the Motion is hereby GRANTED.

It is hereby further ORDERED that defendant, Sequitur Permian, LLC, shall be afforded leave to conduct the deposition of Brian Seward.

END OF ORDER # #

Prepared and submitted by:

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