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

<p>In re:</p>	§	<p>Chapter 11</p>
<p>VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,¹</p>	§	<p>Case No. 20-42002-ELM-11</p>
<p style="text-align: center;"><i>Debtors.</i></p>	§	<p>(Jointly Administered)</p>
<p>MAALT, LP,</p>	§	<p>ADV. PROC. NO. 20-04064-ELM</p>
<p style="text-align: center;"><i>Plaintiff,</i></p>	§	<p>ADV. PROC. NO. 20-04064-ELM</p>
<p>v.</p>	§	<p>ADV. PROC. NO. 20-04064-ELM</p>
<p>SEQUITUR PERMIAN, LLC,</p>	§	<p>ADV. PROC. NO. 20-04064-ELM</p>
<p style="text-align: center;"><i>Defendant.</i></p>	§	<p>ADV. PROC. NO. 20-04064-ELM</p>

**SEQUITUR PERMIAN, LLC'S ORIGINAL PROPOSED
FINDINGS OF FACT AND CONCLUSION OF LAW**

¹ 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.



I. FINDINGS OF FACT AND CONCLUSIONS OF LAW²

A. Findings of Facts

Sequitur is in the crude oil production business, with a couple of hundred wells over approximately 500 square miles in and around Barnhart, Texas, near the Midland Permian Basin (“Permian”). By the Spring of 2018, the Permian was the top oil producing region in the United States. The Permian, at that time, had the largest source of crude oil due to advanced fracking techniques enabling a higher yield of crude oil. The Permian also had the lowest production costs for producers. This made the Permian a desirable region for oil production.

While pipelines were the primary mode for transporting crude oil to destinations for sale, the popularity of drilling in the Permian, along with the technological advancements in fracking, led to such a high yield of crude oil that the takeaway capacity of existing pipelines from the Permian was reached. Therefore, a surplus supply of crude oil was stranded in the Permian, which opened up a price spread whereby the seller could move the crude oil by rail to another trading point and sell the crude oil for a higher price. This is known as arbitrage.

The arbitrage opportunities in the Permian that existed during 2018 due to the price spread were only temporary because there were pipeline expansions planned to connect the Permian to the United States Gulf Coast that would be operational during the middle of 2019. Once the pipelines were established, this would eliminate the price differential and undermine the need for crude-by-rail transport (“CBR”).

² To the extent any of the findings of facts herein are deemed conclusion of law, or any of the conclusions of law are deemed findings of facts, Sequitur moves that the Court consider them as such. Sequitur further reserves the right to amend or supplement these Findings of Facts and Conclusions of Law consistent with the law and based on the facts to be offered or admitted during trial by Sequitur. Additionally, Sequitur incorporates herein by reference its Trial Brief and all summary-judgment briefing previously filed by Sequitur in this case.

In May 2018, a differential existed in the price of crude oil in the Permian compared to the Gulf Coast that presented an arbitrage opportunity for Sequitur. If the total cost of transportation and delivery was less than the amount for which the crude oil could be sold at the Gulf Coast, then Sequitur could potentially earn a higher profit by shipping the crude oil by rail in order to sell it at the Gulf Coast. Therefore, Sequitur saw this as an attractive chance to move its crude oil by rail to sell it at the Gulf Coast and take advantage of the price differential and temporary window for additional profit.

In about May 2018, Sequitur contacted Vista Proppants and Logistics, Inc. (“Vista”), an affiliate of the Plaintiff, Maalt, LP, (“Maalt”) (collectively, “Maalt”) about utilizing Maalt’s existing frac sand transloading terminal in Barnhart, Texas (the “Barnhart Terminal”) to ship crude oil to the Gulf Coast by rail. Sequitur made it clear to Maalt that it was seeking to use the Barnhart Terminal for the shipment of Sequitur’s crude oil to take advantage of a steep discount as to the barrels sold in the Permian as compared to those sold on the Gulf Coast.

Maalt was also interested in CBR from the Barnhart Terminal during May 2018 because the market for transloading frac sand changed when operators began locally sourcing the frac sand in the Permian. In other words, transport by rail for sand was no longer economical or competitive with local sources. Maalt also recognized a unique opportunity to use the Barnhart Terminal for CBR because the Permian pipeline capacity was constrained, and it believed that the Barnhart Terminal was one of few rail facilities that could be retrofitted for CBR. Although the Barnhart Terminal would need to be modified by any customer wanting to transload crude oil, it has been used for CBR several years prior and could be transitioned.

In sum, a CBR scenario at the Barnhart Terminal from May 2018 for an approximate 18- to 24-month temporary window while pipelines were still being constructed to connect the Permian

to the Gulf Coast would have been beneficial for both Sequitur and Maalt due to market conditions for oil and the change in the frac sand market.

Sequitur advised Maalt it had no experience in CBR. In response, Maalt represented they were experts in rail transport who could connect Sequitur with a business partner to handle transportation services for the crude oil, including securing rail cars and rail service. During further communications with Maalt, Sequitur also made it clear to Maalt that it was inexperienced with CBR and securing rail cars to transport crude oil from the Barnhart Terminal to the Gulf Coast. To address Sequitur's inexperience, Maalt, through its representatives, Chris Favors ("Favors") and Jon Ince ("Ince"), represented to both Braden Merrill ("Merrill"), VP & CFO of Sequitur, and Mike Van den Bold ("Van den Bold"), President of Sequitur, that Maalt would connect Sequitur with business partners who could provide the necessary rail cars and rail service at the Barnhart Terminal. According to Van den Bold, Maalt represented to Sequitur that Maalt "were rail experts, their employees had worked for the railroads, that they could help get a deal done, that they had relationships, they had the expertise, that they could help, you know, help coordinate and collaborate to get these contracts in place, to help get the deal done."

Based on the foregoing and as further discussed below, it was reasonable and appropriate for Sequitur to rely on Maalt to connect with a business partner to handle the logistics portion of CBR at the Barnhart Terminal. Notably, the temporary nature of the opportunity to engage in CBR to take advantage of the price spread in the Permian compared to the Gulf Coast, and other existing CBR challenges, created hurdles to implementation of CBR product transportation services at the time.

For a CBR operation to be viable, it had to have four critical elements secured and implemented, including the following: (1) an origin loading facility with an agreement with a

serving railroad, (2) tank cars that comply with federal and individual railroad requirements to ensure safe transport, (3) linehaul transportation with the appropriate rail carriers to achieve delivery from the origin and destination points, and (4) a destination terminal with both track and tank capacity to accept and unload product.

With respect to the origin loading facility, although this can be as minimal as portable pumps located at a siding or industry, in the United States, these facilities have typically been significant investments featuring fixed loading racks, tankage, and loop tracks capable of supporting unit trains. Additionally, the facility must have an agreement with the serving railroad, usually called an Industrial Track Agreement (ITA), in which the facility and the railroad agree as to the type of service to be provided and the kinds of cars and commodities that the facility will be allowed to ship.

With respect to tank cars, they are not provided by railroads but rather by private parties who lease this equipment to shippers, or shippers may own tank cars outright. There are numerous tank car types and specifications, primarily relating to the product handling and containment requirements of specific cargoes. Tank cars are subject to strict federal regulations that govern the handling of hazardous materials in particular, including restrictions on specific car types and specifications permitted to handle flammable products such as crude oil. In addition to federal regulations, railroads have implemented their own requirements for tank car shippers, which can involve both minimum mechanical specifications as well as pricing penalties for certain tank car models.

With respect to linehaul transportation, this is the transportation of loaded cars or trains from origin to destination, which begins with the serving carrier who accesses the origin loading facility. Linehaul service may involve a single railroad if that railroad connects both the origin and

destination points. Otherwise, multiple carriers are involved who must interchange the cars or trains between one another to reach a final destination.

Linehaul transportation is paid for based on a freight rate or rates paid to the serving railroad(s), usually on a per-car basis. To be a valid rate that confers to the shipper the authority to actually ship cars, a rate is formally published under either a public tariff or a contractual rate agreement between the carrier and shipper that often involves both term and volume commitments. For routes involving multiple railroads, each railroad participating in the route must have a definitive agreement in writing either with the shipper (in the case of Rule 11 rates) or with the originating or terminating carrier who has in turn engaged in a formal agreement with the shipper to provide a single invoice (“through rate”) with the shipper, which encompasses all of the involved railroads’ freight charges in a single price. “Ballpark” or estimated rate indications are not actual rates that would permit the shipment of cars.

With respect to destination terminals for crude-by-rail, they are most often large scale storage facilities with sufficient tankage to offload and hold the product of multiple trains, and such terminals are usually also connected via pipeline to local area refineries. Shippers must have definitive agreements with destination terminals confirming both track and tank capacity to accept and unload product. Certain refineries can also receive CBR shipments directly.

In the industry, in order for any crude-by-rail operation to be viable, it must have all of the above required elements and at commercially reasonable costs and terms. Consistent with the industry, “product transportation services” under the TSA do not exist unless all four of these elements are in place and of a sufficient size and scope to accommodate the operations contemplated. Specifically, that means the product transportation services must accommodate a

volume of activity that would equate to approximately 1.4 90-car unit trains shipped per week, or six unit trains per month.

Sequitur also had its own unique challenges making it critical for Sequitur to obtain a business partner to facilitate logistics for CBR including procuring tank cars, obtaining routes and rates with rail carriers, and securing a destination facility. In addition to Sequitur's lack of experience in CBR, as noted above, the Barnhart Terminal was also located on the Texas Pacifico ("TXPF") short line, which was only one piece of product transportation services. That is because the TXPF is unable to provide single-line service to the Gulf Coast or any destination terminal or refinery.

Sequitur acknowledged these challenges early on to Maalt, and Sequitur also reached out to with major oil trading companies including BP, Valero, and Shell concerning purchasing their crude oil and logistics. Sequitur recognized that to get a deal done for CBR transport, it needed an arrangement with a business counterparty that had rail cars, rates, volumes, and contracts to get the crude oil from Barnhart to the US Gulf Coast.

Maalt introduces Sequitur to Jupiter, a business partner specializing in CBR, and represents to Sequitur that Jupiter had railroad contacts, access to railcar rates, and rail cars for CBR to the US Gulf Coast.

From initial negotiations, Maalt assured Sequitur that it could partner with Jupiter Marketing & Trading LLC ("Jupiter"), a business partner of Maalt's that had railroad contacts, rates, and access to rail cars.

On June 1, 2018, Sequitur and Vista entered into a Letter of Intent ("LOI") regarding the use of the Barnhart Terminal to continue with the parties' investigation into the feasibility of an agreement to lease the terminal to transport crude by rail. The LOI reflected the parties' intent,

but not obligation, to enter into a Terminal Services Agreement (“TSA”) for a term of September 2018 to December 2019 for Sequitur to utilize the Barnhart Terminal to ship CBR.

After the execution of the LOI, Favors (Maalt) emailed Merrill (Sequitur) and Travis Morris, the Chief Commercial Officer of Jupiter, regarding Maalt working with both Sequitur and Jupiter regarding the Barnhart Terminal. Notably, Jupiter had entered into a contract to transload crude at one of Maalt’s other terminals in Pecos, Texas. Favors (Maalt) testified this introduction was just another connection because “Sequitur had no rail experience” and that “the introduction was there to Jupiter to facilitate the logistics side of it,” which meant “acquiring railcars, getting rates, moving railcars, making sure service was there.” In other words, Maalt’s introduction of Jupiter to Sequitur was provided so that Jupiter could provide the necessary transportation services for Sequitur in the event that Maalt and Sequitur ultimately entered into the TSA.

Specifically, Maalt’s Favors was asked “[a]fter the LOI, Exhibit Number 6, was executed, what role, if any, do you envision Jupiter playing relative to the Barnhart facility?” Favor answered that “[t]he potential was there was to use their logistics, crude movement, rail or otherwise, to help Sequitur in getting the project to this finish line. Right? Ultimately, getting oil from Barnhart to the Gulf Coast.”

After an initial meeting between Sequitur and Jupiter, Ince (Maalt) confirmed to Merrill (Sequitur) that Jupiter could get them the necessary rail service for the Barnhart Terminal. Specifically, Merrill testified that Ince told him “that Jupiter was . . . the real deal in terms of being able to get it done. They had the rates. They were able to get cars and that we should go with those guys.”

Tony Wroten, (“Wroten”) Senior Finance Associate of Sequitur, also confirmed Maalt promised that Jupiter would deliver the trains if Sequitur’s first choice for a logistical partner,

Shell, did not come to fruition. Specifically, Wroten testified that “[w]e had been introduced to Jupiter by, you know, the Vista guys, Jon and Chris, and you know, we had initial conversations with them” and that “we kind of relied on that and you know, that – that helped us feel, you know, get some comfort around potentially doing something with Jupiter if things with Shell didn’t – didn’t pan out.”

Ultimately, Sequitur spoke with Shell through the summer of 2018 about providing transportation of Sequitur’s crude to the Gulf Coast, but Shell could not get rail service from Barnhart to the Gulf Coast.

On August 3, 2018, Favors emailed Merrill and Van den Bold, pressuring Sequitur to execute the TSA. Favors stated, “I am receiving heavy pressure to get the agreement fully executed” and that “[w]e have been offered slightly better terms from [an]other party that said they will execute an agreement today.”

At the time, Merrill informed Favors that he had not yet had a commitment from any business partner to provide the logistics of transportation services from the Barnhart Terminal. Favors recalled stressing again at that time that if Sequitur needs a business partner that Jupiter was a “prospect ... [for] helping with logistics.” This representation was consistent with the statements previously made by Favors in Maalt’s introduction of Jupiter to Sequitur.

Sequitur entered into the TSA with Maalt, with an effective date of August 6, 2018. Consistent with the entire premise and purpose of the TSA—that Sequitur would be able to cost-effectively deliver oil to the Terminal to be transloaded onto railcars that would be delivered to the Louisiana Gulf Coast refineries—throughout the TSA references are made to “railcars” as well as a reference to the “train loading area.” Thus, it was expressly made clear to and understood by

both parties that without access to trains and railcars on a viable basis, the essential purpose of the TSA was for naught.

The TSA set forth that Maalt would provide the labor, supervision, and materials necessary to deliver, handle, measure, and redeliver (hereinafter “transload”) the oil to Sequitur or to Sequitur’s third-party carriers. In exchange for Maalt’s operation of the Barnhart Terminal and its transloading of crude oil for Sequitur, further conditioned upon the occurrence of the Terminal Operations Commencement Date, Maalt would be paid a fee depending on the amount of oil actually transloaded through the Terminal. Any obligations of Sequitur, including any obligation to make payments, was expressly made subject to the “Force Majeure” clause, among other conditions.

During a period of Force Majeure, all obligations of Sequitur were to be suspended. If the Force Majeure event could not be cured reasonably and economically, as determined by the affected party, then the affected party could decide not to remedy the situation and cancel the TSA. The TSA contained two defined benchmark dates. The first date was the Target Terminal Operations Commencement Date (the “Target Date”), which was defined in the TSA as September 1, 2018. While the TSA made clear that this was a target date for the parties to begin operations at the Terminal, this date (September 1, 2018) was not the effective date for the operations at the Terminal to be commenced for the transloading of crude oil. The second date, the Terminal Operations Commencement Date (the “Commencement Date”), is the date in the TSA for when Maalt’s performance was to begin and the date the Barnhart Terminal was to become fully operational for the transloading of the crude oil on to rail cars.

At the time the TSA was executed, during August 2018, Merrill informed Maalt that he was in talks with Shell as a business partner and if that did not go through then Sequitur would

turn to Maalt's recommended provider, Jupiter, for transportation services. By mid-August 2018, a deal for transportation services with Shell had fallen through, and by the time of the Target Date, Sequitur shifted its reliance to Jupiter for the logistics or transportation services of moving crude out of the Terminal.

Jupiter understood its role to be that of a rail logistics partner. As a logistics partner, Jupiter saw its role as "providing railcars, scheduling railcars, getting crude delivered to the Gulf Coast and selling the product in the market." As noted, for CBR to be viable, Jupiter would have needed to facilitate the tank cars, linehaul transport, and destination terminal.

The Class 1 rail carriers include the Union Pacific ("UP"), the Burlington Northern-Santa Fe ("BNSF"), and the Kansas City Southern ("KCS"). The two Class 1 rail carriers critical to linehaul transport from Barnhart were the UP and the BNSF because either carrier could provide service to the Nustar final destination off-loading facility ("Nustar") in St. James, Louisiana where Jupiter had tankage. The KCS was not an option because it could not provide service to Nustar. A contract to provide the rail transportation was negotiated between Sequitur and Jupiter, but Sequitur waited to finalize and execute until Jupiter had secured rail transportation.

When the Target Date was not reached to provide transportation services by rail, Sequitur entered into a contract with Jupiter whereby it would transport Sequitur's crude oil from and around Barnhart by truck instead of rail. This demonstrates Jupiter's role as the provider of logistics because when CBR was becoming problematic, Jupiter provided substitute logistical means of transporting Sequitur's crude oil for sale in the US Gulf Coast.

Between September and the beginning of November 2018, there were weekly "rail" meetings between Malt, Jupiter, and the TXPF (the short rail line where the Barnhart terminal was

located) to discuss logistics. Jupiter reported its progress concerning securing rail rates, rail routes, and railcars in these meetings.

Jupiter spent months trying to acquire rail transportation service for Sequitur from Barnhart to the Gulf Coast. Jupiter, through its representative, Travis Morris, communicated directly with the TXPF and other Class 1 carriers that could have provided delivering service to potential end-market destination terminals. For instance, Morris testified that Jupiter would get rate quotes for prices to ship crude over the short line TXPF but that there were no contracts between the TXPF and BNSF or UP, necessary Class 1 rail carriers, to handoff the railcars to get them to the Gulf Coast. Additionally, the UP route did not come to fruition because there were issues with the necessary run-through agreements with the short line, Fort Worth & Western (“FWWR”) and the interchange with UP.

Jupiter also had issues getting railcars as new classifications required the retrofit of old railcars or the purchase of new railcars. The number of these acceptable cars was limited in the market. Jupiter was able to acquire some railcars from Equinor that it planned to divert to Barnhart, Texas. However due to the lack of the interchange agreements between the railroads, when Jupiter attempted to send the railcars to Barnhart, the railcars got stuck in the middle of nowhere. Due to these issues, Equinor refused Jupiter’s further use of their railcars. When Equinor pulled their railcars, Jupiter had no other options.

Shortly thereafter on October 16, 2018, Jupiter sent an email to the TXPF stating that Jupiter would have to be on hold with further service to Barnhart “until the UP/TXPF, Fort Worth Western come to a run through agreement or get the [BNSF] to play ball.”

Despite these issues, Jupiter continued to assure Sequitur that rail service was imminent. As of the beginning of November of 2018, Jupiter did not acquire railcars to transport crude out of Barnhart.

The last and only option was for Jupiter to look into shipping rail over the KCS line. On or about November 29, 2018, Morris sent an email to Merrill in which he stated that “I just got off the phone with Vista giving an update. I should be wrapped up today with the KCS/UP. In this case we would expect railcars to arrive within 5-10 days. I will call you later.”

Morris testified that the KCS/UP option he was referring to was with Murex. Morris further testified that the Murex option could not be secured and that Murex could never guarantee that a deal could be done with Jupiter.

Morris indicated that the KCS did not ship to Jupiter’s end destination at Nustar. In addition, there was no commercial agreement in place or capacity to ship Sequitur’s crude oil to an alternative destination terminal in New Orleans called Gulf Gateway used by Murex. According to Morris, Jupiter was offering every solution they could think of and trying to protect Jupiter’s relationship with Sequitur at the end of November 2018. Even if a deal could be struck with Murex concerning capacity at Gulf Gateway, Morris testified it would not have mattered because Jupiter lost the Equinor cars. By November 30, 2018, the deal with Murex was “just disintegrating” per Morris.

Therefore, during November 2018, Sequitur reached out to Murex directly and spoke with Robert Wright of Murex to discuss the possibility of Murex providing railcars and transport service. However, Josh Monroe, the Director of Sales and Marketing for the KCS who handled all customer communications for the KCS concerning crude transport, testified that the KCS faced challenges with putting together deals for CBR out of the Permian, including a lack of destination

terminal options for the KCS. A final destination to Murex's facility in New Orleans was never discussed with Monroe. No rates were ever quoted by the KCS to Murex. No necessary locomotive utilization agreements were in place to facilitate CBR from Barnhart to any destination facility. Monroe was not aware of any efforts by Murex to pursue details of getting rates from the KCS to determine feasibility of rates, capacity, or rail service from the Barnhart Terminal to the US Gulf Coast. Monroe never spoke or corresponded with Wright concerning taking Sequitur's oil from the Maalt terminal in Barnhart to the Murex facility in New Orleans, Louisiana by way of the KCS.

When no railcars were secured, Sequitur determined that the transportation services could not be obtained by their logistics provider, and therefore, there was unavailability, interruption, delay, or curtailment of Product transportation services, or other causes beyond the reasonable control of Sequitur, which gave rise to a Force Majeure event under the TSA. On December 7, 2018, Sequitur sent written notice Maalt that Sequitur had declared an existing "Force Majeure" under the TSA because of the "unavailability, interruption, delay or curtailment of rail transportation services" for the oil, "despite continued efforts to procure such services."

More specifically, a Force Majeure event occurred because crude oil transportation service (e.g., rail service and capacity) to allow for Sequitur's use of the Barnhart Terminal for the intended purposes of the TSA was not available despite diligent efforts to procure such service and capacity, and such event of Force Majeure was not within the reasonable control of Sequitur. The written notice also noted that Sequitur anticipated that the Force Majeure event would "continue for the foreseeable future."

Instead of responding to the December 7, 2018 notice of a Force Majeure event, Maalt sent an invoice to Sequitur for what it described as a "Quarterly Minimum" of \$531,216.00.

On January 31, 2019, Sequitur responded to the invoice with a letter indicating that “[i]nasmuch as the existing Force Majeure Event continues to be in effect, Customer does not owe any Throughput Fees, Shortfall Payments or any other amounts to Terminal Owner; accordingly, the Invoice is hereby disputed in its entirety.” The letter also explained that “the Terminal Operations Commencement Date has not occurred as per the terms of the Agreement,” and “[t]herefore, in accordance with the terms and conditions of the Agreement, the Minimum Volume Commitment is also not in effect, and no amounts are owed by Customer to Terminal Owner.”

The Terminal Operations Commencement Date did not occur because, in Sequitur’s reasonable determination, the Terminal was not fully operational to enable the performance and receipt of the Services and not all Regulatory Approvals for the Services had been obtained. Additionally, Terminal Operations Commencement Date did not occur because Sequitur did not send a written notice sent to Maalt evidencing the Terminal Operations Commencement Date.

On February 8, 2019, Sequitur sent Maalt another letter indicating that the Force Majeure event could not be remedied, and Sequitur declared that the TSA was terminated per its terms.

Sequitur retained two experts from PLG Consulting, Graham Brisben (“Brisben”) and Roger Nelson (“Nelson”) (collectively, the “Experts”), to evaluate (1) “whether product transportation services were interrupted, unavailable, curtailed, and/or delayed as defined in the TSA’s Force Majeure clause” and (2) “whether the conditions that triggered Sequitur’s Force Majeure claim could be reasonably and economically mitigated.”

The Experts indicated in their report that CBR transportation services consists of four elements, including (1) an origin loading facility; (2) tank cars; (3) linehaul transportation; and (4) a destination terminal. After conducting a review and analysis, the Experts opined that “Sequitur, through its Maalt-referred partner, Jupiter, or other sources, was never able to obtain sufficient and

timely product transportation services including suitable railcars, linehaul transportation from all railroads required for a particular route, and a destination offload terminal with available capacity.”

The Maalt terminal at Barnhart is located on the Texas Pacifico (TXPF) short line, which by itself cannot provide the linehaul component of product transportation services because it is unable to provide single-line service to the Gulf Coast or to any destination terminal or refinery. Although TXPF can initiate the first “link in the chain” as the originating carrier, a viable CBR operation cannot occur without definitive commercial and operational agreements in place with other railroad(s) needed to effect delivery to a final destination. TXPF is able to interchange directly with only one Class I carrier (BNSF), and must rely on another short line railroad (Fort Worth and Western) to access KCS and UP.

Given the proximity of Sequitur’s oil and gas lease holdings and production area, it was logical for Sequitur to seek an arrangement with Maalt for use of their terminal at Barnhart to enable crude-by-rail operations. Jupiter, however, was not able to overcome the combination of hurdles and constraints facing all 2018 aspirants of CBR transportation from the Permian, as well as the specific extenuating circumstances facing Sequitur’s planned operations from Barnhart cited above. Later, as Jupiter struggled to gain traction, Sequitur continued its own direct dialogue with other prospective partners and providers of product transportation services. Based on the materials provided, a multitude of avenues and solutions were explored by Jupiter and by Sequitur independently to fulfill all four of the required elements for product transportation services.

As to the required DOT-117 cars, at least three trainsets that could not be located. UP would not enter into a power sharing agreement with TXPF. No rate was ever provided. As to required DOT-117J cars, at least three trainsets that could not be located. No rate was ever provided. No destination terminal ever identified or contracted.

KCS did not enter into a power sharing agreement with TXPF specific to the contemplated operations. No actual rates were ever provided under several different scenarios that were explored using KCS. Specifically, dialogue occurred between KCS and Jupiter's representative, Dion Nicely, about possible routes to the east coast via Meridian MS, but no actual rates were provided. Also, a rate estimate is not an actual rate that can be used to ship cars. No rate was provided from any connecting railroad for movement beyond Meridian to an actual destination terminal or refinery.

Dialogue occurred between KCS and Jupiter's railcar provider Equinor regarding rates from Barnhart to Kansas City, but only a "ballpark" rate estimate was provided and one that would not have applied to 90 car unit trains. Also, a rate estimate is not an actual rate that can be used to ship cars, and no rate was provided from any connecting railroad for movement beyond Kansas City to an actual destination terminal or refinery.

Dialogue also occurred between Sequitur and potential partner Murex regarding possible movements to their terminal in New Orleans that may have included routing via KCS, but no actual rates were provided. For each of the potential KCS scenarios, no destination terminal was ever identified or contracted. Specifically, for KCS scenarios A-B, no specific "east coast" destination was identified or contracted in the scenarios where KCS would hand off to the Norfolk Southern or other railroad(s). For potential KCS scenario C, Murex indicated it lacked capacity at its New Orleans terminal.

Jonas Struthers (railcars) \$5MM "pay to play" fee commercially unreasonable and offered no guarantee of access to cars Murex. No specific number of cars/trainsets or car specifications were proposed. No information available that indicates Murex pursued details of getting rates from railroads or actually "ran the traps" to validate feasibility and confirm capacity, rates, carriers,

routes, and frequency of service. Murex indicated it was “near capacity” with its own CBR operations and lacked capacity at its New Orleans terminal.

With regard to Murex, within the November 2018 high level verbal and email discussions there appears to have been no specificity regarding details on how many cars/trainsets would be provided, of what car specification, via which routes and at what volume and frequency, and to what destination terminal(s) given that Murex had indicated that its own destination terminal in New Orleans was at capacity. As such, there would have been no reason for Sequitur to believe Murex could have been any more successful than Jupiter or others in securing all remaining required elements of product transportation services and of sufficient size and scope for the contemplated operations. In essence, Murex was only describing a willingness to explore the same path that BP, Valero, Shell, and others had already examined and on which Jupiter had already been given a four-month head start, all without success.

Overall, and consistent with the opinions of the Experts, Sequitur was reasonable in its approach to securing CBR along with its business partner, Jupiter, but ultimately, Product transportation services were unavailable, interrupted, delayed, and/or curtailed as contemplated in the Force Majeure of the TSA.

B. Conclusions of Law

The TSA is unambiguous.

Maalt is not entitled to a Shortfall Payment or Throughput Fee under the TSA because: (1) there was never any Throughput of Product into the Terminal; (2) the amount of Product actually Throughput into the Terminal was zero; (3) the Terminal Operations Commencement Date did not occur due to any one of the following (a) Sequitur reasonably determined that the Terminal was not fully operational to enable the performance and receipt of the Services, (b) Sequitur reasonably

determined that not all Regulatory Approvals for the Services had been obtained, and (c) that Sequitur never sent written notice to Maalt evidencing the occurrence of the Terminal Operations Commencement Date; (4) Sequitur established the existence of a Force Majeure event under the TSA; and (5) there was a complete failure of consideration under the TSA with respect to Maalt's promise to provide transloading services such that Maalt would be entitled to a Shortfall Payment or Throughput Fee.

In addition to the foregoing, Sequitur's decision not to send written notice to Maalt evidencing the occurrence of the Terminal Operations Commencement Date did not involve or cause an extreme forfeiture or penalty to Maalt, and the TSA's requirement that Sequitur send written notice to Maalt evidencing the occurrence of the Terminal Operations Commencement Date was an essential part of the TSA, as agreed to by the parties.

Maalt takes nothing against Sequitur under the TSA.

Sequitur is entitled to recover all damages it incurred in reliance on Maalt's and Vista Proppants and Logistics, LLC's fraudulent or negligent misrepresentations to Sequitur that induced Sequitur to enter into the TSA and to recover from Maalt its reasonable and necessary attorney's fees against Maalt, as a prevailing party under the TSA.

In the alternative to the foregoing, any Shortfall Payment owed to Maalt would have to be reduced by at least \$2.35 million because the gross amount the non-breaching party would have received if the contract had been fulfilled should be reduced by any unpaid costs the non-breaching party would have to incur to complete performance of the contract.

Signed this the ____ day of _____, 2021.

Judge Edward L. Morris

END OF ORDER

Prepared and submitted by:

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