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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:

**VISTA PROPPANTS AND LOGISTICS,
LLC, ET AL.,¹**

Debtors.

MAALT, LP,

Plaintiff,

v.

SEQUITUR PERMIAN, LLC,

Defendant.

§ **Chapter 11**

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§ **Case No. 20-42002-ELM-11**

§ **(Jointly Administered)**

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§ **ADV. PROC. NO. 20-04064-ELM**

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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.



**SEQUITUR PERMIAN, LLC'S RESPONSE TO PLAINTIFF AND THIRD-PARTY
DEFENDANT'S MOTION TO EXCLUDE UNDISCLOSED EVIDENCE OF DAMAGES,
DISMISS CLAIMS AND SUPPORTING BRIEF**

SEQUITUR PERMIAN, LLC ("Sequitur") files this Response to Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief and would show the Court as follows:

1. Sequitur respectfully requests that this Court deny Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief.

2. Maalt, LP ("Maalt") seeks to exclude evidence pertaining to Sequitur's damages under Federal Rule of Civil Procedure 37(c)(1) because it claims that Sequitur did not disclose its damages and damage calculations pursuant to Federal Rule of Civil Procedure 26(a). In addition, Maalt seeks dismissal of the claims upon the exclusion of the evidence.

3. Sequitur's evidence as it pertains to damages should not be excluded because Sequitur did disclose the amount sought in damages, Maalt represented to the Court during the Court's initial conference that further disclosures, e.g. damage computations, were not needed or warranted as "both parties have fully disclosed all the things that would normally be required by Rule 26 " and this Court found that Rule 26 disclosures were not required in this proceeding.

4. Sequitur's Brief and Appendix in Support of Response of Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief setting forth Sequitur's contentions of fact and law, and arguments and authorities is also filed herein for the Court's consideration.

PRAYER

WHEREFORE, Sequitur Permian, LLC respectfully requests that the Court deny Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief. and for all other relief to which Sequitur shall show itself entitled.

Dated: June 29, 2021

Respectfully Submitted,

/s/ Christopher J. Kronzer

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2021 a copy of the foregoing was served through the Court's ECF system on those parties receiving ECF notice, and as indicated below on the parties reflected below.

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**SEQUITUR PERMIAN, LLC'S BRIEF IN SUPPORT OF RESPONSE TO PLAINTIFF
AND THIRD-PARTY DEFENDANT'S MOTION TO EXCLUDE UNDISCLOSED
EVIDENCE OF DAMAGES, DISMISS CLAIMS AND SUPPORTING BRIEF**

SEQUITUR PERMIAN, LLC ("Sequitur"), files this Brief in Support of Response to Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief, and in support thereof would show unto the Court, as follows:

I. BACKGROUND.

1. Sequitur will not get into an extensive recitation of the background facts of this case as the facts and issues have been briefed to this Court in full previously. In general, Maalt seeks the recovery of the minimum payment from the alleged date of commencement of the Terminal's operations until the contract's expiration and Sequitur seeks the recovery of amounts expended at the Terminal in reliance on the fraudulent and/or negligent misrepresentations of Maalt.

2. This lawsuit was commenced on February 13, 2019, when Maalt filed its Original Petition in Case No. CV19-003; *Maalt, LP v. Sequitur Permian, LLC*; In the 51st District Court of Irion County, Texas (the "State Court Action") alleging a claim of breach of contract.²

3. On March 8, 2019, Sequitur filed its Original Counterclaims against Maalt in which Sequitur asserted claims of conversion, breach of contract and civil theft related to Maalt's failure to return Sequitur's property after the termination of the contract.³ On September 16, 2019, Sequitur filed its Amended Counterclaims in which it asserted an additional claim of promissory estoppel for which Sequitur pleaded an amount over \$4,000,000 in damages.⁴ On or about

² *Plaintiff's Original Petition*, Appendix to Notice of Removal pgs. 0006 – 0010, Doc 1-1, filed 09/04/20.

³ *Defendant's Original Answer & Defendant/Counter-Plaintiff's Original Counterclaims & Verified Application for Temporary Mandatory Injunction*, Appendix to Notice of Removal pgs. 0011 – 0028, Doc 1-1, filed 09/04/20.

⁴ *Sequitur Permian, LLC's First Amended Counterclaims and Original Third-Party Claims*, Appendix to Notice of Removal pgs. 0034 – 0051, Doc 1-1, filed 09/04/20.

December 20, 2019, Sequitur filed its Second Amended Counterclaims in which it asserted a additional claims of negligent misrepresentation and fraud and for which it pleaded damages in an amount over \$4,000,000.⁵

4. On December 20, 2019, Maalt amended its claims to plead damages in the approximate amount of \$6.6 million and further prayed for “all damages to which it may be entitled.”⁶

5. In March 2020, the parties appeared before the state court to discuss a rescheduling of deadlines and the trial date. At that time, the state court set a trial date for August 24, 2020 and ordered the parties to agree to further deadlines.⁷ After the hearing, Sequitur requested that Maalt amend its petition to replead damages..⁸ The Parties subsequently agreed to the Second Amended Agreed Scheduling Order which set deadlines of April 15, 2020 for Maalt to amend its pleading and July 24, 2020 for the completion of discovery.⁹ However, the parties could not come to an agreement regarding Maalt repleading damages. Specifically, Sequitur sent correspondence to Maalt stating that Maalt had failed to specifically state the maximum amount and type of damages sought in its pleading and requested Maalt file amended pleadings accurately reflecting its damages.¹⁰ Maalt refused to willfully amend its pleading and required Sequitur to file special exceptions. Sequitur acquiesced and did file special exceptions to Maalt’s claimed damages. Maalt did not (and has not) make a similar request on Sequitur to replead their damages.

⁵ *Sequitur Permian, LLC’s Second Amended Counterclaims and First Amended Third-Party Claims*, Appendix to Notice of Removal pgs. 0077 – 0095, Doc 1-1, filed 09/04/20.

⁶ *Plaintiff’s First Amended Original Petition*, Appendix to Notice of Removal pgs. 0096 - 0104, Doc 1-1, filed 09/04/20.

⁷ **Exhibit A**, Order granting Motion for Continuance (App. pg. 0005).

⁸ **Exhibit B**, Email Correspondence (App. pg. 0011).

⁹ **Exhibit C**, Second Amended Agreed Scheduling Order (App. pgs. 0014 – 0017).

¹⁰ **Exhibit B** (App. pg. 0006).

6. On April 15, 2020, Maalt amended its petition and stated that its damages were \$6,614,496 without interest for recovery of the minimum monthly payments under the contract, and added damages for lost profits.¹¹ Maalt supplemented its disclosures and stated that it was further seeking lost profits as alternative damages in the amount of \$4,105,378.00.¹²

7. On May 21, 2020, Maalt noticed the deposition of Sequitur's corporate representative to testify on a number of topics including:

- (a) The allegation set forth in paragraph 42 of Defendant's Third Amended Counterclaims and Second Amended Third-Party Claims (the "Claims") to the effect that [Vista] and [Maalt] made negligent misrepresentations to Defendant, that Defendant justifiably relied on the representations and information, and that Defendant had incurred reliance damages in an amount over \$4,000,000;
- (b) The allegations set forth in paragraph 43 of Defendant's Third Amended Counterclaims and Second Amended Third-Party Claims (the "Claims") to the effect that [Vista] and [Maalt] made false, material representations to Defendant, and thereby fraudulently induced Sequitur into entering the Terminal Services Agreement, that Defendant relied on these representations, and incurred reliance damages in an amount of \$4,000,000.¹³

The deposition of Sequitur's representative was scheduled for June 18, 2020.

8. On May 27, 2020, Maalt provided financial documents in support of their claims for damages.¹⁴ Less than two weeks later, Maalt filed its notice of bankruptcy in the State Court Action thus staying the action and effectively cancelling the deposition of Sequitur's corporate representative.¹⁵

¹¹ *Plaintiff's Second Amended Original Petition*, Appendix to Notice of Removal pgs. 0347 - 0358, Doc 1-1, filed 09/04/20.

¹² *Plaintiff's and Third Party Defendant's Second Combined Amended and Supplemental Response to Request for Disclosures*, Appendix to Notice of Removal pg. 0347 - 0358, Doc 1-1, filed on 09/04/20.

¹³ **Exhibit D**, *Notice of Intent to Take the Oral Deposition of Sequitur Permian, LLC through Its Designated Representative* (App. pgs. 0019 - 0022).

¹⁴ **Exhibit E**, May 27, 2020 correspondence from Maalt, (App. pgs. 0023 - 0024).

¹⁵ **Exhibit F**, Notice of Bankruptcy, (App. pgs. 0025 - 0026).

9. In August 2020, Sequitur filed proof of claims in the bankruptcy proceeding, Case No. 20-42002-elm in the amount of \$4,029,977.00 for “damages arising from the Terminal Services Agreement” with the attached summary of the claim:

“Sequitur Permian, LLC and the Debtor are involved in a lawsuit pending in Irion County as Cause No CV19-003. Sequitur has filed the attached pleading against the Debtor. Sequitur asserts that its claim is not subject to offset because the Debtor is not entitled to monies under the Terminal Services Agreement. However, to the extent the Debtor is awarded a judgment against Sequitur through litigation, Sequitur asserts that its counterclaims would offset any amounts.”¹⁶

10. On September 28, 2020, the parties appeared before this Court for an initial conference regarding this adversary proceeding. During this conference, the issue of Rule 26 disclosures was discussed with the Court. Specifically, Maalt made the further representations:

“(Mr. Lanter): The one thing I wanted to add to that is that, with respect to initial disclosures, **both parties have fully disclosed all the things that would normally be required by Rule 26**, and so we don’t think at this time there would be any reason to have Rule 26 initial disclosures. **All that would require us to do would be repeat everything that’s already been said in the past but in a different piece of paper, and I think that would just make work rather than proceed the case forward.**”¹⁷

In reliance in part on Maalt’s representations, the Court stated: “I’m not going to require Rule 26 disclosures.”¹⁸

11. After the conference, Sequitur conferred with Maalt regarding consolidation of Sequitur’s proof of claims with the adversary proceeding. Maalt stated that it was unopposed to the consolidation.¹⁹ In that same correspondence, Maalt requested the rescheduling of Sequitur’s corporate representative who could testify to those damages claimed in an amount of \$4,000,000 under the claims of fraud and negligent misrepresentation.²⁰

¹⁶ **Exhibit G**, Sequitur’s Proof of Claims (App. pgs. 0027 – 0034).

¹⁷ **Exhibit H**, Transcript of September 28, 2020 Proceedings, Transcript pg. 8, lns. 10 – 18 (App. pg. 0042)

¹⁸ *Id.* at pg. 12, lns. 4 – 11 (App. pg. 0046).

¹⁹ **Exhibit I**, October 30, 2020 Email from Maalt (App. pgs 0054).

²⁰ *Id.*

12. On November 4, 2020, the Court entered its Agreed Order Granting Sequitur Permian, LLC's Motion to Consolidate Proofs of Claim and the Debtor's Objection Thereto with Existing Adversary Proceeding.²¹ The Order states that Sequitur's Proof of Claim Nos. 142 and 143 were thereby consolidated with this Adversary Proceeding for all purposes "including discovery and trial."²²

13. On November 16, 2020, Maalt submitted a position statement wherein it acknowledged that Sequitur's proof of claims incorporates its pleadings from this adversary proceeding. Further, Maalt acknowledged by doing that Defendant incorporated the claims asserted in this adversary into its proofs.²³ After consolidation of the proof of claim with the discovery in this matter, Maalt abandoned its request for deposition of Sequitur's corporate representative. In addition, no further requests for production or information requests to supplement discovery were sent by Maalt.

14. In support of its claims for damages, Sequitur submitted with its trial exhibits invoices and proof of payments related to the activities at the Terminal. The invoices and proof of payments in Exhibits 130-134 had not been produced previously as they had not been requested for production or inspection during discovery.

15. Maalt subsequently filed this Motion to Exclude and/or Motion to Dismiss the damages claims and evidence in support of the damages of Sequitur because Maalt claims that they were not aware of the amount of damages sought by Sequitur and of the method of calculating such damages. As shows supra and herein, Maalt was aware of the amount of damages sought through the proof of claim, stipulated to the Court it did not need Rule 26 disclosures as to damages

²¹ Doc. 41, filed 11/05/20.

²² *Id.*

²³ *Plaintiff's Statement of Position Regarding Core Versus Noncore Proceedings*, Doc 50, filed 11/16/20.

and then willfully abandoned all attempts to conduct discovery on the issue. Now Maalt is seeking to exclude the claims of Sequitur for failure to provide adequate Rule 26(a) disclosures after the Court, in reliance on Maalt's representation, stated that Rule 26(a) disclosures were not required. As shown herein, there is not sufficient evidence to support such drastic relief.

II. ARGUMENTS & AUTHORITIES.

A. Rule 26 Disclosures were not required in this case.

16. Maalt seeks exclusion of Sequitur presentation of its damages solely under Federal Rule of Civil Procedure 37(c)(1) which provides that:

“If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless...”

FED. R. CIV. P. 37(c)(1). This rule is limited to a party's failure to abide by Rule 26(a) or (e). Therefore, Sequitur's failure to abide by any other rule is not applicable to the relief requested by Plaintiff.

17. As shown supra, Maalt represented to the Court that it needed no further information for which Rule 26 provides. In fact, Maalt went as far as to say that providing disclosures under Rule 26 would be a waste of paper and would create unnecessary work. Relying in part on these statements, the Court found that Rule 26 disclosures were not warranted and not required in this adversary proceeding.²⁴

18. This Court has the authority to dispense with Rule 26 disclosures. FED. R. CIV. P. 26(a)(1)(C). Maalt cannot seek relief for failure to abide by Rule 26 when the Court found that Rule 26 was not to be enforced in this proceeding. Therefore, Maalt's Motion fails as a matter of

²⁴ **Exhibit H**, *Transcript of September 28, 2020 Proceedings*, pg. 12, lns. 4 – 11 (App. pg. 0046).

law because the only relief sought is pursuant to Rule 37(c)(1) for which is not applicable after the Court found Rule 26 disclosures were not required.

B. Sequitur has disclosed the amount of damage sought from its claims.

19. Maalt claims that Sequitur has not made Maalt aware of the amount of damages sought in recovery of its claims for negligent misrepresentation and fraud. This is not accurate. In its initial pleadings asserting these causes of action, Sequitur stated generally that it was seeking damages in an amount over \$4 million. Maalt was aware of this assertion and even requested a corporate representative of Sequitur to testify to these specific damage calculations.²⁵

20. In addition, Sequitur stated in its proof of claims the amount of recovery sought in this adversary proceeding. Maalt is aware of this proof of claim and has acknowledged that the proof of claim has been consolidated into this adversary proceeding for purposes of discovery and trial.

C. Maalt did not request in discovery the documents it seeks to exclude.

21. In addition to seeking exclusion of any information pertaining to Sequitur's damages, Maalt further seeks to exclude five trial exhibits of Sequitur, Trial Exhibits 130 – 134, which amount to invoices, field tickets and proofs of payments. Maalt argues that these exhibits should be excluded because they were not produced during discovery.

22. First, Maalt argues that these documents should have been produced pursuant to Rule 26(a). As stated supra, the Court found that Rule 26 was not applicable to this case. Therefore, Sequitur had no burden to provide these documents under Rule 26(a). In addition, Rule 26(a) merely provides that the document shall be made available for inspection and copying. At no point did Maalt request production or inspection of all documents in support of Sequitur's claims of

²⁵ Exhibits D & I.

damages. Finally, the documents sought to be excluded do not purely pertain to damages of Sequitur as they also reflect the work being performed at the Terminal during the fall of 2018 which is a distinct issue.

23. Maalt further argues that the documents should have been produced in response to requests for production. Importantly, failure to abide by a request for production pursuant to Rule 34 does not permit relief under Rule 37(c)(1). Therefore, even if Sequitur did fail to properly respond to a request for production under Rule 34, Maalt would not be entitled to the relief sought.

24. Additionally, the five exhibits contain documents that are not responsive to the requests identified by Maalt. Maalt argues that the documents should have been produced in response to three requests which seek contracts for the construction of improvements, communications related to the contracts and documents identifying equipment and machinery.

25. The identified exhibits contain the following documents:

- Exhibit 130 – invoices, order confirmation and proofs of payments with SafeRack.
- Exhibit 131 – Invoices and proofs of payments to ETOS, Inc.
- Exhibit 132 – Invoices, proofs of payment and field tickets of Fusion Industries.
- Exhibit 133 – Invoices, proofs of payment and delivery tickets for Jet Specialty
- Exhibit 134 – Invoices, field tickets and proofs of payments to RN Trenching.

These exhibits are not responsive to the identified requests. In addition, this is not the case where Sequitur stated that it would provide responsive documents, and nothing was provided. Sequitur did produce documents responsive to the three identified requests as it produced purchase orders or contracts with third parties including Superior Tank Company, Flair King, Saeferack, Milford, Texas Pipe & Supply, Tripoint, among others. These documents have been identified in part as Exhibit 129.

26. If Maalt sought this additional information during discovery, it could have sent out additional discovery requests or taken the deposition of Sequitur's corporate representative, or if

it felt that proofs of payment and any invoices should have been produced Maalt could have sought relief under Rule 37(a). Maalt chose to do none of this and abandoned its discovery efforts as to Sequitur's claims.

D. Assuming arguendo, that the Court finds that Sequitur should have made Rule 26 disclosures, the relief sought by Maalt is unwarranted.

27. Assuming arguendo, that this Court determines that Sequitur should have made Rule 26 disclosures thus arguably entitling Maalt to relief under Rule 37(c)(1), Rule 37(c) provide that there should be no exclusion of evidence if the non-disclosing party can establish the failure to disclose was either harmless or justified. As stated supra, Sequitur was justified in not making further Rule 26 disclosures after Maalt represented that it did not need additional information and the Court found that Rule 26 disclosures would not be required in this adversary proceeding.

28. In addition, when determining the failure to disclose is harmless, the Court considers the following four factors: (1) the importance of the evidence; (2) the prejudice to the opposing party of allowing the evidence to be presented; (3) the possibility of curing such prejudice by granting a continuance; and (4) the explanation, if any, for the party's failure to provide the evidence in discovery. *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 572 (5th Cir. 1996).²⁶ The two cases cited by Maalt where a Court excluded damages evidence at trial based on these factors and subsequently dismissed claims are distinguishable.

29. In *Moore v. CITGO Ref. & Chems., Co. LP*, Case No. 2:11-cv-022, 2012 WL 12894290, 2012 US Dist. LEXIS 193486 (S.D. Tex. Oct. 3, 2012), the Court excluded damages evidence pursuant to Rule 37(b) for plaintiff's failure to abide by a discovery order. *Id.* at * 6. Due to the Plaintiff's failure to abide by the discovery order the *Moore* Court determined that exclusion

²⁶ Sequitur has provided its explanation herein to provide the evidence during discovery and Maalt admits that the evidence it seeks to exclude is important.

of testimony was appropriate. *Id. Moore* is distinguishable to this proceeding as there has been no discovery order issued by the Court which Sequitur violated.

30. Maalt further relies on *Macro Niche Software, Inc. v. 4 Imaging Solutions, LLC*, Civil Action No. H-12-2293, 2014 WL 12599512, 2014 US Dist. LEXIS 190897 (S.D. Tex. Ja. 15, 2014) wherein the Court determined that exclusion of damages was warranted because plaintiff gave no justification for their failure to disclose the damages computation. *Id.* at *4. The *Macro Niche* Court also determined that the one week before trial was not enough time to evaluate additional damages evidence. *Id.* at *5. Maalt argues that it similarly does not have time to review additional evidence and a continuance will unnecessarily delay trial. Maalt further argues that if it knew of the damages then it would have conducted additional depositions previously.

31. Maalt's argument that it did not know it needed another deposition lacks merit because Maalt previously acknowledged, over a year ago, that a further deposition may be needed to discover damages. Maalt chose to abandon that deposition request. Second, to the extent the Court determines that further disclosures and discovery would be necessary, this additional discovery could be accomplished prior to trial. As the Court is aware, trial dates are currently being considered in October 2021 to February 2021. Discovery of any additional information related to damages could be accomplished, in part, through the deposition of Sequitur's corporate representative on these topics. This certainly could be done prior to trial to the extent necessary and would alleviate any complained prejudice to Maalt.

PRAYER

WHEREFORE, Sequitur Permian, LLC respectfully requests that the Court deny Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief and for all other relief to which Sequitur shall show itself entitled.

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Plaintiff,

v.

SEQUITUR PERMIAN, LLC,

Defendant.

§ **Chapter 11**

§

§ **Case No. 20-42002-ELM-11**

§ **(Jointly Administered)**

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ADV. PROC. NO. 20-04064-ELM

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.

**SEQUITUR PERMIAN, LLC'S APPENDIX IN SUPPORT OF RESPONSE TO
PLAINTIFF AND THIRD-PARTY DEFENDANT'S MOTION TO EXCLUDE
UNIDISCLOSED EVIDENCE OF DAMAGES,
DISMISS CLAIMS AND SUPPORTING BRIEF**

Sequitur Permian, LLC ("Sequitur") files this Appendix in Support of Response to Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief and would show the following to the Court:

Exhibit	Title	Pgs.
A	Order granting Motion for Continuance of Trial	0005
B	Correspondence between Maalt and Sequitur	0006 - 0013
C	Second Amended Agreed Scheduling Order and Additional Pretrial Orders	0014 - 0018
D	Notice of Intent to Take the Oral Deposition of Sequitur Permian, LLC through Its Designated Representative	0019 - 0022
E	May 27, 2020 Correspondence	0023 - 0024
F	Notice of Bankruptcy	0025 - 0026
G	Sequitur's Proof of Claims	0027 - 0034
H	Transcript of September 28, 2020 Conference	0035 – 0053
I	Email correspondence from Maalt re: consolidating of proof of claims and deposition on Sequitur's damages	0054 - 0058

Dated: June 29, 2021

Respectfully Submitted,

/s/ Christopher J. Kronzer

Matthew A. Kornhauser

State Bar No. 11684500

Dylan B. Russell

State Bar No. 24041839

Christopher J. Kronzer

State Bar No. 24060120

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**ATTORNEYS FOR
DEFENDANT/COUNTER-PLAINTIFF
SEQUITUR PERMIAN, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2021 a copy of the foregoing 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:

Stephen M. Pezanosky (stephen.pezanosky@haynesboone.com)

Matthew T. Ferris (matt.ferris@haynesboone.com)

David L. Staab (david.staab@haynesboone.com)

Alexandra Kirincic (alex.kirincic@haynesboone.com)

Via Email:

Jim Lanter (jim.lanter@lanter-law.com)

Via Email:

Paul O. Wickes (pwickes@wickeslaw.com)

/s/ Christopher J. Kronzer

Christopher J. Kronzer

CAUSE NO. CV19-003

MAALT, LP,
Plaintiff,

V.

SEQUITUR PERMIAN, LLC,
Defendant.

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IN THE DISTRICT COURT

IRION COUNTY, TEXAS

51ST JUDICIAL DISTRICT

ORDER

ON THIS DAY, the Court considered the foregoing Verified Motion for Continuance of Trial and Expert Designation Deadline and the Court finds the Motion should be in all things GRANTED. It is, therefore,

ORDERED, ADJUDGED and DECREED that the trial setting of June 22, 2020 is reset.

It is further,

ORDERED, ADJUDGED and DECREED this case is set for trial on Aug. 24, 2020 at 9:00AM. *A back-up setting is Sept. 28, 2020 at 9:00.*
Both trial settings shall be in Tom Green Co. by agreement of the parties.
It is further,
ORDERED, ADJUDGED and DECREED that Defendant's deadline to designate expert and produce reports shall be reset to as shall be agreed by the parties., 2020.

SIGNED on this the 10th day of March, 2020.

Candace
JUDGE PRESIDING

This case is set for a status hearing at 11:00 ~~9:00~~ on Tuesday, May 12, 2020 in Tom Green County.



From: [Jim Lanter](#)
To: [Christopher J. Kronzer](#)
Cc: ["Paul Wickes"](#)
Subject: RE: Maalt L.P. v. Sequitur Permian, LLC
Date: Friday, March 20, 2020 10:56:31 AM

Why don't you go ahead and file them. Then we can discuss what we can agree to and what we would oppose, if anything. We don't want to get on a merry-go-round on pleadings. If your exceptions are in writing it gives us something tangible to work off of.

Jim Lanter

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

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From: Christopher J. Kronzer <kronzer@hooverslovacek.com>
Sent: Friday, March 20, 2020 10:49 AM
To: Jim.lanter@lanter-law.com
Cc: 'Paul Wickes' <pwickes@wickeslaw.com>
Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

To clarify my last email: I am not agreeing to limit my objections or special exceptions as the new deadline gives you the ability to amend as you deem necessary and any amendment may add new issues. Based on your current pleadings, I was going to file a special exception requesting you to replead the maximum amount and to state if you are seeking damages under the contract clause and if seeking additional damages the type and general basis for those damages.

From: Jim Lanter <Jim.lanter@lanter-law.com>
Sent: Friday, March 20, 2020 10:17 AM
To: Christopher J. Kronzer <kronzer@hooverslovacek.com>
Cc: 'Paul Wickes' <pwickes@wickeslaw.com>
Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Would you go ahead and file your special exceptions so we can address the pleading issue you raised? Once we have a chance to see exactly what you want replead, we can discuss what can be agreed to and what may need to be contested.

Jim Lanter



0006

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

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From: Christopher J. Kronzer <kronzer@hooverslovacek.com>
Sent: Friday, March 20, 2020 9:54 AM
To: Jim.lanter@lanter-law.com
Cc: Matt A. Kornhauser <kornhauser@hooverslovacek.com>
Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Right now, if everything on our calendar is moving forward, our availability to travel to DFW for the deposition is Tuesday – Friday that last week in April (28, 29, 30) & then May 1. Our schedules would open up a little more in May. If you get some dates in May let me know, Can you please send me the contact information to Murex's attorney so I can reach out to him/her as well?

Chris

From: Jim Lanter <Jim.lanter@lanter-law.com>
Sent: Wednesday, March 18, 2020 2:30 PM
To: Christopher J. Kronzer <kronzer@hooverslovacek.com>
Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Thanks. Send me your dates for the latter half of April so I can talk to the Murex attorney.

Jim Lanter

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

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From: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Sent: Wednesday, March 18, 2020 1:50 PM

To: Jim.lanter@lanter-law.com; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Jim, we are agreeable. Chris

From: Jim Lanter <Jim.lanter@lanter-law.com>

Sent: Wednesday, March 18, 2020 11:05 AM

To: Christopher J. Kronzer <kronzer@hooverslovacek.com>; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Chris,

We can work with your last changes. I've accepted all, added e-sigs, and converted to PDF. If this is easier for you to review remotely, let me know if this works.

I won't file anything without your okay to do so.

Jim Lanter

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

www.lanter-law.com

From: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Sent: Wednesday, March 18, 2020 10:09 AM

To: Jim.lanter@lanter-law.com; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

See attached proposed changes.

From: Jim Lanter <Jim.lanter@lanter-law.com>

Sent: Wednesday, March 18, 2020 9:23 AM

To: Christopher J. Kronzer <kronzer@hooverslovacek.com>; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Any time that day will work.

Jim Lanter

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

www.lanter-law.com

From: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Sent: Wednesday, March 18, 2020 9:27 AM

To: Jim.lanter@lanter-law.com; Matt A. Kornhauser <kornhauser@hooverslovacek.com>;
pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Jim, the court will hold a status telephone conference on the 15th. What time works for you? We can write it into the Order and then address how to proceed after the 15th at that time with any scheduled depositions.

Chris

Sent via the Samsung Galaxy S10, an AT&T 5G Evolution capable smartphone

----- Original message -----

From: Jim Lanter <Jim.lanter@lanter-law.com>

Date: 3/17/20 4:56 PM (GMT-06:00)

To: "Christopher J. Kronzer" <kronzer@hooverslovacek.com>, "Matt A. Kornhauser" <kornhauser@hooverslovacek.com>, pwickes@wickeslaw.com, "'Allen, Sam'" <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Chris,

See the further revisions on the attached.

I want to keep in the provision for work arounds so that if we get to April 15 and there are restrictions in place we know what we need to do. We want to attend depositions in person as much as you do, but if there is a continuing problem then we need to simply move forward with those alternative means even though they are not ideal. This especially important since the Trump administration is now saying this situation could continue into summer. If we get to April 15 and cannot travel, then we can revise the notices for conferencing or some other means.

Before I call Mr. Wright's lawyer to reschedule, please provide me with all of the dates in the last half of April that you or Matt are available so I can provide those to her.

Jim Lanter

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

www.lanter-law.com

From: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Sent: Tuesday, March 17, 2020 4:38 PM

To: Jim.lanter@lanter-law.com; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>

Subject: RE: Maalt L.P. v. Sequitur Permian, LLC

Jim,

Please find attached our proposed scheduling order in response. I am fine with the dates proposed and would like to thank you for proposing an abatement of depositions and the new deadlines for pleadings. I have proposed minimal changes to how we should proceed from here. We would propose taking out local counsel's availability when considering availability of the parties because while local counsel has shown to be beneficial logistically, I do believe that their individual knowledge of the case is less than would be necessary for their sole attendance at the depositions to be appropriate. Further, we would propose a minimum of the number of dates offered so it isn't a take it or leave it situation for one date. Finally, we would like to schedule these depositions with the mindset that we will be able to be there in person and not have to result to video conferencing until we are at the April 15th deadline with depositions scheduled and we are restricted from getting there or we are all locked down by national, state or local officials.

Please let me know your thoughts on the proposed.

Chris

Christopher J. Kronzer
Partner



HooverSlovacek LLP
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Houston, TX 77056
Office: 713-977-8686
Fax: 713-977-5395
www.hooverslovacek.com



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From: Jim Lanter <Jim.lanter@lanter-law.com>
Sent: Tuesday, March 17, 2020 11:01 AM
To: Matt A. Kornhauser <kornhauser@hooverslovacek.com>; pwickes@wickeslaw.com; 'Allen, Sam' <sallen@jw.com>
Cc: Christopher J. Kronzer <kronzer@hooverslovacek.com>
Subject: Maalt L.P. v. Sequitur Permian, LLC

Matt,

As you know, we represented to the Court that we would present an agreed scheduling order in light of the reset of the trial date.

Since that hearing, Chris brought up the request that we replead damages and that he intended to file special exceptions as well as seek leave to file an amended answer.

In light of the request to abate depositions and the other requests, we have revised the proposed

scheduling order to address the potential special exceptions and amendment of pleadings on both sides and related matters, and the completion of depositions in light of the requested abatement.

Jim Lanter

James Lanter, PC
Attorneys at Law
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063

817.453.4800

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From: Matt A. Kornhauser <kornhauser@hooverslovacek.com>
Sent: Monday, March 16, 2020 5:29 PM
To: Jim Lanter <Jim.Lanter@Lanter-Law.com>; pwickes@wickeslaw.com
Cc: Christopher J. Kronzer <kronzer@hooverslovacek.com>; Trula J. Soliman <soliman@hooverslovacek.com>
Subject: Maalt L.P. v. Sequitur Permian, LLC

See attached Rule 11 Agreement. Please contact me if you have any questions.

Matt A. Kornhauser
Equity Partner

HooverSlovacek
ATTORNEYS AT LAW

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Filed 3/19/2020 9:45 AM
 Shirley Graham
 District Clerk
 Irion County, Texas

Ashley Masters

No. 19-003

MAALT, LP

Plaintiff,

vs.

SEQUITUR PERMIAN, LLC

Defendant.

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IN THE DISTRICT COURT

IRION COUNTY, TEXAS

51ST JUDICIAL DISTRICT

SECOND AMENDED AGREED SCHEDULING ORDER
AND ADDITIONAL PRETRIAL ORDERS

The parties have agreed to the following Second Amended Scheduling Order and if approved by the Court, this will constitute an Order of the Court. If no deadline is listed below, the item is governed by the Texas Rules of Civil Procedure unless the items was governed by a previous scheduling order and the time has now passed.

1. All amended pleadings seeking affirmative relief. April 15, 2020
2. All pleadings responsive to any amended pleadings seeking affirmative relief and adding parties shall be filed. April 30, 2020
3. Expert witness designations and reports are required and must be served by the following dates. The designations must include the information listed in Rule 194.2(f). This designation is not a substitute for any responses required by discovery. Failure to timely respond will be governed by Rule 193.6.
 - (a) Additional expert designations and reports for the Plaintiff. May 15, 2020
 - (b) Additional expert designations and reports for the Defendant. June 15, 2020
 - (c) Expert designations and reports for the Plaintiff/Third-Party Defendant to rebut those disclosed by the Defendant. July 1, 2020

SECOND AMENDED AGREED SCHEDULING ORDER



Page 1

0014

4. The discovery period ends and all discovery shall be completed. July 24, 2020
 - Parties seeking discovery must serve the requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement provided that the extension does not affect the trial setting, dispositive motion deadline, or pretrial submission deadlines.
5. Mediation must be completed. May 29, 2020
6. All motions for summary judgment and other dispositive motions must be filed. July 24, 2020
7. All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date. The motions will be heard at the pre-trial hearing if not resolved before that time. August 1, 2020
8. The parties shall file with the Court and serve on all parties a list of all trial exhibits, list of trial witnesses, and findings of fact and conclusions of law. In addition, the parties shall serve a copy of all trial exhibits on the opposing parties by this date. Trial exhibits need not be filed with the Court at this time, but shall be provided to the Court's reporter at the commencement of trial. Each exhibit must be identified separately and not by category or group designation. The parties shall also file designations of those portions of videotaped or digitally recorded depositions that may be offered at trial. 30 days before trial
9. By 4:00 p.m. on this date, the parties shall file with the Court and serve on all parties their objections to the opposing parties' proffered video/film/digitally recorded deposition excerpts and trial exhibits. 21 days before trial

Trial Estimate: The parties estimate that the trial will take 3 to 4 days.

Status Conference:

This case is set for a status conference on April 15, 2020 at 10:00 a.m. via telephone. The call-in number for the conference is (425) 436-6306, access code: 382627.

This case is set for further a status conference on May 12, 2020 at 11:00 a.m. in the courtroom of the 51st District Court at 112 W. Beauregard Avenue, San Angelo, Texas 76903.

Pretrial Hearing: This case is set for a pretrial hearing on August 14, 2020 at 9:00 o'clock, A M. in the courtroom of the 51st District Court at 112 W. Beauregard Avenue, San Angelo, Texas 76903.

Trial: The parties agree to conduct the nonjury trial in this case in the courtroom of the 51st District Court at 112 W. Beauregard Avenue, San Angelo, Texas 76903. The case is set for a nonjury trial on August 24, 2020. If not tried on that date, the trial will commence on September 28, 2020.


No depositions shall be taken until April 15, 2020 due to the Corona virus situation; however, the parties are directed to use that time to schedule depositions so there is no delay in completing them after April 15, 2020. If governmental restrictions that prevent the taking of depositions are in place at that time, the parties shall bring the matter to the attention of the Court if they are not able to agree on further methods for completing depositions. Due to the compressed time for the remaining discovery prior to trial, and the fact that the parties have multiple attorneys of record, it shall not be grounds for objection, a motion to quash, or a motion for protective order that lead or associate counsel has a schedule or other conflict if one of them is otherwise available provided that at least three (3) proposed dates are provided. Local counsel's availability shall not be considered. The parties are ORDERED to work diligently and cooperatively to schedule all depositions in a manner that provides for completion of all depositions sought by both parties within the discovery period provided in this Order. In the event that there are travel restrictions

ordered by a governmental authority in place after April 15, 2020, then the method of conducting deposition(s) after April 15, 2020 shall be discussed with the Court at the April 15, 2020 telephone conference.

Applicable provisions of the Texas Rules of Civil Procedure shall govern all deadlines not ordered herein. In the event this case does not go to trial on the above date, then further deadlines may be established only by order of this Court, or according to the provisions of the Texas Rules of Civil Procedure.

Approval of Scheduling Order and Additional Orders: This Second Amended Agreed Scheduling Order is approved and constitutes an Order of the Court. Additional Orders: The Court also orders that (1) if a party intends to project evidence by computer technology, that party must notify the Court and all parties, in writing, at least 7 days before trial, and (2) at least 7 days before trial, the lawyers and pro se parties shall stipulate insofar as possible to the authenticity and admissibility of each exhibit.

SIGNED March 25, 2020.


JUDGE PRESIDING

Agreed:

/s/ James Lanter

James Lanter

State Bar No. 11940700

Paul O. Wickes

State Bar No. 00788663

Samuel S. Allen

State Bar No. 01057000

Attorneys for the Plaintiff and Third-party Defendant

/s/ Matthew A. Kornhauser

Matthew A. Kornhauser

State Bar No. 11684500

Dylan B. Russell

State Bar No. 24041839

Paul D. Stipanovic

State Bar No. 00795669

Attorneys for the Defendant

No. 19-003

MAALT, LP

Plaintiff,

vs.

SEQUITUR PERMIAN, LLC

Defendant.

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IN THE DISTRICT COURT

IRION COUNTY, TEXAS

51ST JUDICIAL DISTRICT

**PLAINTIFF'S NOTICE OF INTENT TO TAKE
THE ORAL DEPOSITION OF SEQUITUR PERMIAN, LLC
THROUGH ITS DESIGNATED REPRESENTATIVE**

Please take notice that pursuant to Texas Rule of Civil Procedure 199, Plaintiff will take the oral deposition of Sequitur Permian, LLC, at the offices of Hoover Slovacek, LLP, Galleria Office Tower 2, 5051 Westheimer Road, Suite 1200, Houston, Texas 77056 on June 18, 2020, beginning at 10:00 a.m., to be used as evidence in the above entitled and numbered cause. Sequitur Permian, LLC is directed to designate a person or persons to testify on the following matters:

1. The allegations set forth in paragraph 42 of Defendant's Third Amended Counterclaims and Second Amended Third-Party Claims (the "Claims") to the effect that Vista Proppants and Logistics, Inc. and Maalt, LP made negligent misrepresentations to Defendant, that Defendant justifiably relied on the representations and information, and that Defendant has incurred reliance damages in an amount over \$4,000,000;
2. The allegations set forth in paragraph 43 of the Claims to the effect that Vista Proppants and Logistics, Inc. and Maalt, LP made false, material representations to Defendant, and thereby fraudulently induced Sequitur into entering into the Terminal Services Agreement, that Defendant relied on those representations, and incurred reliance damages in an amount of \$4,000,000;
3. The allegations set forth in paragraph 44 of the Claims to the effect that Maalt, LP breached the Terminal Services Agreement and caused Defendant damage;
4. The allegations set forth in paragraph 45(7) of the Claims to the effect that the enforcement of a Shortfall Payment violates public policy, is unconscionable, is unenforceable, or is unlawful;

5. The allegations set forth in paragraph 2.c of Defendant's Original Answer, Verified Denial and Affirmative Defenses to Plaintiff's Second Amended Petition (the "Answer") to the effect that Maalt, LP did not procure and maintain pollution legal liability insurance as required by the Terminal Services Agreement;
6. The allegations of waiver in paragraph 4 of the Answer; and
7. The allegations of failure to mitigate damages in paragraph 8 of the Answer.

Pursuant to Texas Rule of Civil Procedure 199.2(b)(1), Sequitur Permian, LLC must, a reasonable time before the deposition, designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify.

Said deposition will continue from day to day until completed. The deposition will be stenographically recorded by a certified court reporter and may be videotaped.

Respectfully submitted,

By: /s/ James Lanter

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek, Ste. 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW PLLC
5600 Tennyson Parkway, Ste. 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

Samuel S. Allen
State Bar No. 01057000
JACKSON WALKER LLP
135 W. Twohig Avenue
Suite C
San Angelo, Texas 76093
sallen@jw.com

**ATTORNEYS FOR PLAINTIFF
MAALT, LP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court's electronic filing service on May 21, 2020, upon:

HOOVER SLOVACEK LLP
Matthew A. Kornhauser
State Bar No. 11684500
Dylan B. Russell
State Bar No. 24041839
Galleria Tower II
5051 Westheimer, Suite 1200
Houston, Texas 77056
Telephone: 713-977-8686
Facsimile: 713-977-5395
kornhauser@hooverslovacek.com
russell@hooverslovacek.com

GOSSETT, HARRISON,
MILLICAN & STIPANOVIC, P.C.
Paul D. Stipanovic
State Bar No. 00795669
2 S. Koenigheim Street
San Angelo, Texas 76903
Telephone: 325-653-3291
Facsimile: 325-655-683

/s/ James Lanter

CERTIFICATE OF CONFERENCE

On May 13, 2020, the undersigned requested dates for the deposition of the Sequitur Permian, LLC via email listing the topics to be covered in the deposition. As of the filing of this notice, no dates for the deposition have been provided, nor has a response to the request been received.

/s/ James Lanter
James Lanter

James Lanter

Professional Corporation
Attorneys at Law

560 N. Walnut Creek
Suite 120
Mansfield, TX 76063
817.453.4800
817.453.4801 fax

James Lanter

jim.lanter@lanter-law.com

May 27, 2020

Mr. Matthew A. Kornhauser
Mr. Christopher J. Kronzer
Hoover Slovacek LLP
5051 Westheimer Road, Ste. 1200
Houston, TX 77056

Via E-Serve

Re: *Maalt L.P. v. Sequitur Permian, LLC*; Cause No. 19-003, In the 51st Judicial District Court for Irion County, Texas.

Dear Counsel:

We are sending you Plaintiff's supplemental production consisting of documents bearing Bates No. Maalt_001206-001950 via DropBox today.

In addition, we are sending you the following Xcel spreadsheets in native form entitled:

- Barnhart 2019 Financials.xlsx
- Barnhart 2019 GL detail.xlsx
- Barnhart Crude Costing Assumptions.xlsx
- Barnhart Dec2018 GL.xlsx
- Barnhart Jan2020 Financials.xlsx
- Barnhart Jan2020 GL detail.xlsx

The foregoing six spreadsheets are all designated as Confidential under the terms of the Protective Order entered in this case.

Very truly yours,

/s/ James Lanter

James Lanter



0023

Cc: Mr. Samuel S. Allen
Mr. Paul O. Wickes

No. 19-003

MAALT, LP

Plaintiff,

vs.

SEQUITUR PERMIAN, LLC

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

IRION COUNTY, TEXAS

51ST JUDICIAL DISTRICT

NOTICE OF BANKRUPTCY

Plaintiff, Maalt, LP ("Maalt"), files this Notice of Bankruptcy, and shows the Court:

I.

On June 9, 2020, Maalt, LP filed for bankruptcy protection under Chapter 11 in the United States Bankruptcy Court, Northern District of Texas, Case No. 20-42008-elm11, as evidenced by the attached Exhibit A.

Respectfully submitted,

By: /s/ James Lanter

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek, Ste. 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW PLLC
5600 Tennyson Parkway, Ste. 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

NOTICE OF BANKRUPTCY



1

0025

Samuel S. Allen
State Bar No. 01057000
JACKSON WALKER LLP
135 W. Twohig Avenue
Suite C
San Angelo, Texas 76093
sallen@jw.com

**ATTORNEYS FOR PLAINTIFF
MAALT, LP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through
the Court's electronic filing service on the date of filing, upon:

HOOVER SLOVACEK LLP
Matthew A. Kornhauser
State Bar No. 11684500
Dylan B. Russell
State Bar No. 24041839
Galleria Tower II
5051 Westheimer, Suite 1200
Houston, Texas 77056
Telephone: 713-977-8686
Facsimile: 713-977-5395
kornhauser@hooverslovacek.com
russell@hooverslovacek.com

GOSSETT, HARRISON,
MILLICAN & STIPANOVIC, P.C.
Paul D. Stipanovic
State Bar No. 00795669
2 S. Koenigheim Street
San Angelo, Texas 76903
Telephone: 325-653-3291
Facsimile: 325-655-683

/s/ James Lanter

Your claim can be filed electronically on KCC's website at <https://epoc.kccilc.net/Vista>.

United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

- | | |
|--|---|
| <input type="checkbox"/> Vista Proppants and Logistics, LLC (Case No. 20-42002) | <input type="checkbox"/> Lonestar Prospects, Ltd. (Case No. 20-42006) |
| <input type="checkbox"/> VPROP Operating, LLC (Case No. 20-42003) | <input type="checkbox"/> Denetz Logistics, LLC (Case No. 20-42007) |
| <input type="checkbox"/> Lonestar Prospects Management, L.L.C. (Case No. 20-42004) | <input checked="" type="checkbox"/> MAALT, LP (Case No. 20-42008) |
| <input type="checkbox"/> MAALT Specialized Bulk, LLC (Case No. 20-42005) | |

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

1. Who is the current creditor?	SEQUITUR PERMIAN, LLC Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom?		
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? Melissa A. Haselden Name 5051 Westheimer, Suite 1200 Number Street TX 77056 Houston City State ZIP Code Country Contact phone 713-977-8686 Contact email haselden@hooverslovacek.com	Where should payments to the creditor be sent? (if different) Braden Merrill, Vice President & CFO Name 2050 W. Sam Houston Pkwy., Suite 1850 Number Street TX 77042 Houston City State ZIP Code Country Contact phone 713-395-3000 Contact email bmerrill@sequitirenergy.com	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _
7. How much is the claim?	\$ <u>4,029,977.00</u> <div style="float: right; text-align: right;"> Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A). </div>
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Damages arising from Terminal Services Agreement</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <div style="margin-left: 40px;"> Nature of property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i>. <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ </div> <div style="margin-left: 40px; margin-top: 20px;"> Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) </div> <div style="margin-left: 40px; margin-top: 20px;"> Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) </div> <div style="margin-left: 40px; margin-top: 20px;"> Amount necessary to cure any default as of the date of the petition: \$ _____ </div> <div style="margin-left: 40px; margin-top: 20px;"> Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable </div>
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: <u>See attached summary.</u>

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No
☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/17/2020
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name	Braden	Merrill
	First name	Middle name Last name
Title	Vice President & CFO	
Company	Sequitur Permian, LLC	
	Identify the corporate servicer as the company if the authorized agent is a servicer.	
Address	2050 W. Sam Houston Pkwy., Suite 1850	
	Number	Street TX 77042 USA
	City	State ZIP Code Country
Contact phone	713-395-3000	Email bmmerrill@sequiturerenergy.com

SUMMARY

Sequitur Permian, LLC and the Debtor are involved in a lawsuit pending in Irion County as Cause No. CV19-003. Sequitur has filed the attached pleading against the Debtor. Sequitur asserts that its claim is not subject to offset because the Debtor is not entitled to monies under the Terminal Services Agreement. However, to the extent the Debtor is award a judgment against Sequitur through litigation, Sequitur asserts that its counterclaims would offset any amounts awarded to the Debtor.

Your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/Vista>.

United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

- | | |
|--|---|
| <input checked="" type="checkbox"/> Vista Proppants and Logistics, LLC (Case No. 20-42002) | <input type="checkbox"/> Lonestar Prospects, Ltd. (Case No. 20-42006) |
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4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY	
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☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____

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Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/17/2020
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name	Braden	Merrill
	First name	Middle name Last name
Title	Vice President & CFO	
Company	Sequitur Permian, LLC	
	Identify the corporate servicer as the company if the authorized agent is a servicer.	
Address	2050 W. Sam Houston Pkwy., Suite 1850	
	Number	Street TX 77042 USA
	City	State ZIP Code Country
Contact phone	713-395-3000	Email bmerrill@sequiturerenergy.com

SUMMARY

Sequitur Permian, LLC and the Debtor are involved in a lawsuit pending in Irion County as Cause No. CV19-003. Sequitur has filed the attached pleading against the Debtor. Sequitur asserts that its claim is not subject to offset because the Debtor is not entitled to monies under the Terminal Services Agreement. However, to the extent the Debtor is award a judgment against Sequitur through litigation, Sequitur asserts that its counterclaims would offset any amounts awarded to the Debtor.

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

In Re:) **Case No. 20-42002-elm-11**
)
VISTA PROPPANTS AND) Fort Worth, Texas
LOGISTICS, et al.,) Monday, September 28, 2020
) 9:30 a.m.
Debtors.)
_____)
MAALT, LP,) **Adversary Proceeding 20-4064-elm**
Plaintiff,)
v.) STATUS CONFERENCE
SEQUITUR PERMIAN, LLC,)
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD L. MORRIS,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Plaintiff: Matthew Thomas Ferris
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
(214) 651-5955

For the Plaintiff: James Lanter
JAMES LANTER, P.C.
560 N. Walnut Creek, Suite 120
Mansfield, TX 76063
(817) 453-4800

For the Plaintiff: Paul O. Wickes
WICKES LAW, PLLC
5600 Tennyson Parkway, Suite 205
Plano, TX 75024
(972) 473-6900

EXHIBIT

tabbles

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1 APPEARANCES, cont'd.:

2 For the Defendant: Matthew A. Kornhauser
3 Melissa A. Haselden
4 Christopher James Kronzer
5 HOOVER SLOVACEK, LLP
6 Galleria Tower II
7 5051 Westheimer, Suite 1200
8 Houston, TX 77056

6 For the Defendant: Dylan Benjamin Russell
7 HOOVER SLOVACEK, LLP
8 5847 San Felipe, Suite 2200
Houston, TX 77056
(713) 977-8686

9 For the Defendant: Suzanne K. Rosen
10 FORSHEY & PROSTOK, LLP
11 777 Main Street, Suite 1550
Fort Worth, TX 76102
(817) 878-2018

12 Recorded by: Melissa Hurtado
13 UNITED STATES BANKRUPTCY COURT
14 501 W. 10th Street
Fort Worth, TX 76102
(817) 333-6039

15 Transcribed by: Kathy Rehling
16 311 Paradise Cove
17 Shady Shores, TX 76208
(972) 786-3063

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19

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Proceedings recorded by digital sound recording;
transcript produced by transcription service.

1 FORT WORTH, TEXAS - SEPTEMBER 28, 2020 - 9:51 A.M.

2 THE COURT: All right. Let's go ahead and take up
3 the MAALT, LP versus Sequitur Permian, LLC adversary,
4 Adversary 20-4064. Let me go ahead by starting with taking
5 appearances of counsel, starting with counsel for the
6 Plaintiff, MAALT, LP.

7 MR. FERRIS: Yes. Good morning, Your Honor. This
8 is Matt Ferris with Haynes and Boone on behalf of MAALT, LP.
9 Also appearing with me this morning is Mr. James Lanter,
10 litigation counsel for MAALT, LP. And we also have on the
11 phone Paul Wickes, who is also litigation counsel for MAALT,
12 LP.

13 THE COURT: All right. Good morning to all of you.
14 And who do we have for the Defendant, Sequitur Permian?

15 MR. KORNHAUSER: Your Honor, this is Matthew
16 Kornhauser. I am counsel for Sequitur Permian, and have been
17 in the state court litigation. We have with us Melissa
18 Haselden with our law firm. We have Mr. Dylan Russell with
19 our law firm. We have Mr. Chris Kronzer with our law firm.
20 And we also have, I believe, by way of telephone Suzanne
21 Rosen with the Forshey Prostok firm in Fort Worth.

22 THE COURT: All right. Good morning to all of you
23 as well.

24 All right. Obviously, the purpose of today's hearing, as
25 I previewed a little bit whenever I was asking for time

1 estimates, is to just get a sense of where things were at as
2 of the time of removal. We do need to talk about scheduling.
3 Usually, what I like to try to do is leave it to the parties
4 to try to put together a new scheduling order now that you're
5 here.

6 But in conjunction with that, it's always helpful to me
7 to get a little bit of a sense of how far along the case was,
8 what matters may have been pending as of the time of removal,
9 so that if we need to get those back onto a calendar track,
10 we can do that.

11 And in that regard, I'll give you all both an opportunity
12 to talk to me a little bit about this, and I'll probably just
13 go ahead and start with you, Mr. Ferris, but it looks like,
14 based upon my very cursory review of the state court record,
15 that at least at one point in time there was a third party
16 claim. It looks like maybe that has been nonsuited. I'd
17 want to make sure that I understand if that is or isn't the
18 case, or if it was only nonsuited in part.

19 And then it looks like there was at least one set of
20 summary judgment motions pending from each of the parties.
21 But, again, if you all can help fill me in on that. Because
22 there are some things from the state court record that look
23 like maybe they've been superseded by subsequent activity or
24 at least potentially resolved by some activity in the state
25 court before removal.

1 So, again, that would just help me understand where
2 things are at, and then if you all have any preliminary views
3 with respect to scheduling. So, let me stop talking and ask
4 you, Mr. Ferris, to take at least the initial stab at telling
5 me where things are at.

6 MR. FERRIS: Yes. Thank you, Your Honor. And I'll
7 actually turn it over to Mr. Lanter to go ahead and give that
8 background.

9 THE COURT: Okay. Perfect. Mr. Lanter?

10 MR. LANTER: Yes. Thank you, Your Honor. Paul
11 Wickes and I were counsel for MAALT, LP since the filing of
12 this lawsuit in February of 2019. The Defendant answered in
13 early March of 2019. And prior to the stay, we had been
14 engaging in discovery for 15 months.

15 During that time, there were two trial settings, one that
16 was originally set for trial in June of 2020, and that was
17 continued, at the request of Sequitur, until August 24th,
18 2020. And the trial court told us that that was a pretty
19 solid date, but we also had a firm backup date of September
20 28th of 2020. Obviously, both of those passed following the
21 filing of this Chapter 11 case.

22 At the time the stay went into effect, there were six
23 days remaining for Sequitur to designate any additional
24 experts that it wanted to designate. It had already --
25 Plaintiff's designation of experts in February of 2020. And

1 there were 45 days remaining for discovery, with strict
2 instructions from the state court to make sure all of our
3 discovery was done, you know, in time for that August trial
4 setting.

5 So, obviously, all that got bumped because of the stay.

6 But during the state court proceedings, there were a
7 couple of things that came up. There was a first motion for
8 partial summary judgment that was filed by MAALT, LP that
9 addressed Sequitur's promissory estoppel counterclaim. And
10 that was granted by the state court, with the effect of
11 dismissing that counterclaim.

12 There were some remaining counterclaims, also one of
13 which was a counterclaim for conversion of personal property.
14 Prior to that summary judgment hearing, Sequitur nonsuited
15 that claim only in its counterclaim.

16 There were two motions for partial summary judgment that
17 were pending at the time of the stay, and one of those was
18 filed by MAALT, LP and the other one was filed by Sequitur.
19 They kind of overlap in part because parts of each of those
20 motions address a claim as to whether or not take-or-pay
21 damages were liquidated damages and therefore a penalty --
22 MAALT asserting that they're not, Sequitur asserting that
23 they are a penalty. Those were not heard because the hearing
24 was set for June 24th, two days after the Chapter 11 case was
25 filed.

1 So one of the things I wanted to find out from the Court
2 was whether the Court would like us to proceed with those two
3 motions for partial summary judgment. I'm cognizant of the
4 one-motion rule in your court, and we anticipate that there
5 will probably be an additional motion for partial summary
6 judgment after some additional discovery is completed and
7 certainly don't want to run afoul of the one-motion rule.

8 I think where we are right now is we need a trial
9 setting. When this adversary was filed, I think I checked
10 the wrong box on the cover sheet and the Court's staff sent
11 out the typical original scheduling order that set this case
12 for trial on February 1. We believe the February trial
13 setting is appropriate, considering how close we were to
14 trial prior to the Chapter 11 filing and how little time
15 there was remaining in the discovery period. We believe that
16 we can get the discovery done by February, under a 45-day or
17 two-month discovery period in this case. And if we had two
18 months, that would give us a total of 18 months discovery,
19 which is more than ample time in this case.

20 Sequitur, before we had the conference, requested that we
21 agree to a June setting. MAALT believes that that's too far
22 down the road. We would like to get it to trial sooner than
23 that, especially in light of the trial setting that the state
24 court gave us. We don't believe there's any additional need
25 for another nine months of discovery and other proceedings

1 before we have a trial. Like I said, we're comfortable with
2 a February trial setting and would like to continue on that
3 path.

4 As far as scheduling other matters, the parties have been
5 really cooperative in scheduling deadlines prior to trial
6 setting deadlines. So if we could just get a trial setting,
7 I don't think we'd have any problem with tending to the
8 administrative matters prior to the trial, such as time for
9 disclosures, completion of discovery, things of that nature.

10 The one thing that I wanted to add to that is that, with
11 respect to initial disclosures, both parties have fully
12 disclosed all the things that would normally be required by
13 Rule 26, and so we don't think at this time there would be
14 any reason to have Rule 26 initial disclosures. All that
15 would require us to do would be repeat everything that's
16 already been said in the past but in a different piece of
17 paper, and I think that would just make work rather than
18 proceed this case forward.

19 That's kind of where we are, in my opinion. I'll let Mr.
20 Kornhauser add to that, if he'd like.

21 THE COURT: All right. Thank you. That was
22 helpful.

23 Mr. Kornhauser? (Pause.) I think you're on mute.

24 MR. KORNHAUSER: Can you hear me okay now, Your
25 Honor?

1 THE COURT: We can. Thank you.

2 MR. KORNHAUSER: Okay. Thank you. I guess what I
3 can say is this, Your Honor. We -- you know, as far as 15
4 months for discovery, we took the first depositions in this
5 case back in the middle of November, right before
6 Thanksgiving in 2019. And we were moving forward with
7 discovery into 2020 when, you know, COVID came along, and it
8 really impeded our progress.

9 A lot of our discovery, Your Honor, hinged upon not only
10 the principals of the Plaintiff, but also many nonparty
11 witnesses. These are individuals that were with various
12 railroad companies. And we scrambled around to try to
13 schedule these depositions and to do them by way of video,
14 and it took a lot of doing. We had several of them that we
15 were working on, trying to get set up and to try to take
16 them, when, you know, the COVID came along, and it impeded
17 our progress. But we pushed forward.

18 The August setting was over our objection. It was a very
19 fast track. We were scrambling around to try to get all this
20 discovery done. It's a fairly complicated, complex series of
21 facts that make up our defense. The Plaintiff basically has
22 a breach of contract claim. The Defense is burdened, I
23 believe, with proving our *force majeure* defense and other
24 contractual defenses under the contract, which, you know, in
25 reality require us to piece together a string of facts

1 involving the availability of trains, the availability of
2 weights for trains. And so, you know, we were doing very
3 diligent work to try to gather those facts when the COVID
4 came along.

5 And so I really do believe that the August trial setting
6 was a very robust setting, given what we were doing. We
7 really started discovery in November. And I think that's a
8 fair representation. So we had scheduled depositions in June
9 of several individuals that were canceled. You know, we're
10 going to have to reschedule and get together with these
11 people to try to get our discovery complete. So I would say
12 that, you know, the settings in August and September were
13 quite robust.

14 We have summary judgments that have been filed. Those
15 motions, we believe, are going to be supplemented and
16 amended. And so we have to pick up these motions and put
17 them in posture and get them in front of Your Honor so that
18 we can have them prepared for proper argument. So, you know,
19 this is work that we're going to have to do.

20 As far as Mr. Lanter's comments, that's correct, Your
21 Honor: In advance of this hearing, I did circulate an agreed
22 scheduling order. The intent and purpose was to get the
23 discussion going about dates. And I do believe that the June
24 setting is a fair setting, given the work that we have to do.
25 I believe that we have to take between, I'd say, maybe four

11

1 or five, maybe six or seven individuals' depositions. And
2 then we're dealing with experts as well. I'm not aware that
3 -- the Plaintiff having designated an expert on the issues,
4 but we have, and I'm certain they're going to want to depose
5 that individual.

6 But be that as it may, I think it's a -- this case is a
7 fairly fact-intensive case, Your Honor. It does involve
8 expert testimony. And so I think it would be appropriate for
9 us to schedule this with sufficient time, and I do believe
10 that June is a fair time slot for this case to land.

11 THE COURT: All right. Thank you. All right. Why
12 don't we -- I'm just trying to -- I'm also looking at my
13 calendar, trying to figure out a good time to bring all of us
14 back together without a whole lot of slippage, but at the
15 same time giving you all some time to confer further and also
16 do a little bit of homework for me.

17 If I could get you all to take a look at your respective
18 calendars and see what October 19th looks like. Probably the
19 best bet would be October 19th at 1:30.

20 MR. LANTER: Jim Lanter here, Your Honor. My
21 calendar is clear..

22 MR. KORNHAUSER: I'm just checking, Your Honor.

23 (Pause.)

24 MR. KORNHAUSER: That's fine with me, Your Honor.

25 THE COURT: All right. So why don't we do this:

1 I'm going to ask that you all attempt to continue to confer
2 on a schedule. And let me give you a couple of thoughts in
3 relation to that.

4 First of all, I'm not going to require Rule 26
5 disclosures. It does sound like you all are well down the
6 road on this, and whatever disclosures may have occurred in
7 connection with the state court case I think probably gets
8 you where you need to be, particularly given the fact that
9 discovery has already kicked off in a material way. So,
10 rather than burden the process with an overlay of Rule 26
11 disclosures, let's just dispense with those.

12 I'll also provide leave, effectively, for if there is --
13 either party wishes to make additional motions for summary
14 judgment. I'm fine with that as part of the schedule. I
15 think it's -- it's actually kind of funny. It's probably
16 more of a legacy issue than anything, the one-motion rule,
17 because you all will find this a little comical, but I was
18 scratching my head and actually looking over at my folks here
19 and saying, I didn't know I had that rule. But there is some
20 utility to it because it just kind of keeps things
21 mainstreamed and on track.

22 So, that said, I do think that let's have a -- I don't
23 have a problem with opening up an additional opportunity for
24 further summary judgment activity, but let's do try to have
25 some sense of efficiency. So let's, you know, contemplate

1 that it would be an opportunity to file one more round, if
2 you will, of summary judgment matters -- of course, without
3 prejudice to a request for leave to file another one if for
4 some reason there's a real strong basis to do that.

5 So, that'll be something that you all will need to be
6 talking about scheduling around as well.

7 I did hear, Mr. Kornhauser, I think you had made the
8 comment about potentially amending the existing motion for
9 summary judgment. So, you know, we need to put a schedule
10 down for that, too.

11 The one thing that I actually do like to do -- I don't
12 know what your experience had been with the state court that
13 this was in front of -- I do like to have a hearing on
14 motions for summary judgment because I like to hear argument,
15 particularly if there are questions that I have on particular
16 points. So I would want the schedule to include, you know,
17 baked in, if there's going to be amendments, that amendments
18 to those motions need to be filed by x date, responses,
19 replies, et cetera, and then let's have a hearing set down
20 for argument so that I can have that done now.

21 The one thing that you all are going to need to
22 collectively be cognizant of, if this helps at all, I do
23 think that, while June seems a bit extended, quite frankly,
24 it seems like you all have been at this for a while, so if it
25 helps give you some, I guess, a little bit of a road map of

1 where I would be inclined to go in my own head, know that
2 June is probably a bit out there.

3 On the flip side, what I don't want to do is have a
4 summary judgment hearing within weeks of a trial setting,
5 basically, because that's just -- that leads to inefficiency.
6 I just -- that gives me no time to react. So at least be
7 thinking about that as you put down a schedule.

8 So, with all of that said, what we'll do is I will set
9 this for a scheduling conference on October 19th at 1:30 p.m.
10 What I'd like for you all to do is to confer in advance of
11 that hearing, try to come up with an agreeable scheduling
12 order that takes into account the matters that I've just
13 indicated.

14 If there is an inability to agree with respect to the
15 schedule, what I would like is for the parties to file their
16 respective statements. I don't need a bunch of argument
17 included. I just need to know what the parties' respective
18 requests are as to scheduling in, effectively, a notice of
19 sorts that's filed by October 9th. That gives us a little
20 bit of time before the 19th. And that's maybe a little bit
21 earlier than you all might have thought that I would set
22 something out. I just have a really compressed and busy week
23 in between the 9th and the 19th right now, and I want to make
24 sure that I have time to consider what the respective asks
25 are, if there's not an agreement, so that I can try to

1 evaluate things.

2 So, that'll give you all some homework, and then we'll
3 regroup on the 19th.

4 So that you all know, if you reach agreement on a
5 schedule and you submit an agreed scheduling order, then we
6 can take the October 19th hearing off the schedule. That
7 October 19th hearing is purely a backstop hearing in the
8 event that we need to have a hearing to talk about scheduling
9 because of disputes with respect to scheduling.

10 Any questions from anybody?

11 MR. LANTER: I've got one question, Your Honor. And
12 this is kind of more of an administrative issue, and tell me
13 if you're not the right person to ask. But within the
14 Court's electronic filing system, we tried to file a response
15 to their motion for summary judgment after we were appointed
16 special counsel, and it would not let me relate back to a
17 matter in our removal appendix. Any ideas? This is, quite
18 frankly, my first rodeo in this type of adversary.

19 THE COURT: Well, if it gives you any comfort at
20 all, this is not the first time that this has come up. It
21 does get cumbersome.

22 I guess what I would ask is this, because it'll probably
23 make things cleaner: We don't have any responses to either
24 of the summary judgments that have been filed; am I right
25 about that?

1 MR. LANTER: No, nobody -- nobody's filed a response
2 yet.

3 THE COURT: All right. So why don't --

4 MR. LANTER: (inaudible) yet.

5 THE COURT: Well, what I was going to say is why
6 don't we do this for -- because of that, so we're not having
7 -- we don't have a bunch of filings that have to be worried
8 about, if I could kindly ask you, each of the parties, to
9 just simply redocket as a new docketing entry the summary
10 judgment motion that had been filed in state court. I don't
11 want that to disrupt deadlines at all.

12 MR. LANTER: Uh-huh.

13 THE COURT: You know, obviously, the stay has
14 impacted things. And I guess what I would ask is for you all
15 to try to cooperatively and collaboratively reach agreement
16 on what the respective response deadlines would be. And
17 certainly if somebody is planning to file an amended motion,
18 again, I would ask that you all be conferring on that,
19 because there's not a lot of utility in forcing somebody to
20 go through the effort of responding to a summary judgment
21 motion that's just going to be amended.

22 MR. LANTER: Right.

23 THE COURT: But what I -- ultimately, where I'm
24 going with all this is, if we redocket the motions for
25 summary judgment as essentially a freestanding motion now

1 that we're in the adversary, that will eliminate a lot of the
2 confusion from a docketing standpoint and really kind of keep
3 our record clean. So I thank you for raising that. I think
4 let's do that, and that will keep it clean.

5 MR. LANTER: Okay. That makes sense to me, Your
6 Honor. Thank you.

7 MR. KORNHAUSER: And Judge, thank you for that. You
8 know, our intent would be to have these legal issues that are
9 at the core of this case in front of you in totality at one
10 time, hopefully, so that we can, you know, get dispositive
11 rulings one way or the other on these important issues. So
12 we're going to try to be efficient, I know I will, in making
13 sure that we get to you all the arguments and that you can
14 have an opportunity to evaluate those at one time.

15 THE COURT: All right. Very good. And I think that
16 that makes sense. And, again, just hopefully if you all can
17 coordinate on a schedule that will achieve that objective, I
18 think that that makes a lot of sense.

19 MR. KORNHAUSER: Right. And the idea, of course,
20 being that discovery is developed well enough so that we're
21 there, you know, so that the timing of this all makes sense
22 for everybody.

23 THE COURT: Understood. All right. Anything
24 further from anybody today?

25 MR. LANTER: No, Your Honor. Thank you for your

1 time.

2 THE COURT: All right. Very good. Thank you all.

3 MR. FERRIS: Thank you, Your Honor.

4 MR. KORNHAUSER: Thank you, Judge.

5 MR. FERRIS: May we be excused?

6 MR. KORNHAUSER: Can we log off?

7 THE COURT: Feel free to log off when you all are
8 ready. Thank you.

9 MR. KORNHAUSER: Great. Thank you.

10 (Conclusion of proceedings at 10:17 a.m.)

11 --oOo--

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 /s/ Kathy Rehling

09/30/2020

24 Kathy Rehling, CETD-444

Date

25 Certified Electronic Court Transcriber

19

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From: [Jim Lanter](#)
To: [Christopher J. Kronzer](#)
Cc: ["Paul Wickes"](#); [Matt A. Kornhauser](#); [Dylan B. Russell](#); ["Suki Rosen"](#); ["Ferris, Matt"](#)
Subject: RE: Maalt v. Sequitur
Date: Friday, October 30, 2020 9:31:09 AM
Attachments: [image007.png](#)
[image011.png](#)
[image003.png](#)
[Scheduling Order rev 10-30-2020 - redlined.docx](#)
[Scheduling Order rev 10-30-2020 - redlined.pdf](#)

Chris,

Several things to address in this email:

1. We will agree to the submission of the attached scheduling order. A redlined copy is attached as well as a final in pdf form.
2. With respect to your motion to amend your counterclaims, we will not oppose your motion provided that the order entered states – “Plaintiff is hereby authorized to file an amended answer to address new matters raised in the Fourth Amended Counterclaims and Third Amended Third-Party Claims.”
3. Maalt will not oppose Sequitur’s motion to consolidate the proofs of claim and objections to the claims with the adversary. Paul and I have not been retained by Vista Proppants and Logistics, LLC to represent it at this point, so it will be necessary to get its bankruptcy counsel’s (who is copied on this email) consent to entry of your proposed order.
4. We would like dates for a deposition of a representative of Sequitur on the following topics:
 - a. The allegations set forth in paragraph 42 of Defendant’s Fouth Amended Counterclaims and Third Amended Third-Party Claims (the “Claims”) to the effect that Vista Proppants and Logistics, LLC and Maalt, LP made negligent misrepresentations to Defendant, that Defendant justifiably relied on the representations and information, and that Defendant has incurred reliance damages in an amount over \$4,000,000;
 - b. The allegations set forth in paragraph 43 of the Claims to the effect that Vista Proppants and Logistics, LLC and Maalt, LP made false, material representations to Defendant, and thereby fraudulently induced Sequitur into entering into the Terminal Services Agreement, that Defendant relied on those representations, and incurred reliance damages in an amount of \$4,000,000;
 - c. The allegations set forth in paragraph 44 of the Claims to the effect that Maalt, LP breached the Terminal Services Agreement and caused Defendant damage;
 - d. The allegations set forth in paragraph 45(7) of the Claims to the effect that the enforcement of a Shortfall Payment violates public policy, is unconscionable, is unenforceable, or is unlawful;
 - e. The allegations set forth in paragraph 2.c of Defendant’s Original Answer, Verified Denial and Affirmative Defenses to Plaintiff’s Second Amended Petition (the “Answer”) to the effect that Maalt, LP did not procure and maintain pollution legal liability



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- insurance as required by the Terminal Services Agreement;
- f. The allegations of waiver in paragraph 4 of the Answer;
 - g. The allegations of failure to mitigate damages in paragraph 8 of the Answer;
 - h. The allegations of impossibility in paragraph 10 of the Answer;
 - i. The allegations of prior material breach and repudiation in paragraph 11 of the Answer;
 - j. The allegations of impracticability in paragraph 12 of the Answer;
 - k. The allegations that the contractual damages provision for which Plaintiff seeks to enforce is a liquidated damages provision that is an unenforceable penalty in paragraph 14 of the Answer; and
 - l. The allegations of mutual mistake in paragraph 15 of the Answer.

Jim Lanter

James Lanter, PC
Attorney

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Mansfield, Texas 76063

817.453.4800

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From: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Sent: Thursday, October 29, 2020 1:36 PM

To: Jim.lanter@lanter-law.com

Cc: 'Paul Wickes' <pwickes@wickeslaw.com>; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; Dylan B. Russell <russell@hooverslovacek.com>; Suki Rosen <srosen@forsheyprostok.com>

Subject: RE: Maalt v. Sequitur

Jim,

We have contacted the Court about a hearing on our Motion for Leave and they have given us 11/16 at 1:30 pm as an available time and date. Please confirm you are available for a hearing then.

As for the scheduling order, we are in agreement to the changes except for the limitation on the amended motion for summary judgment. While we acknowledge the judge used the words "dusting off" during the scheduling conference, to put that in a scheduling order as some sort of legal standard is inappropriate. We believe the limitation on the amended summary judgment should be taken out. You have the transcript, and if you feel that we have exceeded the scope then you are free to object.

0055

I would hope that we do not need court intervention either, but if you continue to insist on these unnecessary limitations in a scheduling order then I suggest we submit the dueling proposed scheduling orders with and without the "dusting off" language and we can ask the court to consider it on 11/16.

Best Regards,

Chris

From: Jim Lanter <jim.lanter@lanter-law.com>

Sent: Wednesday, October 28, 2020 11:46 AM

To: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Cc: 'Paul Wickes' <pwickes@wickeslaw.com>; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; Dylan B. Russell <russell@hooverslovacek.com>

Subject: RE: Maalt v. Sequitur

Chris,

Attached is our revision to your last pass at the scheduling order. To minimize the redlining, I've accepted those dates and other matter that don't seem to be in issue. Comments are in the margins.

I've also attached the transcript of the court's ruling during the scheduling conference.

If there remains some issue regarding amendment of the state court motions that were filed months ago, then perhaps you can explain what you intend to do so we can determine how best to approach the matter without court intervention if possible. I've asked Dylan for that in the past, but he never responded. Without context and a point of reference, it's hard to have a meaningful discussion.

Jim Lanter

James Lanter, PC
Attorney

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From: Christopher J. Kronzer <kronzer@hooverslovacek.com>

Sent: Friday, October 23, 2020 7:40 PM

To: Jim.Lanter@lanter-law.com
Cc: 'Paul Wickes' <pwickes@wickeslaw.com>; Matt A. Kornhauser <kornhauser@hooverslovacek.com>; Dylan B. Russell <russell@hooverslovacek.com>
Subject: RE: Maalt v. Sequitur

Jim,

Find attached our redline version with comments for your review.

Chris

Christopher J. Kronzer
Partner



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From: Jim Lanter <jim.lanter@lanter-law.com>
Sent: Tuesday, October 20, 2020 12:52 PM
To: Matt A. Kornhauser <kornhauser@hooverslovacek.com>; Christopher J. Kronzer <kronzer@hooverslovacek.com>; Dylan B. Russell <russell@hooverslovacek.com>
Cc: 'Paul Wickes' <pwickes@wickeslaw.com>

Subject: Maalt v. Sequitur

Gentlemen,

Attached is the redraft of the scheduling order with the dates and other provisions instructed by the court. Please let us know if there are any issues.

Jim Lanter

James Lanter, PC
Attorney

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

In re

**Vista Proppants and Logistics, LLC, *et al.*,
Debtors.**

§
§
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§
§
§
§

**Chapter 11
Case No. 20-42002-elm11
(Jointly Administered)**

MAALT, LP,

Plaintiff and Counter-Defendant,

vs.

SEQUITUR PERMIAN, LLC

Defendant.

§
§
§
§
§
§
§
§

Adversary Proceeding No. 20-04064

**ORDER DENYING MOTION TO EXCLUDE UNDISCLOSED EVIDENCE OF
DAMAGES, DISMISS CLAIMS, AND SUPPORTIG BRIEF**

On July 22, 2021, the Court heard Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief. Based on the consideration given during the hearing, the Motion, and Sequitur Permian, LLC's Response the Court is of the opinion that this Motion should be **DENIED**.

ACCORDINGLY, it is hereby **ORDERED** that Plaintiff and Third-Party Defendant's Motion to Exclude Undisclosed Evidence of Damages, Dismiss Claims and Supporting Brief and all relief requested therein is **DENIED**.

End of Order

Approved to form by:

/s/ Christopher J. Kronzer

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Dylan B. Russell

State Bar No. 24041839

Christopher J. Kronzer

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SEQUITUR PERMIAN, LLC**