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JUDICIAL CENTRE	CALGARY
PLAINTIFF	HSBC BANK CANADA, AS AGENT
DEFENDANT	Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD., and QMAX CANADA OPERATIONS INC.
APPLICANT	KPMG INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD., and QMAX CANADA OPERATIONS INC.
DOCUMENT	FIRST REPORT TO THE COURT SUBMITTED BY KPMG INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD., and QMAX CANADA OPERATIONS INC. DATED DECEMBER 18, 2020
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1. INTRODUCTION AND PURPOSE OF THE REPORT

Introduction

1. On May 27, 2020, HSBC Canada, as administrative agent ("**HSBC Canada**") brought an application (the "**Application**") pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and section 13(2) of the *Judicature Act*, RSA 2000, c J-2, seeking the appointment of KPMG Inc. ("**KPMG**") as receiver and manager over the assets, undertakings and property (the "**Property**") of Q'Max Solutions Inc. ("**QSI**"), Fluid Holdings Corp. ("**Fluid Holdings**"), Q'Max Solutions Holdings Inc. ("**QSHI**"), 1356760 Alberta Ltd. ("**1356760**"), and QMax Canada Operations Inc. ("**QCOI**" and together with, QSI, Fluid Holdings, QSHI and 1356760, the "**Receivership Entities**").

2. The Court of Queen's Bench of Alberta (the "**Court**") pronounced an order on May 28, 2020 (the "**Receivership Order**"), pursuant to which KPMG was appointed receiver and manager (in such capacity, the "**Receiver**") of the Property of the Receivership Entities (the "**Receivership Proceedings**"). A copy of the Receivership Order is attached hereto at **Appendix "A"**.

Purpose of the Report

3. This is the Receiver's first report to the Court (the **"First Report"**) and is filed to provide this Honourable Court with:

   a) Background information on the Receivership Entities and their subsidiaries and affiliates (collectively, the "**Q'Max Group**");

   b) An overview of the liquidation process in respect of the Receivership Entities and the sale processes being undertaken by the Receiver in respect of certain foreign subsidiaries of QSI;

   c) An overview of the litigation involving QSI's proprietary software known as "**MAXSITE**";

   d) An update on proceedings pursuant to Chapter 15 of the United States Bankruptcy Code (the "**U.S. Bankruptcy Court**"); and

   e) Information to demonstrate the MAXSITE litigation's impediment on the sale processes being undertaken by the Receiver and the Receiver's request for advice and directions for a determination in respect of same.

4. A confidential supplement to the First Report (the "**First Confidential Supplemental Report**") has been prepared by the Receiver, which provides confidential details on the sale processes being undertaken by the Receiver as well as certain other information relating to the entities subject to those sale processes.

Terms of Reference

5. All materials filed with the Court in connection with the Receivership Proceedings and the U.S. Bankruptcy Court in connection with the Chapter 15 proceedings, which are discussed below, will be made available to interested parties in electronic format on the Receiver's website: home.kpmg/ca/qmax (the "**Receiver's Website**").

6. In preparing this report, the Receiver has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the "**Information**") prepared by the Q'Max Group and/or their representatives, and discussions with the Q'Max Group's management and/or representatives.

7. The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.

8. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Receiver.

9. All references to monetary amounts in this report are in U.S. dollars unless otherwise specified.

2. BACKGROUND INFORMATION

Q'Max Group Corporate Structure

10. QSI is a British Columbia incorporated corporation that is extra-provincially registered in Alberta and is the primary parent company of the group of multinational entities that comprises the Q'Max Group. QSI, by and through the Q'Max Group, provides oilfield services, focused on onshore and offshore drilling fluids, solids control and waste management solutions in the upstream oil and gas drilling and producing industry. The Q'Max Group's customers include(d) national oil companies, major international energy companies and independent exploration and production companies in Canada, the United States, Mexico, Columbia and the Middle East and North Africa.

11. QSI holds direct or indirect ownership interests in the currently or formerly operating and non-operating entities in the Q'Max Group. In addition to QSI, the entities in the Q'Max Group which are relevant to the Receivership Proceedings are the following:

    a) Fluid Holdings, a British Columbia incorporated corporation which is extra-provincially registered in Alberta and is the 100% parent of QSI;

    b) QSHI, an Alberta incorporated corporation which has a 100% ownership interest in Q'Max Mexico, S.A de C.V. ("**Q'Max Mexico**");

    c) 1356760, an Alberta incorporated corporation which has small ownership interests in a number of entities in the Q'Max Group;

    d) QCOI, a British Columbia incorporated corporation which is extra-provincially registered in Alberta and prior to the Receivership Proceedings was the operating entity in Canada;

    e) Q'Max Mexico, a Mexican entity which operates the Q'Max Group's Mexican drilling fluids business;

    f) Central Procurement Inc., a Barbadian entity which operates the Q'Max Group's Colombian branch ("**Q'Max Colombia**");

    g) Environmental Solutions Petroleum Services – Free Zone – S.A.E, ("**Environmental Solutions**"), an Egyptian entity that has a 49% ownership interest in SARL Environmental Solutions Algeria ("**SARL**") which is an Algerian entity. Environmental Solutions and SARL operate the Q'Max's Group waste management business in Egypt and Algeria;

h) International Drilling Fluids & Engineering Services Co. (IDEC) LTD. ("**IDEC**"), a British Virgin Islands entity which has branches in several Middle Eastern and North African countries including the United Arab Emirates, Iraq, Kenya and Tanzania;

i) United QMax Drilling Fluids Company Co. (the "**Kuwait JV**"), a Kuwaiti entity in which QSI holds a 49% ownership interest;

j) QMax Arabian Oil & Gas Services Co. (the "**Saudi JV**"), a Saudi Arabian entity in which QSI holds a 51% ownership interest; and

k) Q'Max America Inc. ("**QAI**") and Anchor Drilling Fluids US, LLC ("**Anchor**"), the two formerly operating entities in the United States which are subject to proceedings under chapter 7 of the U.S. Bankruptcy Court, as discussed further below.

12. QSI's ownership interests in each of the entities in the Q'Max Group is set out in the corporate structure chart attached as **Appendix "B".**

13. In addition to holding direct and indirect ownership interests in the entities in the Q'Max Group, QSI owns intellectual property, including MAXSITE, which is licensed and/or used by certain of the Q'Max Group entities.

14. QSI has also provided parent company guarantees and shared services to the benefit of the Q'Max Group.

Credit Facilities

HSBC Credit Agreement

15. QSI, QCOI and QAI are the borrowers (the "**Borrowers**") pursuant to a credit agreement dated May 23, 2014, which has been amended, restated and supplemented through several amending agreements (collectively, the "**HSBC Credit Agreement**"). as between HSBC Canada as administrative agent for certain lenders, which include HSBC Canada, Bank of Montreal, Business Development Bank of Canada, Export Development Canada and HSBC Bank USA (collectively, the "**Lenders**").

16. As of May 5, 2020, the amounts outstanding from the Borrowers to the Lenders inclusive of interest, was (a) US$145,381,623.21 plus CDN$1,228,668.47: (b) outstanding letters of credit in the amounts of US$3,916,296.42 and CDN$1,161,408.79; (c) other outstanding credit card balances, plus accrued and accruing costs, disbursements and interest (collectively, the "**Indebtedness**").

17. Each of QSI, QSHI, 1356760, QCOI, QAI and Anchor have provided unlimited guarantees of the Indebtedness. Fluid Holdings has granted a limited recourse guarantee in favour of HSBC Canada. Further guarantees of the Indebtedness have been provided by certain other foreign entities in the Q'Max Group. Among other security and collateral, general security agreements were granted by QSI, QSHI, 1356760, QCOI, QAI and Anchor to secure amounts advanced under the HSBC Credit Agreement and which provide first-ranking security interests to the Lenders on all or substantially all the grantors' assets.

Encina Credit Agreement

18. In addition to the HSBC Credit Agreement, QAI as "holdco" and Anchor as borrower are parties to a separate credit agreement (the "**Encina Credit Agreement**") with Encina Business Credit, LLC, as administrative agent on behalf of certain lenders ("**Encina**"). On September 6, 2019, HSBC Canada and Encina entered into an intercreditor agreement, the purpose and effect of which was to subordinate a portion of the Lenders' security to security held by Encina in respect of amounts owing by QAI and Anchor under the Encina Credit Agreement.

Events Leading to the Receivership Proceedings

19. As a result of the downtown in the oil and gas sector and a corresponding reduction in rig and drilling activity, the operations of the Q'Max Group were negatively impacted. These negative impacts were exacerbated due to the COVID-19 pandemic beginning in March 2020. Demand for the Q'Max Group's products and services declined significantly further impacting the Q'Max Group's profitability and liquidity.

20. On May 12, 2020, HSBC Canada, on behalf of the Lenders, issued to the Borrowers a demand for payment and notice of intention to enforce security pursuant to section 244(1) of the BIA.

21. On May 24, 2020, QAI and Anchor filed voluntary petitions for relief under chapter 7 of the U.S. Bankruptcy Court (the "**Chapter 7 Proceedings**"). On the same day, the United States Trustee appointed Christopher R. Murray as the chapter 7 trustee (the "**U.S. Trustee**").

22. As discussed above, on May 27, 2020, HSBC Canada brought the Application and on May 28, 2020, the Court granted the Receivership Order.

23. The Receiver has not been appointed in any capacity in respect of either QAI or Anchor, but both QAI and Anchor are parties to the larger international Q'Max Group.

24. Further background information regarding the Q'Max Group and the Receivership Proceedings can be found on the Receiver's Website.

3. SALE AND LIQUIDATION PROCESSES

Liquidation of Receivership Entities

25. Shortly after the Receiver's appointment, the Receiver determined that the Receivership Entities could not be sold as going concern businesses. Accordingly, the Receiver has undertaken a liquidation process in respect of QCOI which was the only Receivership Entity with any material and saleable operating assets.

26. As discussed above, the assets of the other Receivership Entities share interests in various of the Q'Max Group entities and in the case of QSI, also its intellectual property, including MAXSITE.

Foreign Entity Sale Processes

27. Prior to the Receiver's appointment, in or around April 2020, QSI commenced sale processes (the "**Sale Processes**") in respect of QSI, QSHI and 1356760's share interests in Q'Max Mexico, Q'Max Columbia and, on a combined and individual basis, Environmental Solutions (including its share interest in SARL), IDEC, the Kuwait JV and the Saudi JV (collectively, the "**MENA Entities**").

28. Since its appointment, the Receiver has continued to undertake the Sale Processes through the investment bankers, Lazard (Q'Max Mexico and Q'Max Columbia) and Simmons Energy (MENA Entities) (collectively, the "**Sales Agents**") that were previously engaged by QSI.

29. The Sale Processes are now at advanced stages where potential purchasers have been identified and the Receiver intends to enter into definitive share purchase agreements. However, as discussed further below, the litigation in respect of MAXSITE threatens to impede the Receiver's ability to complete going-concern sales in respect of Q'Max Mexico, Q'Max Columbia and the MENA Entities.

U.S. Liquidation Process

30. Following its appointment, the U.S. Trustee requested approval from the U.S. Bankruptcy Court to continue to operate the businesses in the United States in order to facilitate a short stalking horse sale process of certain of the assets of QAI and Anchor.

31. On June 3, 2020, the U. S. Trustee filed a motion to, inter alia, approve a stalking horse bidder sale agreement and bid procedures. On July 1, 2020, the U.S. Bankruptcy Court entered an order approving the sale of a portion of QAI and Anchor's assets, principally including operations in the northeast United States, to Paragon Integrated Services Group ("**Paragon**") for $7.2 million plus the assumption of the remaining Encina debt.

32. Subsequently, the U.S. Trustee has been taking steps to realize on the remaining assets of QAI and Anchor and has been liaising with the Receiver with respect to the same.

Potential Realizations

33. The Receiver and the U.S. Trustee currently anticipate that the proceeds realized from (a) the sale of the QCOI assets (b) the sale of assets belonging to QAI and Anchor, and (c) the sale of the share interests in the foreign entities owned by QSI, QSHI and 1356760 (to the extent that such share sales can be completed given the issues discussed further below) will be insufficient to repay the Lenders in full, and accordingly, the Receiver and U.S. Trustee currently anticipate that the Lenders will realize a significant deficiency.

4. MAXSITE LITIGATION

MAXSITE Suite of Applications

34. The Receiver understands that MAXSITE is a suite of engineering and related applications developed in-house by QSI and used by all the operating Q'Max Group entities other than Environmental Solutions and SARL (who do not have any drilling operations). The MAXSITE suite includes 12 applications which are used in the day-to-day drilling operations undertaken by these entities and includes historical and predictive information which is critical to the Q'Max Group's businesses.

35. The Receiver has been advised by Q'Max Group personnel that MAXSITE has two types of applications: (a) engineering applications used in the field to support the daily operations, and (b) backup applications mainly used in the office to manage data internally. The engineering applications provide the engineers with the ability to, *inter alia*, plan projects, document wellsite services for all types of wells, make recommendations to clients, prepare post-project documentation, and support the invoicing process. The back-office applications are used internally to manage operational data, including projects, opportunities, master data of chemicals, services, equipment, screens, and to build the well data repository and the well database.

M-I Action and the Complaint

36. Shortly after the Receiver's appointment on May 28, 2020, and in the course of becoming familiar with the Q'Max Group's businesses and international operations, the Receiver learned of several legal proceedings involving QSI and/or its affiliates in various jurisdictions in which the Q'Max Group has or had operations. One such action was a claim by M-I LLC ("**M-I**") against QSI, QAI, and two individuals, which was filed in the United States District Court for the Southern District of Texas, Houston Division (the "**U.S. District Court**"), on April 6, 2018, in Case No. 4:18-cv-01099 (the "**M-I Action**").

37. In the M-I Action, M-I has alleged that a former employee named Sanjit Roy ("**Roy**") (a co-defendant in the M-I Action, and a former 20-year employee of M-I) misappropriated proprietary information (including software and/or source code) when he left M-I's employ, and then used that proprietary information to develop MAXSITE after he become a Q'Max Group employee.

38. The complaint (the "**Complaint**") in the M-I Action, a copy of the body of which is attached to the First Report as **Appendix "C"**, alleges breach of copyright and trade secret violations against QSI (as well as various other claims against the two individual defendants). Specifically, the Complaint in the M-I Action makes the following allegations and claims:

a) That M-I had spent years and millions of dollars developing a suite of engineering application tools for the exploration and development of oil and gas wells, which application tools have given M-I a competitive advantage;

b) That Roy had been the Manager of Engineering Technology at M-I, and he (and another individual defendant named Wilson) had been responsible for developing M-I's suite of software applications prior to 2014 when they were employed by M-I;

c) That Roy was bound by confidentiality and trade secret agreements;

d) That Roy resigned from M-I in 2014, after which time he went to work for Weatherford International for one year before he became a Q'Max Group employee;

e) That before leaving his employment at M-I, Roy copied thousands of computer files containing confidential information which belonged to M-I, including source code related to M-I's proprietary engineering applications;

f) That this confidential and proprietary information was ultimately used to develop MAXSITE;

g) That M-I has copyright in the materials which had been misappropriated by Roy and which were shared with QSI, and as a result, QSI has breached M-I's copyright;

h) That the misappropriated M-I materials constitutes M-I trade secrets, which QSI intended to use and commercially exploit, and as a result, QSI is in violation of M-I's rights under certain federal and state trade secrets legislation;

i) That Roy has breached his confidentiality and trade secrets agreements with M-I;

j) That all defendants have wrongly converted M-I's property to their own use;

k) That the individual defendants breached the fiduciary duties they owed to M-I; and

l) As a result, M-I seeks the following relief**:**

   i) An injunction preventing QSI from using or disclosing M-I's confidential information;

   ii) An injunction requiring QSI to return M-I's confidential information;

   iii) An injunction preventing QSI from doing business with M-I's customers which were solicited by use of M-I's confidential information; and

iv) Damages.

39. QSI and the other defendants named in the M-I Action have defended the M-I Action and dispute the allegations set out in the Complaint.

Summary Judgment Motion and Decision

40. Upon becoming aware of the M-I Action, the Receiver's counsel contacted QSI's Texas-based intellectual property litigation counsel, BoyarMiller, to advise of the Receiver's appointment and to discuss the M-I Action. BoyarMiller advised that there was an outstanding summary judgment motion in the M-I Action, and that BoyarMiller anticipated receiving a decision in that summary judgment motion shortly. BoyarMiller suggested that the Receiver wait to receive the U.S. District Court's decision in that summary judgment motion before taking any additional steps.

41. The decision in the summary judgment motion was released in August 2020. A copy of the August 2020 summary judgment decision (the "**2020 MSJ Decision**") is attached as **Appendix "D**". In addition, M-I had brought a summary judgment motion previously, the decision in respect of which was released approximately one year earlier (the "**2019 MSJ Decision**"). A copy of the 2019 MSJ Decision is attached as **Appendix "E"**. The combination of the 2020 MSJ Decision and the 2019 MSJ Decision results in the following net effect on the allegations in the Complaint:

a) The 2020 MSJ Decision dismissed M-I's copyright infringement claim against QSI and QAI;

b) The 2020 MSJ Decision did not grant QSI and QAI's motion to have M-I's trade secret claim summarily dismissed;

c) The 2019 MSJ Decision did not allow M-I's motion on its trade secret misappropriation claim;

d) As a result, M-I's trade secret claim as set out in the Complaint remains extant (but has been denied by the defendants) and was directed to trial;

e) Because the Chapter 7 Proceedings in respect of QAI preceded the 2020 MSJ Decision, QAI was dismissed from the M-I Action (with leave granted to M-I to have the action reinstated against QAI if the stay in the Chapter 7 Proceedings was lifted); and

f) The 2019 MSJ Decision also granted M-I's breach of contract claim against Roy (in other words, the U.S. District Court concluded that Mr. Roy had improperly taken proprietary information from M-I upon leaving M-I's employ.) However, the question of what damages M-I should be entitled to as a result of this breach of contract would be determined at trial.

42. Accordingly, the only claims which M-I still has against QSI in the M-I Action are: (a) the trade secrets claim, and (b) the conversion claim. The breach of copyright claim was summarily dismissed by the 2020 MSJ Decision.

Relief Requested By M-I

43. Significantly, it appears that M-I may have acknowledged that it was seeking injunctive or equitable relief only in respect of the copyright infringement claim, which was summarily dismissed by the 2020 MSJ Decision. The question of whether M-I is entitled to injunctive or equitable relief against QSI, or if M-I is now limited to a damages award (assuming of course M-I can first establish liability) will have significant implications on the Receivership Proceedings and the Sale Processes for reasons discussed further below.

44. At footnote 48 of the 2020 MSJ Decision, the U. S. District Court made reference to M-I's request for injunctive relief, and also made specific reference to, and apparently relied upon, M-I's note 2 in its motion for summary judgment response, where M-I said the following:

> In this case, where Q'Max used a different programming language for the MAXSITE product and thus did not copy the entire code line-for-line, M-I seeks only injunctive relief on the copyright claim, and seeks damages for the trade secret, conversion, and breach claims. [Emphasis added.]

45. In apparent reliance on this comment (and with specific reference to it), the U.S. District Court noted (at p.26 of the 2020 MSJ Decision): "Defendants are entitled to summary judgment on M-I's copyright infringement claim based on MAXSITE's alleged infringement, including M-I's request for injunctive relief." [Emphasis added.]

5. RECOGNITION PURSUANT TO CHAPTER 15 OF THE U.S. BANKRUPTCY CODE

Receiver's Application for Chapter 15 Recognition

46. After the 2020 MSJ Decision was released in August 2020, the Receiver determined that is was necessary to seek recognition in respect of QSI pursuant to chapter 15 of the U.S. Bankruptcy Code in Texas (the "**Chapter 15 Proceedings**") in order to have the stay in the Receivership Proceedings enforced in the United States in respect of the M-I Action. The Receiver made this decision primarily because the M-I Action was subject to an aggressive pre-trial schedule which required significant work to be done, at significant expense, in preparation for a two-week trial which had been scheduled for January 2021.

47. The initial hearing in the Chapter 15 Proceedings occurred on October 2, 2020 before Judge Isgur of the U.S. Bankruptcy Court. M-I's U.S. counsel appeared and opposed the application, in part on the basis that they wanted to conduct additional discovery of QSI and QAI. As a result, Judge Isgur adjourned the application to October 13, 2020. A copy of the transcript of the October 2, 2020 hearing before Judge Isgur is attached hereto as **Appendix "F"**.

M-I's Subpoenas for Deposition and Discovery

48. Prior to the October 13, 2020 hearing, the Receiver cooperated with M-I's U.S. counsel in respect of its discovery requests related to QSI. This process included the Receiver answering numerous questions which were posed by M-I's U.S. counsel and producing various documents for M-I's U.S. counsel in response to requests made by them. For example, attached as **Appendix "G"** and **Appendix "H"**, respectively are: (a) a copy of an October 8, 2020 email from Receiver's Canadian counsel to M-I's U.S. counsel answering various questions which had been asked by M-I's U.S. counsel and providing various documents in response to those questions, and (b) a copy of an October 15, 2020 email from Receiver's Canadian counsel to M-I's U.S. counsel answering various additional questions which had been asked by M-I's U.S. counsel and providing various documents in response to those questions.

49. At various times during the above-noted initial hearing and the subsequent hearings before the U.S Bankruptcy Court and U.S. District Court, counsel for M-I intimated that at some point prior to the commencement of the Receivership Proceedings and the Chapter 7 Proceedings there had been an improper and clandestine transfer of the ownership of MAXSITE from QAI to QSI.

50. The Receiver has no information to indicate that any such transfer from QAI to QSI ever occurred. Insofar as the Receiver is aware, MAXSITE is, and at all times has been, owned by QSI. The Receiver is able to confirm that the source code for MAXSITE is housed on a third-party server, that the contract for that storage service is between the third-party service provider and QSI, and that the source code for MAXSITE is entirely within the control of QSI (and hence the Receiver).

51. U.S. counsel for M-I also, at various times, raised concerns with respect to an exclusive license agreement ("**ELA**") between QSI and QAI which was executed on the eve of the Receivership Proceedings and the Chapter 7 Proceedings, and that this ELA was then assigned to Paragon, the purchaser of QAI's assets in the northeast United States in the transaction that the U.S. Trustee had approved by the U.S. Bankruptcy Court on July 1, 2020.

52. The Receiver can confirm that it became aware of such an ELA and the assignment of same to Paragon in July 2020 after the approval of the sale by the U.S. Bankruptcy Court and after the closing of that sale. The Receiver can further advise (as the Receiver has also advised M-I's U.S. counsel) that when the Receiver became aware of the existence of this ELA, the Receiver took issue with the granting of the ELA and as a result of the Receiver's position, Paragon ultimately agreed to terminate the ELA. M-I's U.S. counsel was advised of all of the foregoing, and was provided with the relevant documents (including the termination notice), in the October 8, 2020 and October 15, 2020 emails which are attached hereto as Appendices "G" and "H" as discussed in paragraph 48 above.

53. In addition, M-I served a subpoena on the U.S. Trustee seeking to depose the U.S. Trustee and seeking additional discovery from the U.S. Trustee in respect of QAI. The service of this subpoena resulted in a hearing on October 9, 2020 before Judge Isgur on a motion by the U.S. Trustee to quash the subpoena. It should be noted that M-I also served a subpoena on the Receiver, but the Receiver and M-I agreed to proceed with the informal discovery, as described above. Following this hearing, Judge Isgur directed:

a) That the parties schedule an emergency hearing before Judge Lake of the U.S. District Court (the judge who had been overseeing the M-I Action) to determine whether the U.S. District Court or the U.S. Bankruptcy Court was the appropriate court to address various procedural and substantive issues which had arisen in the Chapter 15 Proceedings (including which court should consider whether to issue the stay of proceedings and which court should investigate questions around the ownership and transfer of the MAXSITE software which had been raised by M-I); and

b) the Chapter 15 hearing which had been scheduled for October 13, 2020, was adjourned to October 20, 2020.

54. A copy of the transcript of the October 9, 2020 hearing before Judge Isgur in the Chapter 15 Proceedings is attached hereto as **Appendix "I"**.

October 16, 2020 U.S. District Court Hearing

55. The hearing before Judge Lake of the U.S. District Court occurred on October 16, 2020. In advance of this hearing, both the Receiver and M-I prepared and filed "**Position Statements**". Copies of those Position Statements (without exhibits) are attached hereto at **Appendix "J".**

56. At the conclusion of that hearing, Judge Lake:

a) Held that the U.S. Bankruptcy Court (rather than the U.S. District Court) should decide whether to grant recognition of the Receivership Proceedings and whether to issue a stay, including whether to stay the M-I Action;

b) Held that the issues regarding the ownership, purported transfer and licensing of MAXSITE which had been raised by M-I should also be resolved by the U.S. Bankruptcy Court; and

c) Vacated the U.S, District Court's scheduling order concerning the M-I Action and cancelled the remaining filing deadlines.

57. A copy of the transcript of the October 16, 2020 hearing before Judge Lake is attached hereto as **Appendix "K"**.

Further Hearings in the Chapter 15 Proceedings

58. After the October 16, 2020 hearing before Judge Lake discussed above, the parties reattended before the U.S. Bankruptcy Court on October 20, 2020, in accordance with the October 9, 2020 direction of Judge Isgur. Unfortunately, due to a medical emergency, Judge Isgur was not available to preside, and the hearing therefore proceeded before Judge Jones. A copy of the transcript of the October 20, 2020 hearing is attached hereto as **Appendix "L"**.

59. After the October 20, 2020 hearing, Judge Jones granted certain provisional relief, subject to a final hearing in the Chapter 15 Proceedings on October 26, 2020, in order to give M-I's U.S. counsel an opportunity to complete the discovery they wished to complete, including a deposition of Mr. Diaz-Granados (the former CEO of QSI and former president of QAI and the current president of Paragon). That deposition took place on October 23, 2020.

60. Ultimately, Judge Isgur of the U.S. Bankruptcy Court granted a Recognition Order (again, over M-I's objections) on October 29, 2020 (the "**Recognition Order**"), a copy of which is attached hereto at **Appendix "M"**, and which, amongst other things:

a) Recognized the Receivership Proceedings with respect to QSI as a foreign main proceeding pursuant to section 1517 of the U.S. Bankruptcy Code;

b) Granted the Receiver all of the relief afforded under section 1520 of the U.S. Bankruptcy Code;

c) Granted various stays of proceedings pursuant to section 1521 of the U.S. Bankruptcy Code;

d) Provided that the U.S. Bankruptcy Court retained exclusive jurisdiction to determine the actual ownership of MAXSITE, including whether M-I has any ownership interest in MAXSITE, or is entitled to any injunctive or other equitable relief with respect to MAXSITE, with the retention of this jurisdiction not affecting the U.S. Bankruptcy Court's ability to enter all necessary and appropriate orders in connection with the Receivership Proceedings, including with respect to the disposition or sale of QSI's property or the licensing of MAXSITE to the extent of QSI's ownership interest therein, and granting stay relief for the U.S. Bankruptcy Court to determine whether M-I has any interest in MAXSITE; and

e) Declared that nothing in the Recognition Order was intended to foreclose reconsideration of the jurisdiction retention set forth therein to the extent that the U.S. Bankruptcy Court determines that this Court can and should determine ownership interests in MAXSITE.

Post-Recognition Order

61. On November 4, 2020, M-I's U.S. counsel wrote to the Receiver's Canadian counsel asking if the "Receiver for QSI will agree to lift the stay in the Canadian receivership case to allow for the U.S. litigation between M-I and QSI to continue". On November 5, 2020 the Receiver's Canadian counsel wrote to M-I's U.S. counsel advising that: "In the circumstances, the Receiver is of the view that it would be inappropriate to consent to the lifting of the stay in the Canadian receivership proceedings, and accordingly will not be doing so."

62. At the October 16, 2020 hearing before Judge Lake of the U.S. District Court, Judge Lake specifically directed that the schedule in respect of the M-I Action be vacated, and further directed that the U.S. Bankruptcy Court should decide the issues regarding the ownership, purported transfer and licensing of MAXSITE which had been raised by M-I.

63. As discussed above, the Chapter 15 Proceedings were opposed throughout by M-I. Immediately upon the granting of the Recognition Order, M-I sought to lift the stay to continue with the M-I Action (notwithstanding the fact that that the U.S. District Court has specifically passed responsibility for determination of various key matters to the U.S. Bankruptcy Court, as noted above).

6. M-I ACTION'S IMPEDIMENT ON RECEIVERSHIP PROCEEDINGS AND SALE PROCESSES

Importance of MAXSITE to a Going-Concern Sale

64. Apart from a few hard assets owned by QCOI yet to be liquidated, the balance of the Receivership Entities' estates consist of QSI, QSHI and 1356760's ownership interests in various entities comprising the Q'Max Group and QSI's ownership of intellectual property, including MAXSITE. It is these equity interests in various members of the Q'Max Group which represents the bulk of any remaining value in the Receivership Entities.

65. The Receiver has not been appointed receiver and manager over the non-Canadian entities in the Q'Max Group. However, given that QSI is the direct or indirect parent of these entities, the Receiver's only recourse is to sell QSI's, and the other Receivership Entities', equity interests in these entities. In order to maximize value, it is critical that these international operations be sold as going concerns through share transactions. There is no alternative form of transaction available to the Receiver in respect of these non-Canadian entities.

66. The Receiver has determined that selling MAXSITE by itself in a stand-alone sale is not a realistic alternative, and the Receiver is not pursuing such a transaction. At the same time, because MAXSITE is inextricably bound up in the businesses of these international affiliates, it will be possible to sell the entities as a going concern only if the purchasers of those entities continue to be able to use MAXSITE in the operation of those businesses.

67. Based on discussions and negotiations that the Sales Agents and the Receiver have had with interested parties, it appears that in order for the Receiver to be able to complete going-concern sales of the various foreign entities in the Q'Max Group, it will be necessary for the Receiver to provide an instance of MAXSITE subject to a license agreement to any purchaser of those businesses, so that the purchaser is able to utilize MAXSITE to run those operations without disruption or loss of value.

Effect of Outstanding M-I Action on Receiver's Sales Efforts

68. Given the foregoing, questions around the validity of M-I's claims, and what relief M-I may ultimately be entitled to, are fundamental to the Receiver's ability to conclude any such going-concern sales. M-I appears to have sought injunctive or other equitable relief in the M-I Action. Although all such claims have been disputed by QSI since the M-I Action commenced – and continue to be disputed – the very fact that such a remedy has been sought by M-I creates a potentially fatal impediment to the Receiver's ability to complete a going-concern sale with any purchaser requiring access to MAXSITE. This impediment is likely to create an insurmountable hurdle to the Receiver's ability to transact in respect of any of the foreign entities in which the Receivership Entities have an ownership interest.

69. However, if M-I's potential remedies in respect of the remaining claims against QSI in the M-I Action are limited to an award of damages, and if injunctive or other equitable relief are no longer available to M-I in the M-I Action, then the Receiver would be able to proceed with liquidating the Receivership Entities' major assets by transacting in respect of their share interests in the foreign entities. Accordingly, the question of what remedies M-I might be entitled to against QSI in the M-I Action (assuming of course it were able to establish liability on its remaining claims against QSI) is a significant gating item to the Receiver's ability to fulfill its mandate to liquidate QSI's assets and preserve value.

70. Without a fulsome understanding of the remedies to which M-I may be entitled, it may be impossible for the Receiver to enter into transactions in respect of any of the international operations. In any event, it will be impossible to be certain as to the terms of any putative sale, thus delaying any potential sale to the ongoing cost of the Lenders both in terms of potential loss of recoveries but also in respect of additional costs being incurred to maintain operations.

71. Similarly, the question of what, if any, ownership or other interest M-I has in MAXSITE, and whether that interest is capable of being "vested off", is a significant gating issue to the Receiver's ability to be able to transact in respect of QSI's and the other Receivership Entities' ownership interest in the foreign entities in the Q'Max Group.

72. These are issues that either arise in the context of the M-I Action or are issues which Judge Isgur specifically reserved in the Recognition Order for determination by the U.S. Bankruptcy Court. They are critical issues which the Receiver needs to have resolved urgently in order to continue with its efforts to liquidate the estates of the Receivership Entities.

The Need for an Expeditious Resolution of the M-I Action Related Issues

73. The resolution of these matters is urgent for two reasons:

a) First, the sales processes mentioned above have been underway for many months and are very progressed. Interested potential purchasers have been identified in various jurisdictions. But for the existence of these outstanding issues resulting from M-I's claims in the M-I Action, the Receiver would be close to being able to negotiate definitive agreements. The Receiver is unable to execute definitive agreements until these issues are resolved, and unless these issues are resolved swiftly there is a high risk that potentially interested parties may not have the patience to wait for a resolution of these issues and may lose interest in concluding a transaction; and

b) Second, as discussed in a more fulsome way in the First Confidential Supplemental Report, delay in having these matters addressed will create significant increased expense to both the Receiver and the Lenders.

74. Accordingly, any delay in having these issues resolved will both create transactional risk to the Sale Processes and will also create considerable additional costs in the Receivership Proceedings.

75. M-I's copyright claim has been summarily dismissed in the 2020 MSJ Decision, and it appears that M-I's request for injunctive relief may have been summarily dismissed along with it. The question of whether M-I is still able to seek injunctive or equitable relief as remedies for the remaining claims against QSI in the M-I Action, being only the trade secret and conversion claims, is critical to the Receiver's ability to liquidate the balance of the Receivership Entities' estates.

76. The process which is proposed by the Receiver in this application will allow for these critical issues to be resolved expeditiously, so that the Receiver will know whether or not it will be able to enter into these going concern sales, while at the same time protecting M-I's interests by giving M-I a forum in which to advance arguments in favour of its positions. Moreover, the process being proposed by the Receiver is consistent with the terms of the Recognition Order granted by Judge Isgur of the U.S. Bankruptcy Court, in that it requests that the U.S. Bankruptcy Court determine the very issues which it indicated in the Recognition Order that it had reserved to itself for determination.

77. Unless these issues can be resolved in an expeditious manner, so that the Receiver determines whether it can or cannot enter into these going-concern transactions as described above, the Receiver may find itself in a situation where the delay itself in having these issues determined may create an insurmountable impediment to such transactions.

78. Finally, the Receiver notes that M-I is not (at least yet) a creditor of QSI. The Receiver understands that M-I and the Q'Max Group are direct competitors in the marketplace. Indeed, at paragraphs 21 and 22 of the Complaint, M-I alleges the following in respect of the Q'Max Group, and in respect of the role of MAXSITE in the Q'Max Group's ability to be an effective competitor:

> 21. The launch of Q'Max's MAXSITE software quickly led to Q'Max's appearance for the first time as a direct competitor to M-I in the Tier 1 bidding process. Specifically, in late 2017, upon information and belief, a major independent oil company invited Q'Max to tender a bid for its Tier 1 job in the Gulf of Mexico. Q'Max would not have been invited to tender such a bid if it did not assert to have Tier 1 capability with its MAXSITE hydraulics software. M-I also competed for this bid with its Tier 1 engineering application tools, including VIRTUAL HYDRAULICS. While, upon information and belief, Q'Max did not win this bid, this bid represented the first time that M-I became aware of Q'Max touting its MAXSITE hydraulics software.
>
> 22. Moreover, upon information and belief, Q'Max is currently using its MAXSITE hydraulics software to attempt to qualify as a Tier 1 vendor with two other major independent oil companies. If Q'Max meets their requirements, this would inevitably lead to additional tender offer opportunities — in competition with M-I and M-I's engineering application tools — for these Tier 1 jobs. [Emphasis added.]

The Need for the First Confidential Supplemental Report

79. Discussions in the sales processes between the Sales Agents and the interested prospective purchasers are confidential and are at a very sensitive stage, given definitive agreements have not yet been executed. Public disclosure of the details of those negotiations, or even of the identities of the interested parties, would be detrimental to and would be likely to cause irreparable harm to the ownership interests of the Receivership Entities in those entities. For this reason, the Receiver will be preparing a First Confidential Supplemental Report and intends to apply to this Honourable Court for a Sealing Order in respect of the First Confidential Supplemental Report.

7. RECOMMENDATIONS

80. We submit this First Report in support of our application respectfully requesting this Honourable Court to:

a) Provide advice and directions with respect to those matters set out herein; and

b) Grant the Receiver's proposed form of Order referring the matters set out therein to the U.S. Bankruptcy Court for determination, or in the alternative retaining same for determination by this Honourable Court as this Honourable Court and the U.S. Bankruptcy Court may consider appropriate.

All of which is respectfully submitted this 18th day of December, 2020.

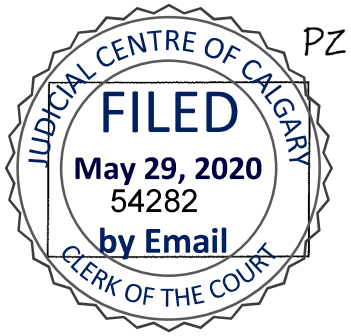
KPMG INC.,
COURT-APPOINTED RECEIVER
AND MANAGER OF Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD AND Q'MAX CANADA OPERATIONS INC.
and not in its personal or corporate capacity

Per: Neil A. Honess
Senior Vice President

Per: Anamika Gadia
Senior Vice President

Appendix “A”

Clerk's Stamp:



PZ

COURT FILE NUMBER	2001-06722
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF	CALGARY
APPLICANT:	HSBC BANK CANADA, AS AGENT
RESPONDENTS:	Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD. and QMAX CANADA OPERATIONS INC.
DOCUMENT	**CONSENT RECEIVERSHIP ORDER**
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**Norton Rose Fulbright Canada LLP** 400 3rd Avenue SW, Suite 3700 Calgary, Alberta T2P 4H2 Howard A. Gorman Q.C. / D. Aaron Stephenson howard.gorman@nortonrosefulbright.com aaron.stephenson@nortonrosefulbright.com Tel: 403-267-8222 Fax: 403-264-5973 Counsel for HSBC Bank Canada, as Agent File No. 1001115678
DATE ON WHICH ORDER WAS PRONOUNCED:	MAY 28, 2020
NAME OF JUDGE WHO MADE THIS ORDER:	GROSSE J.
LOCATION OF HEARING:	CALGARY

UPON the application of HSBC Bank Canada, as Agent (the "**Agent**"), in respect of Q'Max Solutions Inc, Fluid Holdings Corp., Q'Max Solutions Holdings Inc., 1356760 Alberta Ltd. and QMax Canada Operations Inc. (collectively, the "**Debtors**"); **AND UPON** having read the Application, the Affidavit of Carmon Bailey, and the Affidavit of Service, filed; **AND UPON** reading the consent of KPMG Inc. to act as receiver and manager (the "**Receiver**") of the Debtors (excluding certain assets, as provided below), filed; **AND UPON** hearing counsel for the Agent, counsel for the Respondents, counsel for Encina

Business Credit, LLC ("**Encina"**), counsel for the proposed Receiver, and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT**:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2 and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7, KPMG Inc. is hereby appointed Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). For greater certainty, the Property does not include the current and future assets, undertakings or properties of any Defendants other than the Debtors, pending further Order of this Court. The Applicants reserve the right to bring future Applications with respect to Defendants other than the Debtors.

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

   (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability to abandon, dispose of or otherwise release any interest in any of the Debtors' real property, or any right in any immoveable, and any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority, in respect of such interest in real property or immoveable, including pursuant to section 14.06(4) of the BIA, notwithstanding the provisions of the *Oil and Gas Conservation Act,* RSA 2000, c O-6, the *Pipeline Act*, RSA 2000, or any other similar provincial legislation;

   (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to settle, extend or compromise any indebtedness owing to or by the Debtors;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

(k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding $1,500,000, provided that the aggregate consideration for all such transactions does not exceed $2,500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

(m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the

Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership and operating agreement, joint venture agreement or any such similar agreement or agreements to which the Debtors are parties that purport to effect or cause a cessation of operatorship as a result of the occurrence of any default or non-performance by or the insolvency of the Debtors, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings and under no circumstances shall the Debtors be replaced as operator pursuant to any such

agreements without further order of this Court provided, however, that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this Order shall:

(a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;

(b) prevent the filing of any registration to preserve or perfect a security interest;

(c) prevent the registration of a claim for lien; or

(d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtor and the Receiver, or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

12. All persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("**WEPPA**").

15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such

information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

(i) before the Receiver's appointment; or

(ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

A. complies with the order, or

B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or

B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,000,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

19. The Receiver and its legal counsel shall pass their accounts from time to time.

20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $8,000,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

29. The Receiver shall be permitted, at its exclusive discretion, to assign one or more of the Debtors into bankruptcy under the BIA. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. The Receiver shall establish and maintain a website in respect of these proceedings at home.kpmg/ca/qmax (the "**Receiver's Website**") and shall post there as soon as practicable:

(a) all materials prescribed by statue or regulation to be made publically available; and

(b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

35. Service of this Order shall be deemed good and sufficient by:

(a) serving the same on:

(i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

(ii) any other person served with notice of the application for this Order;

(iii) any other parties attending or represented at the application for this Order; and

(b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

CONSENTED TO:

McCARTHY TETRAULT LLP

Per: _____

Solicitors for Q'Max Solutions Inc, Fluid Holdings Corp., Q'Max Solutions Holdings Inc., 1356760 Alberta Ltd. and QMax Canada Operations Inc.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that KPMG Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Q'Max Solutions Inc, Fluid Holdings Corp., Q'Max Solutions Holdings Inc., 1356760 Alberta Ltd. and QMax Canada Operations Inc., appointed by Order of the Court of Queen's Bench of Alberta (the "**Court**") dated the 28th day of May, 2020 (the "**Order**") made in action number **[●]**, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of **[$]**, being part of the total principal sum of $8,000,000 that the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded **[daily] [monthly not in advance on the ● day of each month]** after the date hereof at a notional rate per annum equal to the rate of **[●]** per cent above the prime commercial lending rate of **[●]** from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at **[●]**.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

KPMG Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

Appendix “B”

QMAX
CORPORATE OWNERSHIP STRUCTURE AND CONTROL CHART

as of 01.07.2020

PRIVILEGED AND CONFIDENTIAL
FOR INTERNAL PURPOSES ONLY

Joint Venture
Dissolving
Ultimate Shareholders
Branch

(1) Wael Elessawy: 10%
Seedat Ahmed: 5%

(2) Adb Touabi: 7%
Adlane Daoudi: 14%
Naella Madani: 30%

(3) United Oil Projects Company (K.S.C.C.) 51%

(4) Cimbar Performance Minerals WV, LLC: 50%

(5) Ahmad Samir Albinali Company: 49%

Palladium Equity Partners IV LLC
Registered as Relying Advisor via affiliate Palladium Equity Partners Advisor, LLC (SEC CRD #15906)

Owners & Officers
Marcus A. Rodriguez
David Perez
Kevin L. Reymond
Erik A. Scott
Luis Zaldivar
Eugenie M. Cesar-Fabian

Manages and Controls

General Partner

Palladium Equity Partners IV, L.P.

Affiliated

Directors
Adam Shebitz
David Perez
Daniel Ilundain

Fluid Global G.P. Corp
BC Corp No. BC0999308
Inc. April 10, 2014

PEP Fluid G.P. L.P.
Cayman

Calumet Specialty Products Partners, L.P.

PEP Fluid Co-Invest L.P.
Cayman

PEP Fluid L.P.
Cayman

Fluid Holding Corp
BC Corp. No.BC0999796
Inc. April 16, 2014

QM Holding Corp
BC Corp. No.BC1206277
Inc. April 25, 2019

Q'Max Solutions Inc.
BC Corp. No. BC1003177
Inc. Sept 16 1993

International Drilling Fluids & Engineering Services Co. (IDEC) LTD.
BVI BC NO 1696871
Inc. Feb 20 2012

South Sudan Branch
Reg. No. 195
Reg. Sept 14 2012

Iraq Branch
Kurdistan Reg. No. 20635
Reg. July 21 2014

Dubai Branch
DMCC License No. DMCC-32478
Reg. Sept 6 2012

Kenya Branch
Permit No. 1419355
Reg. Dec 17 2014

Tanzania Branch
Registration. No. 121868
Reg. Nov 24 2015

1356760 Alberta Ltd.
AB Corp. No. 2013567603
Inc. Oct 17 2007

QMax do Brasil Solucoes do Petroleo Ltda
Brazil NIRE 32201400487
Inc. Feb 9 2009

Uganda Branch
Co. No.80020000141707
Reg. March 15, 2017

Chad Branch
Reg. No RCCMTC/NDJ/17B584
Reg. Nov 21, 2017

QMax Financial Holdings Inc.
BC Corp. No. BC1206278
Inc. April 25, 2019

QMax Canada Operations Inc.
BC Corp. No. BC1060333
Inc. in AB on May 9 2012

Central Procurement Inc.
Delaware File No. 5992714
Inc. March 18 2016

Central Procurement Inc.
Barbados Corp. No.15133
Inc. March 16 1998

QMax Middle East FZE
JAFZA Reg. No. 180435
Inc. May 17 2016

QMax Ecuador S.A.
Ecuador RUC No. 1791399757001
Inc. April 15 1998

Q'Max America Inc.
Delaware File No. 3393010
Inc. May 16 2001

Colombia Branch
Reg. No. 830095262
Reg. Oct 12 2001

QMax Peru S.A.C.
Peru RUC No. 20503333052
Inc. Nov 23 2001

Anchor Drillings Fluids USA, LLC
Delaware File No. 5923464
Formed Dec 31, 2015

C&A Grinding, L.L.C.
Georgia File No. 11082749
Formed Nov 3, 2011

Q'Max Solutions Singapore Pte. Ltd.
Singapore Corp. No. 201506359E
Inc. March 10 2015

India Project Office
Reg. No. 205800469
Reg. June 19 2008

United QMax Drilling Fluids Company Co.
Inc. July 9, 2017

QMax Arabian Oil & Gas Services Co.
Inc. Sept 18, 2018

Tri-Max Solutions Limited
Trinidad & Tobago
Co. No.: C2017042103834
Inc. April 13, 2017

Q'Max Solutions Holdings Inc.
AB Corp. No. 2012853491
Inc. Dec 4 2006

QMax Mexico, S.A. de C.V.
Mexico RFC QME000424KB1
Inc. April 7 2000

QMax Servicios Administrativos S.A. de C.V.
Mexico RFC QSA1201207U03
Inc. Jan 19 2012

QMax Servicios Tecnicos S.A. de C.V.
Mexico RFC QST1201209X8
Inc. Jan 19 2012

Environmental Solutions for Petroleum Services – Free Zone – S.A.E.
Egypt Reg. No. 1533
Inc. April 26 2007

SARL Environmental Solutions Algeria
Algeria Reg. No. 16/00-0988267B13
Inc. Dec 10 2015

QMax Servicios de Ingenieria S.A. de C.V.
Mexico RFC QSI1201209V0
Inc. Jan 19 2012

100% .01% .06% .07% 99.9% 99.94% 99.99% 99.98% 85%(1) 49%(3) 51%(5) 49%*(2) 50%(4)

Appendix “C”

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

M-I L.L.C. D/B/A M-I SWACO, Plaintiff, v. Q'MAX SOLUTIONS, INC., Q'MAX AMERICA INC., SANJIT ROY, AND DAVID WILSON, Defendants.	)	Case No. 4:18-cv-01099 **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff M-I L.L.C. d/b/a M-I SWACO files this Complaint against Defendants Q'Max Solutions, Inc., Q'Max America, Inc., Sanjit Roy, and David Wilson for violations of the Defend Trade Secrets Act, the Texas Uniform Trade Secrets Act and the Federal Copyright Act, and for breach of contract, conversion, and breach of fiduciary duty, as follows:

PARTIES

1. Plaintiff M-I SWACO ("M-I") is a limited liability company organized and existing under the laws of the State of Delaware. M-I maintains its principal place of business in the United States located at 5950 N. Course Dr., Houston, Texas 77072.

2. On information and belief, Defendant Q'Max Solutions Inc. ("Q'Max Solutions") is a foreign corporation organized and existing under the laws of Alberta, Canada. On information and belief, Q'Max Solutions is registered to do business in the State of Texas and maintains its principal place of business in the United States located at 11700 Katy Freeway #200, Houston, Texas 77079. Q'Max Solutions may be served with process by service upon its registered agent

for service of process, Corporation Service Company, d/b/a CSC – Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

3. On information and belief, Defendant Q'Max America Inc. ("Q'Max America") is a wholly-owned subsidiary of Q'Max Solutions.[1] Q'Max America is a corporation organized and existing under the laws of the State of Delaware. Q'Max America is registered to do business in the State of Texas and maintains its principal place of business in the United States located at 11700 Katy Freeway #200, Houston, Texas 77079. Q'Max America may be served with process by service upon its registered agent for service of process, Corporation Service Company, d/b/a CSC – Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

4. On information and belief, Defendant Sanjit Roy is an individual Texas resident, and Roy can be served with process at his residence, 22315 Keystone Trail, Katy, Texas, 77450, or wherever he may be found. Upon information and belief, he also conducts business in this District through his employer Defendant Q'Max Solutions.

5. On information and belief, Defendant David Wilson is an individual Texas resident, and Wilson can be served with process at his residence, 6190 FM 2666 Rd., Shepherd, Texas, 77371-2203, or wherever he may be found. Upon information and belief, he also conducts business in this District through his employer Defendant Q'Max Solutions.

JURISDICTION

6. This Court has original subject matter jurisdiction over this dispute, pursuant to 28 U.S.C. §§ 1331 and 1338, because M-I's claims against Defendants arise under the Federal Defend Trade Secrets Act, 18 U.S.C § 1836, *et seq.* ("DTSA"), and under the Copyright Act, 17 U.S.C.

[1] Defendants Q'Max Solutions and Q'Max America are collectively referred to herein as "Q'Max."

§ 101 *et seq.* This Court has supplemental and pendent jurisdiction over M-I's state and common law claims under 28 U.S.C. § 1367 because M-I's claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article 3 of the United States Constitution.

7. This Court has personal jurisdiction over Defendants because they reside in this District and transact business in this District. Specifically, this Court has personal jurisdiction over Roy and Wilson because they are citizens and residents of Texas. This Court has personal jurisdiction over Q'Max Solutions and Q'Max America because, upon information and belief, both entities have their principal place of business in this District, Q'Max Solutions employs these Texas residents and citizens (Roy and Wilson), and the conduct of both entities sought to be enjoined by M-I is related to this conduct within the forum state. This conduct also renders Q'Max Solutions subject to personal jurisdiction by Texas courts pursuant to Texas' long arm statute because Q'Max Solutions has recruited Roy and Wilson, Texas residents, for employment. Tex. Civ. Prac. & Rem. Code § 17.042.

VENUE

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because at least one Defendant resides in this District and all Defendants reside in Texas, because a substantial portion of the acts or omissions giving rise to M-I's claims occurred in this District, and/or because at least one Defendant is subject to this Court's personal jurisdiction for this action.

FACTS COMMON TO EACH CLAIM FOR RELIEF

9. After many years of research and the investment of millions of dollars, M-I developed valuable intellectual property in the form of a powerful suite of engineering application tools for the exploration and development of oil & gas wells, and especially suited for complex, challenging and high value wells, referred to as "Tier 1." Providing engineering solutions suited

for these Tier 1 applications must be accomplished to qualify to tender a bid on a Tier 1 well application. Accordingly, M-I invested significant human and financial resources researching and developing this Tier 1 technology.

10. The Tier 1 engineering application tools developed by M-I, included virtual drilling analyses, such as VIRTUAL HYDRAULICS ("VH"), VH and RHECON NAVIGATOR, SPECTRUM, and OPTI-STRESS; real time management solutions such as PRESSPRO RT ("PPRT") and PRESSPRO RT NAVIGATOR; and virtual completion analyses, such as VIRTUAL COMPLETION SOLUTIONS ("VCS") and OPTI-BRIDGE. Over many years of drilling and analyzing wells and conducting further laboratory analysis, M-I has also developed engineering application tools for well planning, reporting and data mining, including certain proprietary databases.

11. M-I's Tier 1 engineering application tools have set M-I apart from others in the drilling and completions industry, starting with M-I's VIRTUAL HYDRAULICS – a significant advancement in the industry. VH was the first sophisticated hydraulics modeling software solution of its kind, and after almost two decades is still considered the gold standard for its predictive accuracy. This translated into a strong competitive and reputational advantage for M-I in the field of drilling and completion fluids. M-I continued its efforts by further developing engineering application tools and databases, as identified above, to provide accurate and precise models for its clients, with specific applications for the competitive Tier 1 jobs.

12. As time showed, competing tools were not easily developed. For many years, M-I was the only player offering such advanced technology. Top competitors recognized the importance of M-I's revolutionary tools but appeared to lag far behind M-I. Given the significant time and investment costs, a high barrier of entry exists to provide engineering application tools

for these Tier 1 projects. Indeed, upon information and belief, it took one major competitor many years to launch a competing engineering application, with a second major competitor introducing their solution a few years afterward. Indeed, after almost 17 years, only four companies (including M-I) are known to have developed engineering application tools for Tier 1 jobs globally and those companies are larger, more significant players competing in certain geographic areas in the drilling and completions market.

Roy and Wilson, Chief Developers of M-I's IP, Depart From M-I

13. A chief developer of M-I's engineering application tools – VH, VCS and PPRT – was Defendant Sanjit Roy, an employee of M-I for over 20 years and previously the Manager of Engineering Technology at M-I.

14. During his employment with M-I, Roy signed an Employee Invention and Confidential Information Agreement ("Confidential Agreement") and a Trade Secret Agreement and Covenant Not To Compete ("Trade Secret Agreement"). A true and correct copy of each is attached as **Exhibit A** and **B**, respectively.

15. Roy resigned from M-I in May 2014. After briefly working for M-I's competitor Weatherford, Roy joined Q'Max in April 2015 as Manager of Applied Engineering, where upon information and belief, he remains today.

16. The chief developer of certain internal proprietary databases and reporting platforms was Defendant David Wilson, an employee of M-I for over 30 years as Manager of Engineering Business Solutions and Business Systems Manager.

17. Wilson resigned from M-I in March 2015, and joined Q'Max the very same month as Director of Engineering Applications, where upon information and belief, he remains today.

18. Prior to departing M-I, Roy and Wilson copied at least 55,000 files (40-50 gigabytes) of M-I's intellectual property on to several USB devices. None of those specific USB

devices were returned to M-I. Those files copied by Roy and Wilson include source code and confidential information related to, at least, VH, VCS, PPRT, and certain proprietary databases.

Q'Max's Rapid Advancement to a Tier One Provider and Use of M-I's Intellectual Property

19. Q'Max had been only a small competitor in this industry, typically competing with M-I, and others, for low tier jobs – not Tier 1 – and competing largely on cost. This has just recently and rapidly changed.

20. In 2017, a mere two years after Q'Max recruited Roy and Wilson, Q'Max appeared to have commercially launched a competing Tier 1 engineering application tool referred to as MAXSITE hydraulics modeling software. Q'Max's apparent rapid development of such a Tier 1 engineering application tool does not comport with the time that was required for M-I to develop such a software application or the apparent time required for other significant players in the drilling and completion market to do so.

21. The launch of Q'Max's MAXSITE software quickly led to Q'Max's appearance for the first time as a direct competitor to M-I in the Tier 1 bidding process. Specifically, in late 2017, upon information and belief, a major independent oil company invited Q'Max to tender a bid for its Tier 1 job in the Gulf of Mexico. Q'Max would not have been invited to tender such a bid if it did not assert to have Tier 1 capability with its MAXSITE hydraulics software. M-I also competed for this bid with its Tier 1 engineering application tools, including VIRTUAL HYDRAULICS. While, upon information and belief, Q'Max did not win this bid, this bid represented the first time that M-I became aware of Q'Max touting its MAXSITE hydraulics software.

22. Moreover, upon information and belief, Q'Max is currently using its MAXSITE hydraulics software to attempt to qualify as a Tier 1 vendor with two other major independent oil

companies. If Q'Max meets their requirements, this would inevitably lead to additional tender offer opportunities – in competition with M-I and M-I's engineering application tools – for these Tier 1 jobs.

23. M-I does not have access to any source code of Q'Max's MAXSITE hydraulics software; however, the visual outputs closely resemble at least M-I's VH and VCS engineering application tools. These similarities include, for example, the basic design and informational organization, the position of the graphics and data, the decisions and use of color, and generally the overall look and feel between the two visual outputs, such that in the normal course of events, such similarity would not be expected to arise wholly independently.

COUNT I
(Copyright Infringement, 17 U.S.C. §§ 501 *et seq.* –
All Defendants)

24. M-I re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

25. M-I is the owner of copyrights related to several engineering application tools, including: VIRTUAL HYDRAULICS, VIRTUAL COMPLETION SOLUTIONS, PRESSPRO RT, and proprietary databases[2] (collectively, "Copyrighted Works"). A true and correct copy of evidence demonstrating that the Copyright Office has received the applications for the

[2] VIRTUAL HYDRAULICS 3.1 (2007) (**Exhibit C**); VIRTUAL HYDRAULICS 3.2 (2009) (**Exhibit D**); VIRTUAL HYDRAULICS 3.3 (2013) (**Exhibit E**); VIRTUAL HYDRAULICS 3.4 (2014) (**Exhibit F**); VIRTUAL HYDRAULICS 3.5 (2015) (**Exhibit G**); VIRTUAL HYDRAULICS 3 (2013) (**Exhibit H**); VIRTUAL HYDRAULICS 3 (2014) (**Exhibit I**); VIRTUAL COMPLETION SOLUTIONS 1.0 (2011) (**Exhibit J**); VIRTUAL COMPLETION SOLUTIONS 1.1 (2013) (**Exhibit K**); VIRTUAL COMPLETION SOLUTIONS 1.2 (Mar. 2014) (**Exhibit L**); VIRTUAL COMPLETION SOLUTIONS 1.2 (Dec. 2014) (**Exhibit M**); PRESSPRO RT 2.2.2 (2014) (**Exhibit N**); PRESSPRO RT 2.2.2 (2015) (**Exhibit O**); and M-I Proprietary Database (**Exhibit P**).

Copyrighted Works as well as the required deposit and fee for each are attached as **Exhibits C-P**, respectively.

26. Defendants Roy and Wilson had access to M-I's Copyrighted Works by virtue of their software development and management roles at M-I.

27. Defendants Roy and Wilson knowingly, willfully, intentionally, and deliberately infringed M-I's exclusive rights in the Copyrighted Works by copying, reproducing and retaining, in whole or in part, M-I's Copyrighted Works without authorization. Further, upon information and belief, Roy and Wilson distributed them to their new employer Defendant Q'Max without M-I's authorization.

28. Defendant Q'Max, upon information and belief, had access to M-I's Copyrighted Works through former employees, Roy and Wilson, and certain products of Q'Max, including at least the MAXSITE Hydraulics software and related software, are substantially similar to the protected elements of M-I's Copyrighted Works. They are similar at least in the basic design and informational organization, in the position of graphics and data, in the decisions and use of color, and generally in the overall look and feel, such that in the normal course of events, this similarity would not be expected to arise independently in the two works. Accordingly, this similarity strongly suggests that Defendants copied, in whole or in part, M-I's Copyrighted Work.

29. Defendants have no license or any other form of permission to commercially copy, sell, license or distribute the M-I Copyrighted Works.

30. Accordingly, without authorization, Defendants have infringed M-I's exclusive rights in the Copyrighted Works by copying, reproducing, selling, giving away, publicly displaying, and/or distributing products, including at least the MAXSITE Hydraulics software,

which utilize or are derived from M-I's Copyrighted Works, in whole or in part, and upon information and belief, will continue to do so.

31. Defendants' acts of direct, contributory, and/or vicarious copyright infringement are willful, deliberate, and committed with utter disregard of M-I's copyrights, pursuant to the Copyright Act, 17 U.S.C. § 504.

32. Defendants' actions of copyright infringement have occurred, and continue to occur, within the statute of limitations period, pursuant to the Copyright Act, 17 U.S.C. § 507.

33. Defendants' copyright infringement has caused and will continue to cause M-I to suffer substantial injuries.

34. As a result of this infringement, M-I is entitled to recover, among other things, injunctive relief, monetary damages, punitive damages, and its costs and fees in this action.

COUNT II
(Violation of the Federal Defend Trade Secrets Act, 18 U.S.C. §§ 1836 *et seq.* – All Defendants)

35. M-I re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

36. M-I is the owner of valid and enforceable trade secrets, including the trade secrets in the components of M-I's engineering application tools VIRTUAL HYDRAULICS, VIRTUAL COMPLETION SOLUTIONS, and PRESSPRO RT; in the computer program code of such software applications; in other confidential programming code; and in proprietary constants, methods, plans, designs, concepts, improvements, modifications, research data and results, and know-how related to M-I's engineering application tools, interactive content, modeling, predictive modeling, and certain proprietary databases.

37. All of M-I's trade secrets are confidential, proprietary, and highly valuable trade secrets and derive independent economic value, actual or potential, from not being generally

known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

38. M-I's misappropriated trade secrets are not generally known and are not readily ascertainable. M-I took reasonable precautions to maintain the secrecy of these misappropriated trade secrets, including by maintaining confidentiality provisions in employment agreements with key employees (including Roy), by maintaining secured networks and databases, and by limiting access to such information from others.

39. Accordingly, M-I's misappropriated trade secrets are considered a "trade secret" under the DTSA, because the information is not generally known outside of M-I's business or by employees and others involved in M-I's business. M-I has invested significant amounts of time and money in developing the information, continuously uses the information in its business, and has also taken reasonable measures to guard the secrecy of the information. The information cannot easily be acquired or duplicated by others, and is of great value to M-I and its competitors.

40. During the course and scope of Roy's and Wilson's employment with M-I, Roy and Wilson were exposed to and had access to M-I's misappropriated trade secrets. At least Defendant Roy agreed, as part of his employment, to not disclose to others or use any confidential technical or business information belonging to M-I. Roy further agreed that upon termination of his employment, he would surrender to M-I all information in his possession relating to the business of M-I and to preserve as confidential all trade secrets of M-I. Roy further agreed to not use M-I's misappropriated trade secrets or disclose to others such trade secrets, nor to take, retain, or copy any of M-I's documents containing such trade secrets.

41. Roy and Wilson copied and retained certain of M-I's trade secrets without authorization, and therefore stole M-I's misappropriated trade secrets while still employed at M-I,

with, upon information and belief, an intent to use in a competing business and is now using that information in their new positions as Manager of Applied Engineering and Director of Engineering Applications respectively, at Q'Max.

42. Q'Max knew or reasonably should have known that Roy and Wilson did not—and still do not—have permission to disclose any of M-I's confidential information or the misappropriated trade secrets to Q'Max. Roy's and Wilson's continued possession and use of M-I's confidential information demonstrates that they have no intention of complying with the law, and upon information and belief, Q'Max will continue to facilitate the knowing theft and misuse of M-I's misappropriated trade secrets and confidential information.

43. Upon information and belief, Q'Max intended to leverage and commercially exploit M-I's misappropriated trade secrets for the financial benefit of its drilling services and in furtherance of its rapid development of the Tier 1 engineering application tool, MAXSITE Hydraulics. In furtherance of that plan, and without authorization from M-I, upon information and belief, Q'Max improperly acquired access to M-I's misappropriated trade secrets through its relationship with Roy and Wilson, and intended to leverage, commercially exploit, and otherwise use the M-I misappropriated trade secrets without permission or authorization.

44. Roy and Wilson had notice that M-I's misappropriated trade secrets were confidential, proprietary, and highly valuable, and Q'Max knew or reasonably should have known the same. Upon information and belief, Defendants have utilized the unlawfully obtained confidential information and misappropriated trade secrets to unfairly compete and solicit M-I customers, and should not be able to reap the benefits of their unlawful conduct.

45. The foregoing acts constitute misappropriation of M-I's trade secrets under the Defend Trade Secrets Act, 28 U.S.C. § 1836.

46. Defendants' conduct was malicious, deliberate, and willful, or in the alternative at least grossly negligent.

47. Defendants' misappropriation of M-I's trade secrets has caused and will continue to cause damage to M-I in an amount to be determined at trial.

COUNT III
(Violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. § 134A.001, *et seq.* – All Defendants)

48. M-I re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

49. During the course of their relationship with M-I, Roy and Wilson were exposed to M-I confidential and trade secret information.

50. For instance, Roy and Wilson had access to materials comprising confidential and proprietary information, including the trade secrets in the components of M-I's engineering application tools VIRTUAL HYDRAULICS, VIRTUAL COMPLETION SOLUTIONS, and PRESSPRO RT; in the computer program code of such software applications; in other confidential programming code; and in proprietary constants, methods, plans, designs, concepts, improvements, modifications, research data and results, and know-how related to M-I's engineering application tools, interactive content, modeling, predictive modeling, and certain proprietary databases.

51. This information is not available to the general public and is guarded by M-I. M-I keeps such information confidential in order to maintain an advantage in the highly competitive drilling environment.

52. This information is considered a trade secret under the Texas Uniform Trade Secrets Act ("TUTSA"), Tex. Civ. Prac. & Rem. Code Ann. § 134A.001, *et seq.*, because M-I has taken reasonable efforts to maintain its secrecy, and the information has independent economic

value to M-I and to third parties because it is generally unknown and not readily ascertainable through proper means by persons who could obtain economic value from its disclosure or use.

53. Under TUTSA, "actual or threatened misappropriation [of trade secrets] may be enjoined." Tex. Civ. Prac. & Rem. Code Ann. §134A.003.

54. Roy and Wilson have misappropriated M-I's confidential and trade secret information. For example, Roy and Wilson downloaded information containing certain trade secrets from M-I's internal networks, or by other means, to USB devices that were not returned to M-I, thereby acquiring such information without permission and through improper means, and with knowledge or reason to know that it was acquired through improper means.

55. After acquiring M-I's confidential and trade secret information through improper means, Roy and Wilson further misappropriated such information by, upon information and belief, disclosing it to Q'Max without M-I's express or implied consent. Roy and Wilson also knew or had reason to know that such information was acquired through improper means, and/or acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

56. Q'Max misappropriated M-I's confidential and trade secret information by, upon information and belief, acquiring such information from Roy and Wilson with knowledge or with reason to know that it was acquired through improper means.

57. Further, upon information and belief, all Defendants have misappropriated and are misappropriating M-I's confidential and trade secret information by using it without M-I's express or implied consent at Q'Max, evidenced at least by the substantial similarity of the MAXSITE software to M-I's own engineering application tools, such as VIRTUAL HYDRAULICS, and by Q'Max's rapid development of an engineering application suitable for Tier 1 projects. All Defendants acquired such information through improper means, and/or obtained such information

with knowledge or reason to know that it was obtained from someone that acquired it through improper means or under circumstances giving rise to a duty to maintain its secrecy or limit its use.

58. Upon information and belief, Defendants have misappropriated and are misappropriating M-I's trade secrets by unlawfully possessing and utilizing M-I's property, including M-I's confidential information, and using that information to solicit M-I's customers. Upon information and belief, Defendants have utilized the unlawfully obtained confidential information and misappropriated trade secrets to unfairly compete and solicit M-I's customers, and should not be able to reap the benefits of their unlawful conduct.

59. Upon information and belief, Defendants actions have caused M-I to lose existing and/or potential customers. Defendants actions have damaged M-I's goodwill, and have diminished M-I's reputation and legitimate business interests.

60. Roy's and Wilson's unlawful possession of M-I's property, including M-I's confidential and misappropriated trade secret information, with, upon information and belief, the clear intent to use such information to expand Q'Max's business, constitutes the "threatened" misuse of M-I's trade secrets. Injunctive relief is therefore appropriate.

61. M-I has no adequate remedy at law and, unless injunctive relief is granted, will continue to be irreparably harmed by Defendants' misappropriation in a manner that is not fully compensable by money damages. Accordingly, M-I requests that this Court enter an order enjoining Defendants from using any misappropriated M-I confidential information and from disclosing such information to anyone not authorized to receive such information.

62. Moreover, upon information and belief, Defendants' misappropriation of M-I's trade secrets has been and is willful and malicious.

63. As a direct and proximate result of Defendants' misappropriation, M-I requests an award of its compensatory damages, as well as exemplary damages and its reasonable attorneys' fees pursuant to TUTSA.

COUNT IV
(Breach of Contract – Roy)

64. M-I re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

65. On October 25, 1995, Roy signed the Confidentiality Agreement (**Exhibit A**) and the Trade Secret Agreement (**Exhibit B**). The Confidentiality Agreement and the Trade Secret Agreement are valid, enforceable, and binding contracts.

66. As a party and signatory to the Confidentiality Agreement and the Trade Secret Agreement, M-I is the proper party to bring suit for breach of these contracts.

67. Further, M-I has performed and/or tendered performance of its contractual obligations pursuant to the Confidentiality Agreement and the Trade Secret Agreement.

68. The Confidentiality Agreement includes Roy's promise not to reveal without authorization any of M-I's confidential technical or business information. (**Exhibit A** at ¶ 5.) Similarly, the Trade Secret Agreement includes Roy's promise to preserve as confidential all of M-I's trade secrets and his promise not to use such trade secrets for his own benefits or purposes and not to disclose to others such trade secrets. (**Exhibit B** at ¶ 2.)

69. The Trade Secret Agreement also includes Roy's promise not to retain or copy any of M-I's documents containing trade secrets. (**Exhibit B** at ¶ 2.) Pursuant to the Confidentiality Agreement, Roy likewise agreed that upon termination of his employment, he would surrender to M-I any and all things such as drawings, manuals, documents, photographs and the like (including all copied thereof) in his possession relating to the business of M-I. (**Exhibit A** at ¶ 6.)

70. Roy breached these agreements by copying, retaining, and upon information and belief, revealing M-I's information to Q'Max. This information included, among other things, proprietary, confidential, and trade secret information.

71. As a natural, probable, and foreseeable consequence of Roy's breaches, M-I has suffered and continues to suffer damages for which Roy is liable, including lost profits, loss of customers, and loss of future business opportunities and good will.

72. M-I is entitled to injunctive relief to prevent imminent and irreparable harm in the future for which it has no adequate remedy at law.

COUNT V
(Conversion – All Defendants)

73. M-I re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

74. M-I rightfully owns, possesses, and has the right to immediate possession of M-I's personal property, including M-I's confidential information, trade secrets, intellectual property, and other non-copyrighted physical documents containing trade secret and confidential information ("M-I's Property").

75. Defendants have wrongfully exercised dominion and control over M-I's Property in a manner inconsistent with M-I's rights. For example, without M-I's consent or authorization, Defendants have wrongfully taken, acquired, disclosed, used, and derived information from M-I's Property. Defendants have no right of possession to M-I's Property as Roy's and Wilson's rights of possession ceased when they stopped working for M-I.

76. At the time of Defendants' actions, M-I owned, possessed, and had the right to immediate possession of M-I's Property.

77. Defendants' conduct deprived M-I of its ownership rights.

78. M-I has suffered serious damages by Defendants' conversion of M-I's Property.

COUNT VI
(Breach of Fiduciary Duty – Roy and Wilson)

79. M-I re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

80. As possessors of M-I's trade secret, proprietary, and confidential information, Roy and Wilson owed M-I a fiduciary duty not to misappropriate such information.

81. Roy, during his employment at M-I as Manager of Engineering Technology, also owed M-I a duty of loyalty to act in M-I's best interest and to not divulge M-I's trade secrets or steal its information. This duty continued after Roy resigned from M-I.

82. Wilson, during his employment at M-I as Manager of Engineering Business Solutions and Business Systems Manager, also owed M-I a duty of loyalty to act in M-I's best interest and to not divulge M-I's trade secrets or steal its information. This duty continued after Wilson resigned from M-I.

83. Both Roy and Wilson breached their fiduciary duties for their own benefit and for the benefit of Q'Max by misappropriating M-I's information, including trade secret, proprietary, and confidential information, which, upon information and belief, they used to solicit business on behalf of Q'Max, a competing company.

84. As a result of such breaches of fiduciary duties by Roy and Wilson, M-I has suffered or will suffer damages for which Defendants are liable, including lost profits, loss of customers, and loss of future business opportunities and good will.

85. M-I is also entitled to injunctive relief to prevent imminent and irreparable harm in the future for which it has no adequate remedy at law.

REQUEST FOR A JURY TRIAL

86. M-I requests a jury trial.

PRAYER FOR RELIEF

87. Upon trial on the merits, M-I requests that it be awarded:

(a) An injunction enjoining and restraining Defendants, and their agents, representatives, associates, employees, and all those acting in concert or participation with them, from using any M-I confidential information for their own benefit and from disclosing M-I confidential information to anyone not authorized to receive the information;

(b) An order requiring Defendants to return all M-I confidential information in their possession, custody or control to M-I;

(c) An order prohibiting Defendants from engaging in business with M-I's current or former customers for which Defendants unlawfully solicited with misappropriated M-I confidential information and trade secrets;

(d) A judgment that the Copyrighted Works have been infringed by each Defendant;

(e) Enter judgment against Defendants for actual damages and any profits of Defendants from Defendants' infringement of the M-I's Copyrighted Works, as provided by 17 U.S.C. § 504(b); or, upon M-I's election prior to a final decision by the Court, statutory damages as provided by 17 U.S.C. § 504(c), in an amount to be determined at trial;

(f) The entirety of the amount of money that Defendants have realized world-wide in anything related to Tier 1 software offerings, including derivative work received as a result of entering the Tier 1 market;

(g) The lost revenue and profits from any jobs M-I lost due to Defendants' wrongful conduct;

(h) Damages for the reasonable value of the information Defendants took from M-I, including research and development costs;

(i) All other compensatory damages that M-I suffered from the Defendants' wrongful conduct;

(j) An award of exemplary damages; and

(k) Such other and further relief as the Court may deem appropriate.

DATED: April 6, 2018

Respectfully Submitted,

By: /s/ John R. Keville

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COUNSEL FOR PLAINTIFF
M-I L.L.C.

Exhibit A

M-I Drilling Fluids L.L.C.

EMPLOYEE INVENTION AND CONFIDENTIAL INFORMATION AGREEMENT

In consideration of my employment or the continuation of my employment by M-I Drilling Fluids L.L.C., its subsidiaries or affiliates, I agree that:

1. I shall promptly disclose to M-I or its designee any and all inventions, developments or innovations (hereinafter referred to as "said inventions"), whether patentable or unpatentable, made or conceived by me, either solely or jointly with others: (a) during the term of my employment that relate to, or arise out of, any developments, services or products of, or pertain to the business of M-I or any of its subsidiaries or divisions and (b) for a period of six (6) months after termination of my employment said inventions that relate to, or arise out of, any developments, services or products that I have been concerned with during the term of my employment.

2. I hereby assign and agree to assign to M-I, its successors and assigns, my entire right, title and interest in and to any of said inventions.

3. I shall, without further compensation, do all lawful things, including: maintaining invention records which shall be the property of M-I, rendering assistance and executing necessary documents, as requested, to enable M-I to file and obtain patents in the United States and foreign countries on any of said inventions, as well as to protect M-I's interest in any of said inventions.

4. I am listing on the back of this agreement all inventions relating to any development, service or product of or pertaining to the business of M-I and any subsidiaries or divisions thereof that were owned or controlled by me at the time of entering its employment and which shall be excluded from this agreement.

5. I shall not, during the term of my employment or thereafter, disclose to others or use any confidential technical or business information belonging either to M-I or to a customer or client of M-I except as authorized in writing, respectively, by M-I or such customer or client. "Confidential technical or other confidential business information" means any information which I learn or originate during the course of my employment, regardless of whether it is written or otherwise tangible that (a) is not generally available to the public and (b) gives one who uses it an advantage over competition.

6. Upon termination of my employment, I shall surrender to M-I any and all things such as drawings, manuals, documents, photographs and the like (including all copies thereof) that I have in my possession relating to the business of M-I or any division or subsidiary thereof.

7. This agreement may not on behalf of or in respect to M-I be modified to terminated in whole or in part, except by an instrument in writing signed by an officer or other authorized executive of M-I.

8. I agree that this agreement shall be binding upon my heirs, executors and other legal representatives or assigns.

Deborah Meador
Witness

Sanjit Ray
Employee

10/25/95
Date

Exhibit B

M-I Drilling Fluids L.L.C.

TRADE SECRET AGREEMENT
AND
COVENANT NOT TO COMPETE

I understand that by reason of my employment by M-I Drilling Fluids L.L.C., ("M-I"), I will have access to trade secrets, technical data, confidential and proprietary information owned by M-I relating to its products, its customers, and its methods of doing business. I have received or will receive specialized knowledge and/or training in M-I's business, at its expense, including disclosure of its proprietary information, and will have the opportunity to gain close knowledge of and possible influence over customers of M-I by reason of personal contacts during the course of employment, and will in some measure possess the goodwill of M-I. For and in consideration of being hired by M-I, the salary to be paid to me by M-I, technical training received by me from M-I and my access to such information, and in order to protect M-I against disclosure of its proprietary information and against loss of customers or goodwill, I agree:

1. That for a period of two (2) years after termination, I will not directly or indirectly compete with M-I in the territory in which I was employed at any time during the previous two (2) years of my employment with M-I. "Territory" shall include, but not be limited to, all Counties, Parishes, or Cities in which I was employed, as well as all territory within a zone of 300 miles radius from a facility, location, or office of M-I in which I was employed.

2. That after termination I will preserve as confidential all trade secrets of M-I that have been or may be obtained by me by reason of my employment and I will not, without written authority from M-I, use such trade secrets for my own benefit or purposes nor disclose to others such trade secrets, nor will I take, retain, or copy any of M-I's documents containing such trade secrets. This restriction shall not apply to any information M-I voluntarily discloses to the public or which is independently developed and disclosed by others or which otherwise enters the public domain through lawful means.

3. That should I breach the terms of this Agreement, M-I will sustain irreparable damage thereby and shall be entitled to an injunction against such breach.

4. That this Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

5. That should any part of this Agreement, for any reason, be declared invalid, such invalidity shall not affect the validity of any remaining portion hereof, and the remaining portion hereof shall remain in force and effect as if this Agreement had been executed with the invalid portion eliminated, and it is hereby declared the intention of the parties hereto that they would have executed the remaining portions of this Agreement without including therein any such part, parts, or portion which may for any reason be hereafter declared invalid.

6. That, as used herein: (a) Direct competition means design, development, production, promotion or sale of products or services competitive with those of M-I; (b) Indirect competition means my employment by any competitor or third party providing competing products or services to M-I's products or services for whom I will perform the same or similar functions as I performed for M-I; (c) Trade secrets shall include, but not be limited to, company information encompassed in all drawings, designs, technical manuals, plans, proposals, marketing and sales plans, customer lists, financial information, costs, pricing information, owned or developed by M-I and geological and other information acquired in confidence by M-I from its customers that has not previously been publicly released by duly authorized representatives of M-I or its customers.

Executed in HARRIS County, State of TEXAS, this 25 day of OCTOBER, 1995.

Deborah Meador
WITNESS

Sanjit Roy
EMPLOYEE

WITNESS

APPENDIX A

COMPLIANCE CERTIFICATE AND QUESTIONNAIRE

TO: **M-I Drilling Fluids L.L.C.**
Attn: Human Resources Department
P. O. Box 42842
Houston, TX 77242

I certify that the answers to the following questions as to my self, my spouse, minor children and any relatives are true and correct:

1. Have you furnished services to or sought or received, for personal or any other person's gain, any payment, whether for services or otherwise, loan (except from a bank), gift or discount of more that nominal value, or entertainment which goes beyond common courtesies usually associated with accepted business practice, from any business enterprise which is a competitor of the company or has current or known prospective dealings with the Company as a supplier, customer, lessor or lessee? ___Yes ✓No

2. Have you, for personal or any other person's gain, deprived the Company of any opportunity for benefit which could be construed as related to any existing or reasonably anticipated future activity of the Company?
___Yes ✓No

3. Have you, for personal or any other person's gain, made use of or disclosed confidential information learned as a result of employment by the Company?
___Yes ✓No

4. Do you have any outside interest which materially interferes with the time or attention you should devote to the Company? ___Yes ✓No

5. Do you have a direct or indirect financial interest in, or receive any compensation or other benefits as a result of, transactions between M-I Drilling Fluids Company and any individual or business firms:

   a. From which the Company purchases supplies, materials or property;
   b. Which renders any service to the Company;
   c. Which enters into leases with or assignments to or form the Company;
   d. To which the Company sells any of its products, materials, facilities or properties;
   e. Which has any other contractual relations or business dealings with the Company?

   (The financial interests mentioned above do not include interests in corporations listed on a national stock exchange or traded over the counter, providing the financial interest is one percent or less of said corporation's outstanding shares.)

   ___Yes ✓No

continued/

APPENDIX A

6. Have you used Corporate or subsidiary funds or assets for any unlawful or improper purpose? ____Yes ✓No

7. Are you aware of any undisclosed or unrecorded fund or asset of the Company or any subsidiary established for any purpose? ____Yes ✓No

8. Are you aware of any false or artificial entry made on the books and records of the Company or its subsidiaries for any reason, or any arrangement that results in such prohibited act? ____Yes ✓No

9. Are you aware of any payment on behalf of the Company or any of its subsidiaries approved or made with the intention or understanding that any part of such payment is to be used for purposes other than those described by the documents supporting the payment? ____Yes ✓No

10. Have you been or are you in violation of the Code of Ethics Policy? ____Yes ✓No

11. Do you know of any such violations? ____Yes ✓No

I certify that I have read and will retain for future reference the Code of Ethics Policy adopted by M-I Drilling Fluids L.L.C. I understand that any breach of the Policy may be cause for dismissal or other disciplinary action, including reimbursement of any losses to the Company. I also understand and I agree that if the answer to any of the above questions should later change, I will promptly inform my immediate supervisor, in writing, of all pertinent facts.

Listed below are my business or personal relationships which may potentially constitute a conflict as defined in this policy.

==========

(Should additional space be required, please attach a seperate sheet)

==========

Date: 10/25/95

Sanjit Roy — RESEARCH ENGINEER

(Signature) (Title)

SANJIT ROY — ERL, HOUSTON

(Print Name) (Division/Location)

Exhibit C

Owen, Sam

From: Copyright Office <noreply@loc.gov>
Sent: Friday, April 06, 2018 1:18 PM
To: Trademarks SF
Subject: Confirmation of Receipt

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Virtual Hydraulics 3.1 were received by the U.S.Copyright Office on 4/6/2018.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to https://eco.copyright.gov/eService_enu/ and click on case number 1-6466150738 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at http://www.copyright.gov/eco/tips/.

SHIPPING SLIPS: If you mail physical copies of the material being registered, the effective date of registration will be based on the date on which we receive the copies WITH CORRESPONDING SHIPPING SLIPS ATTACHED.

A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-6466150738. If you have questions or need assistance, Copyright Office contact information can be found at http://www.copyright.gov/help/index.html#general.

United States Copyright Office

Owen, Sam

From: Copyright Office <cop-rc@loc.gov>
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Exhibit D

Owen, Sam

From: Copyright Office <noreply@loc.gov>
Sent: Friday, April 06, 2018 1:18 PM
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Exhibit E

Owen, Sam

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United States Copyright Office

Owen, Sam

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File Name :vh_first_part_2_-_basform_01082010.pdf
File Size :178453 KB
Date/Time :4/6/2018 4:25:26 PM

File Name :vh_last_part_1_-_vrdh_output_07082013.pdf
File Size :874414 KB
Date/Time :4/6/2018 4:25:26 PM

File Name :vh_first_part_1_-_virhyd_07182013.pdf
File Size :59852 KB
Date/Time :4/6/2018 4:25:26 PM

[THREAD ID: 1-2YXVK7N]

United States Copyright Office

Exhibit F

Owen, Sam

From: Copyright Office <noreply@loc.gov>
Sent: Friday, April 06, 2018 1:18 PM
To: Trademarks SF
Subject: Confirmation of Receipt

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Virtual Hydraulics 3.4 were received by the U.S.Copyright Office on 4/6/2018.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to https://eco.copyright.gov/eService_enu/ and click on case number 1-6466215213 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at http://www.copyright.gov/eco/tips/.

SHIPPING SLIPS: If you mail physical copies of the material being registered, the effective date of registration will be based on the date on which we receive the copies WITH CORRESPONDING SHIPPING SLIPS ATTACHED.

A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-6466215213. If you have questions or need assistance, Copyright Office contact information can be found at http://www.copyright.gov/help/index.html#general.

United States Copyright Office

Owen, Sam

From: Copyright Office <cop-rc@loc.gov>
Sent: Friday, April 06, 2018 1:30 PM
To: Trademarks SF
Subject: Acknowledgement of Uploaded Deposit

THIS IS AN AUTOMATED EMAIL. PLEASE DO NOT REPLY.

Thank you for submitting your registration claim using the Electronic Copyright Office (ECO) System.

The following files were successfully uploaded for service request 1-6466215213

File Name :vh_first_part_2_-_basform_12102012.pdf
File Size :178686 KB
Date/Time :4/6/2018 4:26:07 PM

File Name :vh_last_part_1_-_vrdh_output_12102012.pdf
File Size :998755 KB
Date/Time :4/6/2018 4:26:11 PM

File Name :vh_first_part_1_-_virhyd_01172013.pdf
File Size :63065 KB
Date/Time :4/6/2018 4:26:07 PM

[THREAD ID: 1-2YXVK92]

United States Copyright Office

Exhibit G

Owen, Sam

From: Copyright Office <noreply@loc.gov>
Sent: Friday, April 06, 2018 1:18 PM
To: Trademarks SF
Subject: Confirmation of Receipt

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Virtual Hydraulics 3.5 were received by the U.S.Copyright Office on 4/6/2018.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to https://eco.copyright.gov/eService_enu/ and click on case number 1-6466215378 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at http://www.copyright.gov/eco/tips/.

SHIPPING SLIPS: If you mail physical copies of the material being registered, the effective date of registration will be based on the date on which we receive the copies WITH CORRESPONDING SHIPPING SLIPS ATTACHED.

A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-6466215378. If you have questions or need assistance, Copyright Office contact information can be found at http://www.copyright.gov/help/index.html#general.

United States Copyright Office

Owen, Sam

From: Copyright Office <cop-rc@loc.gov>
Sent: Friday, April 06, 2018 1:30 PM
To: Trademarks SF
Subject: Acknowledgement of Uploaded Deposit

THIS IS AN AUTOMATED EMAIL. PLEASE DO NOT REPLY.

Thank you for submitting your registration claim using the Electronic Copyright Office (ECO) System.

The following files were successfully uploaded for service request 1-6466215378

File Name :vh_first_part_2_-_basform_03212013.pdf
File Size :178096 KB
Date/Time :4/6/2018 4:26:52 PM

File Name :vh_last_part_1_-_vrdh_output_07092013.pdf
File Size :1003423 KB
Date/Time :4/6/2018 4:26:56 PM

File Name :vh_first_part_1_-_virhyd_08202013.pdf
File Size :60470 KB
Date/Time :4/6/2018 4:26:52 PM

[THREAD ID: 1-2YXVK9W]

United States Copyright Office

Exhibit H

Registration #: *-APPLICATION-*
Service Request #: 1-6435965971

Mail Certificate

MH2 Technology Law Group, LLP
Garrett Atkinson
1951 Kidwell Dr., Suite 550
Vienna, VA 22182 United States

Priority: Routine **Application Date:** March 29, 2018

Correspondent

Name: Garrett Atkinson
Email: gatkinson@mh2law.com
Telephone: (703)917-0000x136
Address: 1951 Kidwell Dr., Ste 550
Vienna, VA 22182 United States

Registration Number
-APPLICATION-

Title

Title of Work: Virtual Hydraulics 3 (2013)
Volume: 3
Date on Copies: 2013

Completion/Publication

Year of Completion: 2013
Date of 1st Publication: January 01, 2013
Nation of 1st Publication: United States

Author

- **Author:** M-I LLC
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: M-I LLC
5950 North Course Drive, Houston, TX, 77072, United States

Certification

Name: Garrett Atkinson
Date: March 29, 2018
Applicant's Tracking Number: 0162.0194

<< Back

Case Summary:

Case #:	1-6435965971	**Type of Case:**	Literary Work	**Opened:**	3/29/2018
Title:	Virtual Hydraulics 3 (2013)			**Contact Name:**	Garrett Atkinson
Fee Due:	55.00	**Service Fee Paid:**	55.00	**Claim Status:**	Pending

Submit Your Work(s)

To complete your submission, please submit the required copy(ies) of your work. You may (1) upload electronic files if the work meets the requirements; otherwise, you must (2) send the work by mail (do not do both).

(1) Upload your work(s): Please perform the following steps for the case(s) in the table below.
Step 1: Click the "Select files to upload" button. Using your computer's browser, select your files for the corresponding work then click the "Start upload" button.
Step 2: After uploading all files for this work, click the corresponding "Complete Your Submission" button. Files cannot be uploaded later than 5 days after your first file is received.

Please note: Files cannot be returned or deleted once uploaded. To avoid delays and/or a later effective date of registration, please verify the following before uploading a copy of your work(s):

- It is a category of work that may be uploaded
- It is an acceptable file type
- It is an acceptable file size

Upload Your Work(s)

1 - 1 of 1

Case Details	Step 1: Select & Upload Files	Step 2: Complete Your Submission
Case #: 1-6435965971 **Title:** Virtual Hydraulics 3 (2013) **Volume:** **Number:** **Issue Date:** **Type of Work:** Literary Work	Claim submission completed; no further action required. Click here for more information View Uploaded File Names	

Updates

1 - 1 of 1

Comments	Activity Type	Status	Created
Submitted by GJATKINSON on 03/29/2018	Upload Deposit	Received	3/29/2018 10:50:06 AM

(2) Send Your Work(s) by Mail:

- Click the "Create Shipping Slip" button in the table below; a Shipping Slip link will appear in the Attachments column.
- Click the Shipping Slip link and print out and attach the shipping slip(s) to your deposit copy(ies). For multiple cases, be sure to attach shipping slips to the corresponding copies.
- Mail the deposit copy(ies) within 30 days to the Copyright Office address at the bottom of the slip.Note: Your effective date of registration will be based on the date on which we receive the copies **with corresponding shipping slips attached.**

Click "Home" after uploading files(s) or printing shipping slip(s). You may verify the submission in the open Cases table on your eCO Home page.

Send Your Work(s) by Mail

Create Shipping Slip

No Records

Attachment Name	File Type	Size	Date and Time	Comments

Take Our Survey!

Exhibit I

Registration #: *-APPLICATION-*
Service Request #: 1-6439726684

Mail Certificate

MH2 Technology Law Group, LLP
Garrett Atkinson
1951 Kidwell Dr., Suite 550
Vienna, VA 22182 United States

Priority: Routine **Application Date:** March 29, 2018

Correspondent

Organization Name: M-I LLC
Name: Garrett Atkinson
Email: gatkinson@mh2law.com
Address: 5950 North Course Drive
Houston, TN 77072 United States

Registration Number
-APPLICATION-

Title

Title of Work: Virtual Hydraulics 3 (2014)
Volume: 3
Date on Copies: 2014

Completion/Publication

Year of Completion: 2014
Date of 1st Publication: January 01, 2014
Nation of 1st Publication: United States

Author

- **Author:** M-I LLC
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: M-I LLC
5950 North Course Drive, Houston, TX, 77072, United States

Certification

Name: Garrett Atkinson
Date: March 29, 2018
Applicant's Tracking Number: 0162.0195

<< Back

Case Summary:

Case #:	1-6439726684	**Type of Case:**	Literary Work	**Opened:**	3/29/2018
Title:	Virtual Hydraulics 3 (2014)			**Contact Name:**	Garrett Atkinson
Fee Due:	55.00	**Service Fee Paid:**	55.00	**Claim Status:**	Pending

Submit Your Work(s)

To complete your submission, please submit the required copy(ies) of your work. You may (1) upload electronic files if the work meets the requirements; otherwise, you must (2) send the work by mail (do not do both).

(1) Upload your work(s): Please perform the following steps for the case(s) in the table below.
Step 1: Click the "Select files to upload" button. Using your computer's browser, select your files for the corresponding work then click the "Start upload" button.
Step 2: After uploading all files for this work, click the corresponding "Complete Your Submission" button. Files cannot be uploaded later than 5 days after your first file is received.

Please note: Files cannot be returned or deleted once uploaded. To avoid delays and/or a later effective date of registration, please verify the following before uploading a copy of your work(s):

- It is a category of work that may be uploaded
- It is an acceptable file type
- It is an acceptable file size

Upload Your Work(s)

1 - 1 of 1

Case Details	Step 1: Select & Upload Files	Step 2: Complete Your Submission
Case #: 1-6439726684 **Title:** Virtual Hydraulics 3 (2014) **Volume:** **Number:** **Issue Date:** **Type of Work:** Literary Work	Claim submission completed; no further action required Click here for more information View Uploaded File Names	

Updates

1 - 1 of 1

Comments	Activity Type	Status	Created
Submitted by GJATKINSON on 03/29/2018	Upload Deposit	Received	3/29/2018 10:50:11 AM

(2) Send Your Work(s) by Mail:

- Click the "Create Shipping Slip" button in the table below; a Shipping Slip link will appear in the Attachments column.
- Click the Shipping Slip link and print out and attach the shipping slip(s) to your deposit copy(ies). For multiple cases, be sure to attach shipping slips to the corresponding copies.
- Mail the deposit copy(ies) within 30 days to the Copyright Office address at the bottom of the slip.Note: Your effective date of registration will be based on the date on which we receive the copies **with corresponding shipping slips attached**.

Click "Home" after uploading files(s) or printing shipping slip(s). You may verify the submission in the open Cases table on your eCO Home page.

Send Your Work(s) by Mail

Create Shipping Slip

No Records

Attachment Name	File Type	Size	Date and Time	Comments

Exhibit J

Owen, Sam

From: Copyright Office <noreply@loc.gov>
Sent: Friday, April 06, 2018 1:18 PM
To: Trademarks SF
Subject: Confirmation of Receipt

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Virtual Completions Solution 1.0 were received by the U.S.Copyright Office on 4/6/2018.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to https://eco.copyright.gov/eService_enu/ and click on case number 1-6465997871 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at http://www.copyright.gov/eco/tips/.

SHIPPING SLIPS: If you mail physical copies of the material being registered, the effective date of registration will be based on the date on which we receive the copies WITH CORRESPONDING SHIPPING SLIPS ATTACHED.

A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-6465997871. If you have questions or need assistance, Copyright Office contact information can be found at http://www.copyright.gov/help/index.html#general.

United States Copyright Office

Owen, Sam

From: Copyright Office <cop-rc@loc.gov>
Sent: Friday, April 06, 2018 1:26 PM
To: Trademarks SF
Subject: Acknowledgement of Uploaded Deposit

THIS IS AN AUTOMATED EMAIL. PLEASE DO NOT REPLY.

Thank you for submitting your registration claim using the Electronic Copyright Office (ECO) System.

The following files were successfully uploaded for service request 1-6465997871

File Name :vcs_first_part_1_-_program_02012010.pdf
File Size :37718 KB
Date/Time :4/6/2018 4:20:08 PM

File Name :vcs_first_part_2_-_frmmainframe_02112013.pdf
File Size :305369 KB
Date/Time :4/6/2018 4:20:09 PM

File Name :vcs_last_part_1_-_geomexlreport_08192011.pdf
File Size :140441 KB
Date/Time :4/6/2018 4:20:08 PM

File Name :vcs_last_part_2_-_dprobexlreport_01102013.pdf
File Size :89307 KB
Date/Time :4/6/2018 4:20:08 PM

File Name :vcs_last_part_3_-_disproexlreport_07112013.pdf
File Size :189967 KB
Date/Time :4/6/2018 4:20:08 PM

[THREAD ID: 1-2YXVHMN]

United States Copyright Office

Exhibit K

Owen, Sam

From: Copyright Office <noreply@loc.gov>
Sent: Friday, April 06, 2018 1:18 PM
To: Trademarks SF
Subject: Confirmation of Receipt

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Virtual Completions Solution 1.1 were received by the U.S.Copyright Office on 4/6/2018.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to https://eco.copyright.gov/eService_enu/ and click on case number 1-6466150633 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at http://www.copyright.gov/eco/tips/.

SHIPPING SLIPS: If you mail physical copies of the material being registered, the effective date of registration will be based on the date on which we receive the copies WITH CORRESPONDING SHIPPING SLIPS ATTACHED.

A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-6466150633. If you have questions or need assistance, Copyright Office contact information can be found at http://www.copyright.gov/help/index.html#general.

United States Copyright Office

Owen, Sam

From: Copyright Office <cop-rc@loc.gov>
Sent: Friday, April 06, 2018 1:26 PM
To: Trademarks SF
Subject: Acknowledgement of Uploaded Deposit

THIS IS AN AUTOMATED EMAIL. PLEASE DO NOT REPLY.

Thank you for submitting your registration claim using the Electronic Copyright Office (ECO) System.

The following files were successfully uploaded for service request 1-6466150633

File Name :vcs_first_part_2_-_frmmainframe_04082013.pdf
File Size :360812 KB
Date/Time :4/6/2018 4:21:57 PM

File Name :vcs_last_part_1_-_geomexlreport_04082013.pdf
File Size :140494 KB
Date/Time :4/6/2018 4:21:56 PM

File Name :vcs_last_part_2_-_dprobexlreport_04082013.pdf
File Size :89333 KB
Date/Time :4/6/2018 4:21:56 PM

File Name :vcs_last_part_3_-_disproexlreport_04082013.pdf
File Size :165567 KB
Date/Time :4/6/2018 4:21:57 PM

File Name :vcs_first_part_1_-_program_04082013.pdf
File Size :37848 KB
Date/Time :4/6/2018 4:21:56 PM

[THREAD ID: 1-2YXVIFN]

United States Copyright Office

Exhibit L

Registration #: *-APPLICATION-*
Service Request #: 1-6439727175

Mail Certificate

MH2 Technology Law Group, LLP
Garrett Atkinson
1951 Kidwell Dr., Suite 550
Vienna, VA 22182 United States

Priority: Routine **Application Date:** March 29, 2018

Correspondent

Organization Name: MH2 Technology Law Group, LLP
Name: Garrett Atkinson
Email: gatkinson@mh2law.com
Address: 1951 Kidwell Dr., Ste 550
Vienna, VA 22182 United States

Registration Number
-APPLICATION-

Title

Title of Work: Virtual Completion Solutions 1.2 (Mar. 2014)
Volume: 1.2
Date on Copies: 2014

Completion/Publication

Year of Completion: 2014
Date of 1st Publication: March 01, 2014
Nation of 1st Publication: United States

Author

- **Author:** M-I LLC
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: M-I LLC
5950 North Course Drive, Houston, TX, 77072, United States

Certification

Name: Garrett Atkinson
Date: March 29, 2018
Applicant's Tracking Number: 0162.0195

<< Back

Case Summary:

Case #: 1-6439727175 **Type of Case:** Literary Work **Opened:** 3/29/2018

Title: Virtual Completion Solutions 1.2 (Mar. 2014) **Contact Name:** Garrett Atkinson

Fee Due: 55.00 **Service Fee Paid:** 55.00 **Claim Status:** Pending

Submit Your Work(s)

To complete your submission, please submit the required copy(ies) of your work. You may (1) upload electronic files if the work meets the requirements; otherwise, you must (2) send the work by mail (do not do both).

(1) Upload your work(s): Please perform the following steps for the case(s) in the table below.
Step 1: Click the "Select files to upload" button. Using your computer's browser, select your files for the corresponding work then click the "Start upload" button.
Step 2: After uploading all files for this work, click the corresponding "Complete Your Submission" button. Files cannot be uploaded later than 5 days after your first file is received.

Please note: Files cannot be returned or deleted once uploaded. To avoid delays and/or a later effective date of registration, please verify the following before uploading a copy of your work(s):

- It is a category of work that may be uploaded
- It is an acceptable file type
- It is an acceptable file size

Upload Your Work(s)

1 - 1 of 1

Case Details	Step 1: Select & Upload Files	Step 2: Complete Your Submission
Case #: 1-6439727175 **Title:** Virtual Completion Solutions 1.2 (Mar. 2014) **Volume:** **Number:** **Issue Date:** **Type of Work:** Literary Work	Claim submission completed; no further action required Click here for more information View Uploaded File Names	

Updates

1 - 1 of 1

Comments	Activity Type	Status	Created
Submitted by GJATKINSON on 03/29/2018	Upload Deposit	Received	3/29/2018 10:49:53 AM

(2) Send Your Work(s) by Mail:

- Click the "Create Shipping Slip" button in the table below; a Shipping Slip link will appear in the Attachments column.
- Click the Shipping Slip link and print out and attach the shipping slip(s) to your deposit copy(ies). For multiple cases, be sure to attach shipping slips to the corresponding copies.
- Mail the deposit copy(ies) within 30 days to the Copyright Office address at the bottom of the slip.Note: Your effective date of registration will be based on the date on which we receive the copies **with corresponding shipping slips attached**.

Click "Home" after uploading files(s) or printing shipping slip(s). You may verify the submission in the open Cases table on your eCO Home page.

Send Your Work(s) by Mail

Create Shipping Slip

No Records

Attachment Name	File Type	Size	Date and Time	Comments

Exhibit M

Registration #: *-APPLICATION-*
Service Request #: 1-6439924499

Mail Certificate

MH2 Technology Law Group, LLP
Garrett Atkinson
1951 Kidwell Dr., Suite 550
Vienna, VA 22182 United States

Priority: Routine **Application Date:** March 29, 2018

Correspondent

Organization Name: MH2 Technology Law Group, LLP
Name: Garrett Atkinson
Email: gatkinson@mh2law.com
Address: 1951 Kidwell Dr., Ste 550
Vienna, VA 22182 United States

Registration Number
-APPLICATION-

Title

Title of Work: Virtual Completion Solutions 1.2 (Dec. 2014)
Volume: 1.2
Date on Copies: 2014

Completion/Publication

Year of Completion: 2014
Date of 1st Publication: December 01, 2014
Nation of 1st Publication: United States

Author

- **Author:** M-I LLC
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: M-I LLC
5950 North Course Drive, Houston, TX, 77072, United States

Certification

Name: Garrett Atkinson
Date: March 29, 2018
Applicant's Tracking Number: 0162.0195

<< Back

Case Summary:

Case #: 1-6439924499 **Type of Case:** Literary Work **Opened:** 3/29/2018

Title: Virtual Completion Solutions 1.2 (Dec. 2014) **Contact Name:** Garrett Atkinson

Fee Due: 55.00 **Service Fee Paid:** 55.00 **Claim Status:** Pending

Submit Your Work(s)

To complete your submission, please submit the required copy(ies) of your work. You may (1) upload electronic files if the work meets the requirements; otherwise, you must (2) send the work by mail (do not do both).

(1) Upload your work(s): Please perform the following steps for the case(s) in the table below.
Step 1: Click the "Select files to upload" button. Using your computer's browser, select your files for the corresponding work then click the "Start upload" button.
Step 2: After uploading all files for this work, click the corresponding "Complete Your Submission" button. Files cannot be uploaded later than 5 days after your first file is received.

Please note: Files cannot be returned or deleted once uploaded. To avoid delays and/or a later effective date of registration, please verify the following before uploading a copy of your work(s):

- It is a category of work that may be uploaded
- It is an acceptable file type
- It is an acceptable file size

Upload Your Work(s)

1 - 1 of 1

Case Details	Step 1: Select & Upload Files	Step 2: Complete Your Submission
Case #: 1-6439924499 **Title:** Virtual Completion Solutions 1.2 (Dec. 2014) **Volume:** **Number:** **Issue Date:** **Type of Work:** Literary Work	Claim submission completed; no further action required Click here for more information View Uploaded File Names	

Updates

1 - 1 of 1

Comments	Activity Type	Status	Created
Submitted by GJATKINSON on 03/29/2018	Upload Deposit	Received	3/29/2018 10:55:38 AM

(2) Send Your Work(s) by Mail:

- Click the "Create Shipping Slip" button in the table below; a Shipping Slip link will appear in the Attachments column.
- Click the Shipping Slip link and print out and attach the shipping slip(s) to your deposit copy(ies). For multiple cases, be sure to attach shipping slips to the corresponding copies.
- Mail the deposit copy(ies) within 30 days to the Copyright Office address at the bottom of the slip.Note: Your effective date of registration will be based on the date on which we receive the copies **with corresponding shipping slips attached.**

Click "Home" after uploading files(s) or printing shipping slip(s). You may verify the submission in the open Cases table on your eCO Home page.

Send Your Work(s) by Mail

Create Shipping Slip

No Records

Attachment Name	File Type	Size	Date and Time	Comments

Exhibit N

Registration #: *-APPLICATION-*
Service Request #: 1-6439924269

Mail Certificate

MH2 Technology Law Group, LLP
Garrett Atkinson
1951 Kidwell Dr., Suite 550
Vienna, VA 22182 United States

Priority: Routine **Application Date:** March 29, 2018

Correspondent

Organization Name: MH2 Technology Law Group, LLP
Name: Garrett Atkinson
Email: gatkinson@mh2law.com
Address: 1951 Kidwell Dr., Ste 550
Vienna, VA 22182 United States

Registration Number
-APPLICATION-

Title

Title of Work: PressPro RT 2.2.2 (2014)
Volume: 2.2.2
Date on Copies: 2014

Completion/Publication

Year of Completion: 2014
Date of 1st Publication: January 01, 2014
Nation of 1st Publication: United States

Author

- **Author:** M-I LLC
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: M-I LLC
5950 North Course Drive, Houston, TX, 77072, United States

Certification

Name: Garrett Atkinson
Date: March 29, 2018
Applicant's Tracking Number: 0162.0195

<< Back

Case Summary:

Case #:	1-6439924269	**Type of Case:**	Literary Work	**Opened:**	3/29/2018
Title:	PressPro RT 2.2.2 (2014)			**Contact Name:**	Garrett Atkinson
Fee Due:	55.00	**Service Fee Paid:**	55.00	**Claim Status:**	Pending

Submit Your Work(s)

To complete your submission, please submit the required copy(ies) of your work. You may (1) upload electronic files if the work meets the requirements; otherwise, you must (2) send the work by mail (do not do both).

(1) Upload your work(s): Please perform the following steps for the case(s) in the table below.
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Step 2: After uploading all files for this work, click the corresponding "Complete Your Submission" button. Files cannot be uploaded later than 5 days after your first file is received.

Please note: Files cannot be returned or deleted once uploaded. To avoid delays and/or a later effective date of registration, please verify the following before uploading a copy of your work(s):

- It is a category of work that may be uploaded
- It is an acceptable file type
- It is an acceptable file size

Upload Your Work(s)

1 - 1 of 1

Case Details	Step 1: Select & Upload Files	Step 2: Complete Your Submission
Case #: 1-6439924269 **Title:** PressPro RT 2.2.2 (2014) **Volume:** **Number:** **Issue Date:** **Type of Work:** Literary Work	Claim submission completed, no further action required Click here for more information View Uploaded File Names	

Updates

1 - 1 of 1

Comments	Activity Type	Status	Created
Submitted by GJATKINSON on 03/29/2018	Upload Deposit	Received	3/29/2018 10:49:57 AM

(2) Send Your Work(s) by Mail:

- Click the "Create Shipping Slip" button in the table below; a Shipping Slip link will appear in the Attachments column.
- Click the Shipping Slip link and print out and attach the shipping slip(s) to your deposit copy(ies). For multiple cases, be sure to attach shipping slips to the corresponding copies.
- Mail the deposit copy(ies) within 30 days to the Copyright Office address at the bottom of the slip.Note: Your effective date of registration will be based on the date on which we receive the copies **with corresponding shipping slips attached.**

Click "Home" after uploading files(s) or printing shipping slip(s). You may verify the submission in the open Cases table on your eCO Home page.

Send Your Work(s) by Mail

Create Shipping Slip

No Records

Attachment Name	File Type	Size	Date and Time	Comments

Exhibit O

Registration #: *-APPLICATION-*
Service Request #: 1-6439924316

Mail Certificate

MH2 Technology Law Group, LLP
Garrett Atkinson
1951 Kidwell Dr., Suite 550
Vienna, VA 22182 United States

Priority: Routine **Application Date:** March 29, 2018

Correspondent

Organization Name: MH2 Technology Law Group, LLP
Name: Garrett Atkinson
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Registration Number
-APPLICATION-

Title

Title of Work: PressPro RT 2.2.2 (2015)
Volume: 2.2.2
Date on Copies: 2015

Completion/Publication

Year of Completion: 2014
Date of 1st Publication: January 01, 2015
Nation of 1st Publication: United States

Author

- **Author:** M-I LLC
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: M-I LLC
5950 North Course Drive, Houston, TX, 77072, United States

Certification

Name: Garrett Atkinson
Date: March 29, 2018
Applicant's Tracking Number: 0162.0195

<< Back

Case Summary:

Case #:	1-6439924316	**Type of Case:**	Literary Work	**Opened:**	3/29/2018
Title:	PressPro RT 2.2.2 (2015)			**Contact Name:**	Garrett Atkinson
Fee Due:	55.00	**Service Fee Paid:**	55.00	**Claim Status:**	Pending

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Exhibit P

Owen, Sam

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Your Application and payment for the work M-I Proprietary Database were received by the U.S.Copyright Office on 4/6/2018.

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United States Copyright Office

Owen, Sam

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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

M-I L.L.C. D/B/A M-I SWACO

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
John R. Keville, Winston & Strawn LLP
1111 Louisiana Street, 25th Floor, Houston, TX 77002
(713) 651-2600

DEFENDANTS

Q'MAX SOLUTIONS, INC., Q'MAX AMERICA INC., SANJIT ROY, AND DAVID WILSON

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

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- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
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- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
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- ☐ 443 Housing/ Accommodations
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- ☐ 448 Education

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- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
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- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

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- ☐ 690 Other

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- ☐ 740 Railway Labor Act
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- ☐ 790 Other Labor Litigation
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- ☐ 840 Trademark

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- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

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- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
18 U.S.C § 1836 and 17 U.S.C. § 501

Brief description of cause:
Copyright infring., trade secret misapprop; breach of contract, conversion and/or breach of fiduciary duty

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
04/06/2018

SIGNATURE OF ATTORNEY OF RECORD
s/ John R. Keville

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Appendix “D”

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

M-I L.L.C. d/b/a M-I SWACO,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-18-1099
	§	
Q'MAX SOLUTIONS, INC.; Q'MAX AMERICA, INC.; and SANJIT ROY,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

M-I L.L.C. d/b/a M-I SWACO ("M-I") filed this action against Q'Max Solutions, Inc., Q'Max America, Inc. (together "Q'Max"), and Sanjit Roy (collectively, "Defendants") alleging the theft and use of M-I's intellectual property and software. M-I alleges claims for copyright infringement, misappropriation of trade secrets, and conversion against all Defendants and breach of contract and breach of fiduciary duty claims against Roy.[1] Pending before the court are Plaintiff M-I LLC's Motion to Enforce the Terms of the Protective Order and Compel the Destruction of an Inadvertently Produced Document ("Motion to Compel") [Docket Entry No. 134], Defendants' Motion for Summary Judgment as to Copyright Infringement ("Defendants' MSJ") [Docket Entry No. 128], and Defendants' Motion to Exclude Testimony of David Leathers and

[1]Complaint, Docket Entry No. 1, p. 5 ¶ 13, pp. 8-9 ¶ 30, pp. 10-11 ¶¶ 41-42, p. 13 ¶¶ 55-56, p. 16 ¶¶ 70-75, p. 17 ¶ 83. All page numbers for docket entries in the record refer to the pagination inserted at the top of the page by the court's electronic filing system, CM/ECF.

Expert Testimony on Copyright Damages ("Motion to Exclude Expert Testimony") [Docket Entry No. 126]. For the reasons explained below, the Motion for Protective Order will be granted, Defendants' MSJ will be granted, and the Motion to Exclude Expert Testimony will be denied.

I. Factual and Procedural Background

The court will not describe in detail the background of this action because it has done so in its previous Memorandum Opinion and Order granting in part and denying in part M-I's motion for summary judgment as to its breach of contract and misappropriation of trade secrets claims.[2] The facts below are those that relate specifically to M-I's copyright infringement claim.

M-I developed Virtual Hydraulics ("VH") and Presspro RT ("PPRT"), which are hydraulics simulation software used in oil and gas drilling. The software permits users to enter parameters about a well and to simulate the hydraulics that will occur within the well at various depths. M-I asserts copyright over VH, PPRT, and proprietary databases (the "Copyrighted Works"). Until May of 2014, Sanjit Roy was employed by M-I and had access to the Copyrighted Works. When Roy left M-I, he kept copies of confidential information on computers and external hard drives, including a full backup of his M-I computer that contained the source code for various versions of VH and PPRT.

[2]Memorandum Opinion and Order, Docket Entry No. 111, pp. 1-4.

Roy joined Q'Max, a competitor of M-I, in April of 2015. Roy and Q'Max developed MAXSITE Hydraulics ("MAXSITE"), a software program with the same models as VH that could compete with VH in the virtual hydraulic simulation space. M-I alleges that Roy and Q'Max copied the Copyrighted Works; specifically, M-I claims that MAXSITE infringes on its copyright because it was created by copying the Copyrighted Works and is substantially similar to them.

M-I filed this action on April 6, 2018, asserting, among other claims, copyright infringement.[3] Defendants seek summary judgment only as to M-I's copyright infringement claim.[4] M-I responded on December 9, 2019.[5] Defendants replied on December 16, 2019,[6] and M-I filed a surreply on April 29, 2020.[7]

II. Defendants' Motion for Summary Judgment

A. Standard of Review

Summary judgment is appropriate if the movant establishes that there is no genuine dispute about any material fact and the movant

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[3]Complaint, Docket Entry No. 1, p. 7.

[4]Defendants' MSJ, Docket Entry No. 128, p. 1.

[5]Plaintiff M-I LLC's Opposition to Defendants' Motion for Summary Judgment as to Copyright Infringement ("M-I's MSJ Response"), Docket Entry No. 132.

[6]Defendants' Reply in Support of Motion for Summary Judgment as to Copyright Infringement ("Defendants' MSJ Reply"), Docket Entry No. 136.

[7]Plaintiff M-I LLC's Surreply to Defendants' Reply in Support of Motion for Summary Judgment as to Copyright Infringement ("M-I's MSJ Surreply"), Docket Entry No. 144.

is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Disputes about material facts are genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986).

The party moving for summary judgment must show the absence of a genuine issue of material fact. Exxon Corp. v. Oxxford Clothes, Inc., 109 F.3d 1070, 1074 (5th Cir. 1997). "If the moving party fails to meet this initial burden, the motion must be denied, regardless of the nonmovant's response." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam) (citing Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986)). If the moving party meets this burden, Rule 56© requires the nonmovant to go beyond the pleadings and show by affidavits, depositions, answers to interrogatories, admissions on file, or other admissible evidence that specific facts exist over which there is a genuine issue for trial. Id. The nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 106 S. Ct. 1348, 1356 (1986).

In reviewing the evidence "the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097, 2110 (2000). The court resolves factual controversies in favor of the nonmovant,

"but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little, 37 F.3d at 1075.

B. Applicable Law

"To prove copyright infringement, a plaintiff must establish (1) ownership of a valid copyright; (2) factual copying; and (3) substantial similarity." Nola Spice Designs, L.L.C. v. Haydel Enterprises, Inc., 783 F.3d 527, 549 (5th Cir. 2015). The second element requires a showing that the defendant "actually used the copyrighted material to create his own work" and that "the copying is legally actionable." Engineering Dynamics, Inc. v. Structural Software, Inc., 26 F.3d 1335, 1340-41 (5th Cir. 1994)). There is no dispute that the copyrights M-I has asserted are valid.

Actual use of copyrighted material may be proven either by "direct evidence of copying or through circumstantial evidence demonstrating both (1) that the defendant had access to the copyrighted work and (2) that the two works are 'probatively' similar." General Universal Systems, Inc. v. Lee, 379 F.3d 131, 141 (5th Cir. 2004). "The access element is satisfied if the person who created the allegedly infringing work had a reasonable opportunity to view the copyrighted work. The second element – probative similarity – requires a showing that the works, 'when compared as a whole, are adequately similar to establish appropriation.'" Id.

"Not all copying, however, is copyright infringement." Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 111 S. Ct. 1282, 1296 (1991). For copying to be legally actionable, the alleged infringing work must satisfy the third element by "bear[ing] a substantial similarity to the protected aspects of the original." Peel & Co, Inc. v. The Rug Market, 238 F.3d 391, 398 (5th Cir. 2001). Therefore, "[t]he inquiry focuses not on every aspect of the copyrighted work, but on those aspects of the plaintiff's work [that] are protect[a]ble under copyright laws and whether whatever copying took place appropriated those [protected] elements." T-Peg, Inc. v. Vermont Timber Works, Inc., 459 F.3d 97, 112 (1st Cir. 2006) (internal quotation marks and citations omitted). "[A]nyone may copy uncopyrightable elements in a copyrighted work." Engineering Dynamics, 26 F.3d at 1347. Given these limitations, "where the copyrighted work contains unprotectable elements, the first step is to distinguish between protectable and unprotectable elements of the copyrighted work." Nola Spice, 783 F.3d at 550. Once unprotectable elements are excluded, "[t]he next inquiry is whether the allegedly infringing work bears a substantial similarity to the protectable aspects of the original work." Id. The standard is "whether a layman would view the two works as 'substantially similar'" after comparing the works side-by-side. General Universal, 379 F.3d at 142. This is a question of fact on which summary judgment is only available if no reasonable juror could find substantial similarity of ideas and expression. Id.

Computer programs are entitled to copyright protection. General Universal, 379 F.3d at 142. Protection extends to both the literal elements - the source code and object code - and the nonliteral elements such as its "structure, sequence, organization, user interface, screen displays, and menu structures." Id. The Fifth Circuit has endorsed the "abstraction-filtration-comparison" test for assessing whether protectable expression in software has been improperly copied. Id. The test begins with abstraction, where the court "dissect[s] the allegedly copied program's structure and isolate[s] each level of abstraction contained within it." Id. "Second, the court filters out unprotectable expression by examining the structural components at each level of abstraction to determine whether they can be protected by copyright." Id. The court must filter out ideas, processes, facts, elements dictated by efficiency or external factors, and elements taken from the public domain, as these are not protected by copyright. Id. at 142-43. Finally, the court compares the filtered copyrighted software to the defendants' to determine whether a substantial portion was copied. Id. at 143.

C. Analysis

M-I alleges two types of copyright claims: (1) the claim against Roy for making copies of the Copyrighted Works, and (2) the claim against all Defendants that MAXSITE was produced by copying the Copyrighted Works. Defendants argue that they are entitled to

summary judgment against M-I's copyright claim on the basis that there is no substantial similarity between MAXSITE and the protected elements of M-I's Copyrighted Works.[8] Defendants argue that M-I has identified no protectable elements of the software that will survive filtration except the source code and that the source code of the two programs are not substantially similar. M-I responds that (1) the abstraction-filtration-comparison test does not apply, (2) even if the test applies, there are substantial similarities between MAXSITE and the Copyrighted Works, and that (3) Defendants' argument does not affect the copyright claim against Roy based on his making copies of the Copyrighted Works.[9]

1. The Abstraction-Filtration-Comparison Test Applies

As an initial matter, M-I disputes whether the court should rely on the abstraction-filtration-comparison test. M-I argues that the court should instead hold that the nonliteral elements of its Copyrighted Works are protectable based on tests stated in Torah Soft Ltd. v. Drosnin, 136 F. Supp. 2d 276 (S.D.N.Y. 2001), and Feist, 111 S. Ct. 1282.

M-I's argument lacks merit. It is well established in this circuit that courts should use the abstraction-filtration-comparison test to assess copyright infringement claims involving

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[8]Brief in Support of Defendants' Motion for Summary Judgment as to Copyright Infringement ("Defendants' MSJ Brief"), Docket Entry No. 129, p. 7.

[9]M-I's MSJ Response, Docket Entry No. 132, pp. 9, 10-11, 24.

nonliteral elements of computer programs. E.g., General Universal, 379 F.3d at 142; Beardmore v. Jacobsen, 131 F. Supp. 3d 656, 674 (S.D. Tex. 2015); Engenium Solutions, Inc. v. Symphonic Technologies, Inc., 924 F. Supp. 2d 757, 786-87 (S.D. Tex. 2013). Torah Soft and Feist do not speak to what framework a court should use to decide alleged infringement against a computer program. The principle M-I cites from Torah Soft is simply that a computer program's output may be protectable along with the program itself if the program, rather than the user, "suppl[ies] the lion's share of the creativity to create the screen display." 136 F. Supp. 2d at 283. The principle of Feist is simply that a work must be original in order to receive copyright protection. 111 S. Ct. at 345-46. These principles are properly applied within the abstraction-filtration-comparison test at the filtration stage to which of the program's non-literal elements may be protectable. Accordingly, the court will apply the abstraction-filtration-comparison test and assess these other tests for protectability at the filtration step.

2. Abstraction

The first step of the test is abstraction. The parties do not substantially disagree on the levels of abstraction by which the court should analyze the Copyrighted Works. Defendants state that the program can be abstracted into: (1) formulas and algorithms, (2) coefficients and constants, (3) architecture, modules, and

components, (4) test results, (5) user interfaces and outputs, and (6) the source code.[10] M-I states that the relevant levels of abstraction are: (1) the source code, (2) algorithms and data structures, (3) modules, (4) architecture or structure, and (5) the purpose of the program.[11] Neither side has argued that the court should not consider the levels of abstractions identified by the other. The court finds no reason to stray from the levels of abstraction proposed by the parties. M-I has not, however, argued that its Copyrighted Works contain protectable expression at the level of the purpose of the computer programs. Combining the parties' arguments, the court will analyze the program as divided into the following levels of abstraction: (1) coefficients and constants; (2) formulas and algorithms; (3) architecture and modules, (4) test results and data structures, and (5) user interfaces and outputs.

3. Filtration

The second step of the test is filtration. The court will assess the computer program at the different levels of abstraction to determine which parts of the program are protectable and which are not. M-I bears the burden of proof to demonstrate copyright infringement. Nola Spice, 783 F.3d at 549. Accordingly, where Defendants meet their burden by demonstrating that there is no

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[10]Defendants' MSJ Brief, Docket Entry No. 129, p. 11.

[11]M-I's MSJ Response, Docket Entry No. 132, p. 14.

genuine issue of material fact that an element of the Copyrighted Works are protectable, the burden shifts to M-I to point to summary-judgment evidence showing the contrary. Little, 37 F.3d at 1075.

a. Coefficients and Constants

Coefficients used within the Copyrighted Works are a component that expert testimony has identified as proprietary to M-I.[12] These coefficients "were developed and continuously refined by M-I after many years of gathering and analyzing laboratory data and actual wellsite data from many wells."[13] But "scientific observations of physical relationships . . . are not invented or created; they already exist and are merely observed, discovered and recorded. Such a discovery does not give rise to copyright protection." Gates Rubber Co. v. Bando Chemical Industries, Ltd., 9 F.3d 823, 842-43 (10th Cir. 1993). A constant or coefficient used by a computer program that reflects scientific observation and physical relationships is therefore not protected by copyright. Id. at 843; see 17 U.S.C. § 102(b) (excluding principles and discoveries from copyright protection). The coefficients accordingly must be filtered out and cannot be used as the basis for finding copyright infringement. M-I has not argued otherwise.

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[12]Declaration of Lucian K. Johnston, Exhibit E to Defendants' MSJ Brief, Docket Entry No. 129-5, p. 6 ¶ 10.

[13]Id.

b. Formulas and Algorithms

Expert testimony has also identified formulas used by the Copyrighted Works as proprietary.[14] Richard Hooper, an expert retained by M-I, identified a number of algorithms used by the Copyrighted Works.[15] In particular, Hooper's Report states that MAXSITE and the Copyrighted Works used algorithms that produced the same results in estimating pressure and temperature.[16] The report also states that the "hole cleaning functionality" present in both are implemented in similar ways using the same four pieces of functionality.[17] Defendants argue that algorithms and formulas may not be protected by copyright as a matter of law, and in the alternative the algorithms are in the public domain.[18] M-I argues that the specific "algorithm structures" as implemented with particular functions are protectable.[19]

The Copyright Act explicitly excludes any "procedure, process, system, [or] method of operation" from receiving copyright protection "regardless of the form in which it is . . . embodied in such work." 17 U.S.C. § 102(b). Copyright law protects only the

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[14] Id.

[15] Expert Report of Richard Hooper ("Hooper Report"), Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, pp. 47-54.

[16] Id. at 47-48 ¶ 131, 52 ¶ 141, 54 ¶ 145.

[17] Id. at 47-48 ¶¶ 131-133.

[18] Defendants' MSJ Brief, Docket Entry No. 129, pp. 14-15.

[19] M-I's MSJ Response, Docket Entry No. 132, p. 16.

original expression of a process or method, not the process or method itself. Atari Games Corp. v. Nintendo of America Inc., 975 F.2d 832, 839 (Fed. Cir. 1992). An algorithm is a specific series of steps that accomplish a particular operation and accordingly often embodies an unprotectable process. Gates Rubber, 9 F.3d at 835, 837. Computer program algorithms cannot receive copyright protection to the extent that they are simply a process or method of operation. Torah, 136 F. Supp. 2d at 291. It is therefore critical to distinguish the process embodied by a computer algorithm from the original expression of the algorithm. Typically, for the expression of a process to be protectable, it must be possible for the process to be expressed in multiple different way. Oracle America, Inc. v. Google Inc., 750 F.3d 1339, 1367 (Fed. Cir. 2014). And even when an algorithm is expression rather than process, it may still be unprotectable under other copyright doctrines. Gates Rubber, 9 F.3d at 845.

Hooper's expert report concludes that MAXSITE copied the algorithms for calculating pressure and temperature changes solely because the MAXSITE code and the PPRT code for those functions returned the same result. At most this shows that the MAXSITE algorithms use the same process as the PPRT algorithms; it does not show that MAXSITE copied any algorithm expressive component of the algorithm.

Hooper's analysis of the hole cleaning functionality is more detailed. Hooper demonstrates that the MAXSITE and PPRT hole

cleaning algorithms are implemented via four separate sub-functions. PPRT uses functions named "SetParameters," "GetCutConc," "GetSteadyHClean," and "GetSlipVelocity." MAXSITE uses functions named "SetParameters," "CalcCuttingConcentration," "GetSteadyHClean," and "SlipVelocity."[20] M-I argues that the choice to divide the hole cleaning algorithm into four sub-functions is protectable creative expression. The court disagrees. A process that requires the execution of several sub-processes is still an unprotectable process. Instructive is Hooper's description of the "GetSteadyHClean" functionality as a "recipe" using the same "series of steps."[21] Hooper's conclusion of infringement relies on the fact that the program algorithms used the same variables in the same series of steps to achieve the same outcomes. But this only demonstrates that they implement the same processes. M-I points to no evidence in the record that these processes could have been expressed without the use of sub-functions that have their own particular series of steps. The court concludes that there is no genuine issue of material fact as to whether the algorithms in the Copyrighted Works as claimed by M-I are subject to copyright protection. Because M-I seeks protection of the processes carried out by the algorithms rather than their specific expression, the algorithms cannot support a finding of copyright infringement.

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[20] Id.

[21] Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, p. 51 ¶ 138.

c. Architecture and Modules

The program's architecture or structure is a description of how the program operates in terms of its various functions, which are performed by discrete modules, and how each of these modules interact with each other. Gates Rubber, 9 F.3d at 835. Modules, in turn, are groupings of data types with a particular result to be obtained or set of actions that may be performed. Id. The abstract idea of structuring functions of a computer program using a method or organizing principle is not protected by copyright. Oracle, 750 F.3d at 1367. Only the particular implementation of that idea may be protected. Id.

The structure of the program that Hooper identifies and M-I claims is protected is "a lower-layer that presents modular functionality to the layers above it for intermediate calculations and display on the user interface."[22] Defendants argue that this is a general statement of the basics of computing structuring and is therefore not protectable expression.[23] Defendants' rebuttal expert opines that Hooper's description of the architecture is simply that it is modular.[24] The court agrees. Hooper's report does not describe what is expressive about the Copyrighted Works'

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[22]M-I's MSJ Response, Docket Entry No. 132, p. 17; Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, p. 57 ¶ 161.

[23]Defendants' MSJ Reply, Docket Entry No. 136, pp. 3-4.

[24]Expert Rebuttal Report of Ronald S. Schnell, Exhibit B to Defendants' MSJ Brief, Docket Entry No. 129-2, p. 27 ¶ 78.

architecture or modular system; it only likens the M-I and Q'Max architectures because they implement functions and models in a series of layered modules.[25] M-I specifies no part of the architecture that is protectable expression distinct from the idea of its organizational structure. The court concludes that the only element of the architecture that M-I has claimed as protected is the idea of its layered, modular functionality, for which copyright is not available.

Defendants argue that the modules themselves are not subject to copyright protection because under the scenes a faire doctrine their presence is dictated by the external factors of customer demands and the business served by MAXSITE.[26] The scenes a faire doctrine denies protection to "those expressions that are standard, stock, or common to a particular topic or that necessarily follow from a common theme or setting." Gates Rubber, 9 F.3d at 838. In addition to expressions that are "standard, stock, or common," the doctrine "excludes from protection those elements of a program that have been dictated by external factors." Id. "External factors may include: hardware standards and mechanical specifications, software standards and compatibility requirements, computer manufacturer design standards, target industry practices and

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[25]Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, pp. 57-58 ¶¶ 161-171.

[26]Defendants' MSJ Brief, Docket Entry No. 129, p. 16.

demands, and computer industry programming practices." Id. (internal citations omitted).

Defendants point to testimony that the predictive hydraulics modeling programs for well drilling typically and reasonably would need to provide certain data in a certain way in order to be useful for customers.[27] This testimony also shows that implementing features offered by competitors in order to please customers is standard practice.[28] M-I's expert testified that M-I's Copyrighted Works are not unique in providing data on density, temperature, and annular velocity, or in accounting for variables such as low shear-rate viscosity.[29] Defendants also point to marketing material by a non-party competitor, Halliburton, that advertises its software as aiding oil rig operators by providing "accurate modeling of the pressure losses, hole cleaning and surge and swab pressure predictions."[30] The court is persuaded that this evidence shows no genuine issue of material fact as to whether modules for pressure loss, surge and swab, and hole cleaning are standard features in predictive hydraulics modeling programs. Because the undisputed

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[27]Oral and Videotaped Deposition of Lee Conn, Exhibit G to Defendants' MSJ Brief, Docket Entry No. 129-7, p. 8 lines 17-25, p. 9 lines 1-8.

[28]Id. at 14 lines 9-18.

[29]Id. at 10 lines 23-25, 11 lines 4-23, 12 lines 7-11.

[30]Halliburton, Drilling Fluids Graphics (DFG™) Software Allows Operator to Save Rig Time and Successfully Drill Challenging HPHT Well in Western Canada, Exhibit C to Defendant's MSJ Reply, Docket Entry No. 136-3.

summary-judgment evidence shows that the presence of these modules is dictated by industry standards and M-I has pointed to no particular aspect of the modules in its Copyrighted Works that are more than the standard expressions incidental to industry demand, the court concludes that the modules are not protectable.

d. Test Results and Data Structures

Among the Copyrighted Works described in the Complaint are "proprietary databases."[31] Hooper's expert report identifies two claimed databases among the information found to have been copied by Roy: "[I]nformation about the results of drilling with different fluids (the FANN 70 database)" and a "database relating to M-I's drilling logs from its activities around the world (ONE-TRAX)."[32] Defendants argue that these databases contain raw data resulting from testing that is not subject to copyright protection. M-I does not argue that the raw data is subject to copyright. M-I suggests that these databases should be considered at the level of abstraction of "data structures." M-I does not, however, argue that MAXSITE infringes on these data structures nor provide any analysis or authority to suggest that the data structures as used by the computer programs are protectable under the abstraction-filtration-comparison test. Accordingly, the court concludes that

[31]Complaint, Docket Entry No. 1, p. 6 ¶ 18, 7 ¶ 25.

[32]Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, p. 11 ¶ 41.

Defendants are entitled to summary judgment that MAXSITE does not infringe on either the raw data in the databases or the data structures.

e. Graphical User Interfaces and Outputs

M-I claims copyright protection over the graphical user interfaces ("GUIs") used in its programs.[33] M-I limits the non-literal element of the GUIs that it claims as copyright to "the combination of the layout, color, order, direction, shape, and placement of output variables" - or the "look and feel" of the GUI.[34] Defendants argue that the elements of the GUIs are not protected by copyright because they are methods of operation or because they are unprotectable through the merger or scenes a faire doctrines.[35]

Much of Defendants' argument focuses on whether discrete elements within the GUIs such as the charts, output tables, command buttons, and module selection window, are subject to copyright protection.[36] M-I disclaims that these individual elements are copyrightable and claims only the GUIs' combination, layout, and presentation of these elements.[37] Defendants reply that if the

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[33]M-I's MSJ Response, Docket Entry No. 132, p. 18.

[34]Id.

[35]Defendants' MSJ Brief, Docket Entry No. 129, p. 20.

[36]Id. at 22-24.

[37]M-I's MSJ Response, Docket Entry No. 132, p. 18.

GUIs' individual elements cannot be protected, neither can their combined "look and feel."[38] But infringement may be based on an original selection and arrangement of unprotected elements. Apple Computer, Inc. v. Microsoft Corp., 35 F.3d 1435, 1446 (9th Cir. 1994). Nevertheless, the court cannot find infringement based on the "look and feel" of the GUIs without first filtering out elements that are not protectable. See id. ("[T]he party claiming infringement may place no reliance upon any similarity in expression resulting from unprotectable elements." (internal quotations omitted)).

Hooper's expert report identifies a number of elements. Those elements can be generally categorized as:

- Naming and organization of menus and options, such as an expandable tree menu;[39]
- Labeling and options for inputs and outputs;[40] and
- Selection, labeling, organization, ordering, and coloring of graphical output displays, such as the Virtual Hydraulics SnapShot.[41]

The merger doctrine prohibits copyright if an idea may only be expressed in a limited manner and therefore the idea and expression merge. Gates Rubber, 9 F.3d at 838. In a functional program the

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[38]Defendants' MSJ Reply, Docket Entry No. 136, p. 5.

[39]E.g., Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, p. 26 ¶ 71.

[40]E.g., id. at 33 ¶ 92.

[41]E.g., id. at 40 ¶¶ 102-106.

idea of allowing users to input particular data and receive output of particular data necessarily merges with the labeling needed to communicate those inputs and outputs to the user. For example, the GUIs' use of labels such as "well geometry," "casing," "lining," "length," and "weight" to show the user where to input variables is necessary to implement the idea of allowing users to input the well geometry variables.[42] The idea of users inputting variables therefore merges with the functional labels that show where each variable should be placed and renders the labels unprotectable. The court need not examine every example in detail to conclude that the naming and labeling used in the GUIs are not protectable expression.

As explained above, the scenes a faire doctrine prohibits the protection of expressions that are standard to a particular topic, including expressions that are an industry standard in a particular area. In the business market context, when a feature, sequence, organization, or other element of the GUI becomes standard, the scenes a faire doctrine will operate to make them unprotectable by copyright. Apple Computer, Inc. v. Microsoft Corp., 799 F. Supp. 1006, 1023 (N.D. Cal. 1992) (citing Plains Cotton Co-Op Ass'n of Lubbock, Texas v. Goodpasture Computer Service, Inc., 807 F.2d 1256, 1262 (5th Cir. 1987)). The evidence establishes that customers of these programs require a complete hydraulics analysis

[42] E.g., id. at 28 ¶ 78.

report that displays all of the results and presents them using graphs that plot the results versus the depth of the analyzed well.[43] Moreover, the industry standard is to plot the graphs vertically because that is an intuitive way to display data that varies by the depth of a well.[44] The court concludes that under the scenes a faire doctrine, the general selection, display, and direction of data and charts on the graphical output are unprotectable.

This filtering leaves only the arrangement and presentation of elements in the GUI as protectable under copyright. Creativity in arrangement, however, is "a function of (i) the total number of options available, (ii) external factors that limit the viability of certain options and render others non-creative, and (iii) prior uses that render certain selections 'garden variety.'" Matthew Bender & Co., Inc. v. West Publishing Co., 158 F.3d 674, 682-83 (2d Cir. 1998). If there is a limited amount of material to select, compile, or arrange, it is less likely that the choices made will require more than a de minimis effort. Id. The court concludes that the use of an expandable tree to display a menu is not an original choice in light of the evidence that an expandable tree is

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[43]Videotaped Deposition of Alan D. McLean, Exhibit K to Defendants' MSJ Brief, Docket Entry No. 129-11, p. 51 line 24 - p. 53 line 11.

[44]Oral and Videotaped Deposition of Sanjit Roy, Exhibit I to Defendants' MSJ Brief, Docket Entry No. 129-9, p. 362 line 7 - p. 363 line 8.

a basic structure available to software developers using Microsoft Visual Studio.[45]

The court is not persuaded, however, that the arrangement and presentation of the data table, header bar, and vertical graphs on the Virtual Hydraulics SnapShot are totally devoid of originality. At minimum, screenshots of the M-I SnapShot, Baker Hughes interface, and Halliburton interface demonstrate there is some variation in the arrangement, presentation, and coloring of those elements of the results screen that is left to the discretion of the program's author.[46] To the extent that M-I's GUI is protectable, however, it is limited to these protectable elements. Infringement of the GUI cannot be found based on a similarity of the unprotectable elements described above.

4. Comparison

Having completed the filtration process, the court must determine whether MAXSITE is substantially similar to the Copyrighted Works. Engineering Dynamics, 26 F.3d at 1348. "Ultimately the court must decide whether those protectable portions of the original work that have been copied constitute a substantial part of the original work - i.e. matter that is

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[45]Oral and Videotaped Deposition of Richard Hooper, Ph.D., P.E., Exhibit A to Defendants' MSJ Brief, Docket Entry No. 129-1, p. 138 line 20 - p. 139 line 21.

[46]See Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, pp. 35-39 (displaying and comparing the graphical results screens of each of the competing programs).

significant in the plaintiff's program." Gates Rubber, 9 F.3d at 839. The court must also consider the applicable scope of protection afforded by copyright to the particular work. Engineering Dynamics, 26 F.3d at 1348. Computer interfaces "may lie very near the line of uncopyrightability" "[t]o the extent that they are highly functional [or] contain highly standardized technical information." Id.

The only non-literal elements of the Copyrighted Works that the court found protectable are the arrangement, presentation, and coloring of the data tables, header bar, and vertical charts used in the results screen. There is no question that the output graphics of the 2015 version of MAXSITE, "HydrauliQs QuikView," is very similar to Virtual Hydraulics' SnapShot in terms of the protectable elements of the GUI.[47] The coloring and layout of the screens are virtually identical, except the order of the vertical graphs and the location of a vertical column displaying data have been moved. The 2018 version of MAXSITE, by contrast, nearly completely removed these similarities.

For the 2015 version of MAXSITE's arrangement, presentation, and coloring of the results screen to establish substantial similarity between the programs, those elements of the GUI must be important to M-I's programs as a whole. See Digital Drilling Data Systems, L.L.C. v. Petrolink Services, Inc. 965 F.3d 365, 2020

[47] See Hooper Report, Exhibit D to Defendants' MSJ Brief, Docket Entry No. 129-4, p. 23 ¶ 62, p. 24 ¶ 63.

WL 3603953, at *5 (5th Cir. July 2, 2020). In the absence of summary judgment evidence as to the qualitative and quantitative importance of the copied portion to the plaintiff's work as a whole, summary judgment of non-infringement is appropriate. Id. Because M-I has pointed to no evidence that the protectable arrangement, presentation, and coloring of the results screen are a "substantial part" of the program, the court must conclude that there is no genuine issue of material fact as to MAXSITE's substantial similarity to the Copyrighted Works. Accordingly, Defendants' MSJ will be granted as to the allegation that MAXSITE infringes on the Copyrighted Works' non-literal elements.

5. Source Code

Defendants also seek summary judgment as to literal copying of the source code. Defendants argue that there is no genuine issue of material fact as to literal infringement because M-I's expert identified at most 44 lines that appear similar between the two source codes - amounting to 0.0022% of the over two million lines in M-I's original source code. The court agrees that no reasonable jury could find that these 44 lines could establish substantial similarity on the basis of quantitative importance. See Digital Drilling, 2020 WL 3603953, at *5 (holding that copying of 5% of an original work did not satisfy the threshold for quantitative importance). And M-I has not pointed to any summary judgment evidence as to the 44 lines' qualitative importance to its overall programs. See id.

M-I argues that the court should not grant summary judgment because there is evidence Roy actually copied its source code when he wrote MAXSITE. Both factual copying and substantial similarity are distinct elements that must be established to prove copyright infringement. Nola Spice, 783 F.3d at 549. That Roy may have copied the code in writing MAXSITE does not save the copyright infringement claim if there is no genuine issue of fact as to substantial similarity. See Digital Drilling, 2020 WL 3603953, at *5 (affirming summary judgment of a copyright infringement claim on substantial similarity grounds despite actual copying). Accordingly, the court need not consider M-I's arguments that (1) comments in MAXSITE's source code prove the lines were copied from M-I's source code and (2) Defendants spoliated evidence as to access and copying of the source code. Defendants are entitled to summary judgment on M-I's copyright infringement claim based on MAXSITE's alleged infringement, including M-I's request for injunctive relief.[48]

D. M-I's Unauthorized Copying Claim Remains Live Against Roy

M-I's Complaint alleges two grounds for its copyright claim: (1) that Roy copied and distributed the Copyrighted Works without authorization, and (2) that Q'Max and Roy infringed on the Copyrighted Works by copying them to create MAXSITE. Defendants

[48] See M-I's MSJ Response, Docket Entry No. 132, p. 9 n.2.

have sought summary judgment only as to the latter ground. Accordingly, M-I may continue to pursue its copyright claim against Roy on the basis of making and distributing copies of the Copyrighted Works.

III. Motion to Enforce Protective Order and Compel Destruction of an Inadvertently Produced Document

On September 28, 2018, the court entered a Protective Order under Federal Rule of Civil Procedure 26(c).[49] The Protective Order governs the designation, maintenance, and discovery of confidential documents for use in this action.[50] The order contains a snap-back provision governing the quick return of accidentally produced materials subject to attorney-client privilege pursuant to Federal Rule of Evidence 502(d).[51] The order provides that the inadvertently producing party "must promptly notify the recipient(s) and provide a privilege log for the inadvertently produced materials," after which "[t]he recipient(s) shall gather and destroy all copies of the privileged material and certify as such to the producing party within ten (10) days of the date of the notification."[52]

M-I states that on November 26, 2019, it became aware that document M-I_QMAX00002957 ("the Document") had been inadvertently

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[49]Protective Order, Docket Entry No. 57.

[50]Id. at 1-3.

[51]Id. at 7-8 ¶ 5.

[52]Id. at 8.

produced despite containing attorney-client communications and privileged work product.[53] M-I notified Defendants and invoked a snap-back of the Document under the Protective Order.[54] On December 12, 2019, Defendants informed M-I that they did not believe the Document was privileged and that they would not allow the snap-back.[55] M-I did not submit a privilege log to Defendants until December 12.[56] M-I filed its Motion to Compel on December 13, 2019, which asks the court to compel the destruction or return of the Document.[57] Defendant responded on January 3, 2020,[58] and Plaintiff replied on January 10, 2020.[59]

Defendants argue that the Protective Order applies only to inadvertently produced materials actually "protected by the

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[53]Motion to Compel, Docket Entry No. 134, p. 4.

[54]Id.; Email from Kelvin Han dated November 26, 2019, Exhibit 2 to Motion to Compel, Docket Entry No. 134-3, p. 2.

[55]Email from Lauren Black dated December 12, 2019, 8:41 a.m., Exhibit 4 to Motion to Compel, Docket Entry No. 134-5, p. 2.

[56]Motion to Compel, Docket Entry No. 134, p. 5; Email from Lauren Black dated December 12, 2019, 3:11 PM, Exhibit 6 to Motion to Compel, Docket Entry No. 134-7 (stating that Defendants had not received a privilege log); Email from John R. Keville dated December 12, 2019, 4:19 p.m., Exhibit 7 to Motion to Compel, Docket Entry No. 134-8 (attaching a privilege log).

[57]Motion to Compel, Docket Entry No. 134, p. 2.

[58]Defendants' Response in Opposition to Motion to Enforce Protective Order and Compel Destruction of Inadvertently Produced Document ("Defendants' Discovery Response"), Docket Entry No. 140.

[59]Plaintiff M-I LLC's Reply in Support of Its Motion to Enforce the Terms of the Protective Order and Compel the Destruction of an Inadvertently Produced Document ("M-I's Discovery Reply"), Docket Entry No. 141.

attorney-client privilege or work product privilege." The court disagrees. The snap-back provision in the Protective Order is essentially a recitation of the snap-back procedure in Federal Rule of Civil Procedure 26. That rule requires snap-back for any information produced in discovery for which there is a claim of privilege. Fed. R. Civ. P. 26(b)(5)(B). Defendants' argument that they could withhold the Document from snap-back under the Protective Order while they could not do so under FRCP 26(b)(5)(B) lacks merit.

The Document is a single page containing two April 3, 2018, emails. One email contains two requests for information. The second email responds to the two questions and attaches a sixteen-page PDF. The parties agree that the underlying facts provided in the email response and the sixteen-page PDF are not privileged, and M-I agrees that Defendants are entitled to discovery of those parts of the Document.[60] The only issue is whether the Document is privileged because one of the questions and responses is protected by the attorney-client privilege. M-I argues that the Document is privileged because it contains communications within M-I's corporate setting made for the purpose of collecting information to be transmitted to counsel.[61] Defendants argue that the Document is

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[60]Motion to Compel, Docket Entry No. 134, p. 5 & n.4; M-I's Discovery Reply, Docket Entry No. 141, p. 3 & n.3; M-I_QMAX00002957, Exhibit A to Defendants' Discovery Response, Docket Entry No. 140-1.

[61]Motion to Compel, Docket Entry No. 134, pp. 6–7.

not privileged, and alternatively that there is a substantial need for Defendants to be allowed to use the Document as evidence even if it is privileged.[62]

Attorney-client privilege "exists 'to encourage full and frank communication between attorneys and their clients.'" OneBeacon Ins. Co. v. T. Wade Welch & Associates, Civil Action No. H-11-3061, 2013 WL 6002166, at *2 (S.D. Tex. Nov. 12, 2013) (Miller, J.) (quoting United States v. El Paso Co., 682 F.2d 530, 538 (5th Cir. 1982)). The elements of attorney-client privilege are: "(1) a confidential communication; (2) made to a lawyer or his subordinate; (3) for the primary purpose of securing either a legal opinion, legal services, or assistance in a legal proceeding." SEC v. Microtune, Inc., 258 F.R.D. 310, 315 (N.D. Tex. 2009). The party asserting the privilege bears the burden to demonstrate how each communication satisfies all the elements of the privilege. Id. (citing Hodges, Grant & Kaufmann v. United States, 768 F.2d 719, 721 (5th Cir. 1985)).

The court narrowly construes the privilege to the bounds necessary to protect these principles because the "assertion of privileges inhibits the search for truth." Id. (quoting Navigant Consulting, Inc. v. Wilkinson, 220 F.R.D. 467, 477 (N.D. Tex. 2004)). The privilege is limited to the disclosures made to an

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[62]Defendants' Discovery Response, Docket Entry No. 140, pp. 5-6 & n.14.

attorney that are "necessary to obtain informed legal advice which might not have been made absent the privilege." Id. (quoting Fisher v. United States, 96 S. Ct. 1569, 1577 (1976)). Therefore, "the privilege does not protect documents and other communications simply because they result from an attorney-client relationship." Id. (citing Navigant Consulting, 220 F.R.D. at 477).

"This privilege applies in the corporate setting when an employee, on instructions from a superior, communicates with counsel that which is necessary to supply the basis for legal advice." Nalco Co., Inc. v. Baker Hughes Inc., 2017 WL 3033997, at *2 (S.D. Tex. July 18, 2017) (citing Upjohn v. United States, 101 S. Ct. 677, 685 (1981)). "Communications that reflect counsel's advice to the corporation do not lose their privileged status when shared among corporate employees who share responsibility for the subject matter of the communication." Nalco, 2017 WL 3033997, at *2.

Based on the court's in camera review of the Document and affidavit testimony submitted under seal,[63] the court concludes that the Document contains privileged communications within a corporate setting between employees at the behest of gathering information for the corporate counsel. The authorities cited by Defendants are inapposite because they do not involve this particular type of

[63]M-I_QMAX00002957, Exhibit A to Defendants' Discovery Response, Docket Entry No. 140-1; Declaration of Lee Conn, Docket Entry No. 135, pp. 1–2 ¶¶ 2–7.

attorney-client privilege. Defendants' argument that M-I seeks protection of facts rather than an attorney-client communication lacks merit because M-I has only sought shielding of the email itself, not any underlying facts the email may have revealed or be related to.

Defendants also argue that they should be permitted to use the Document because they have a substantial need to demonstrate that M-I had ready access to certain materials, and Defendants face undue hardship in obtaining evidence of such elsewhere.[64] But discovery of privileged material is generally not available when the information sought is available by other means. In re International Systems and Controls Corp. Securities Litigation, 693 F.2d 1235, 1240 (5th Cir. 1982). Defendants can obtain the same facts by deposing the employees involved. That Defendants may need to re-depose the M-I employees involved without the use of the Document does not meet the high level of undue hardship to enable discovery of privileged material. See id. ("The cost of one or a few depositions is not enough to justify discovery of [privileged documents]."). Accordingly, the court will grant M-I's Motion to Compel and order Defendants to destroy any copies of the Document in accordance with the Protective Order. Because the parties agree that parts of the Document are not privileged, the court will order

[64]Defendants' Discovery Response, Docket Entry No. 140, p. 6 n.14.

M-I to produce a redacted version of the Document to Defendants after destruction of the unredacted version is certified.

IV. Motion to Exclude Expert Opinion

Also pending before the court is Defendants' Motion to Exclude Expert Testimony (Docket Entry No. 126). The court's practice is to rule on motions to exclude expert testimony during trial because experts frequently modify their opinions, and at trial counsel often establish more extensive predicates for experts' testimony. Moreover, the context in which the testimony is offered is often necessary to rule on such issues. The Motion to Exclude Expert Testimony will be denied without prejudice.

V. Conclusion and Order

For the reasons explained above, the court concludes that M-I's copyright claim based on the MAXSITE Hydraulics's alleged infringement of M-I's Copyrighted Works fails because M-I has not identified any protectable non-literal elements of its Copyrighted Works other than the limited presentation and arrangement of its output GUI, and there is no evidence that the protectable portions of the output GUI and the source code that Defendants are alleged to have copied are important enough to the M-I's overall programs to render MAXSITE substantially similar to them. Accordingly, Defendants' Motion for Summary Judgment as to Copyright Infringement (Docket Entry No. 128) is **GRANTED**. M-I's copyright

claim against Q'Max Solutions, Inc., and Q'Max America, Inc. are dismissed with prejudice, and its claim against Sanjit Roy is dismissed except as based on his unauthorized copying and distribution of the Copyrighted Works.

The court concludes that Defendants retained inadvertently disclosed privileged communications contrary to the court's Protective Order (Docket Entry No. 57). Accordingly, Plaintiff M-I LLC's Motion to Enforce the Terms of the Protective Order and Compel the Destruction of an Inadvertently Produced Document (Docket Entry No. 134) is **GRANTED**. Defendants are **ORDERED** to gather and destroy all copies of M-I_QMAX00002957 under its control and to certify the destruction to M-I within ten days of the submission of this opinion. M-I is **ORDERED** thereafter to produce a version of M-I_QMAX00002957 with the privileged communication redacted.

Defendants' Motion to Exclude Testimony of David Leathers and Expert Testimony on Copyright Damages (Docket Entry No. 126) is **DENIED WITHOUT PREJUDICE**.

Based on this opinion and the court's August 6, 2019, Memorandum Order and Opinion (Docket Entry No. 111), M-I's remaining claims in the case are: (1) its federal and state law trade secrets claims against all Defendants; (2) its conversion claim against all Defendants; (3) its limited copyright claim against Roy; and (4) its breach of fiduciary duty claim against Roy.

The court will hold a scheduling conference on August 21, 2020, at 2:00 p.m., in Courtroom 9-B, Ninth Floor, United States Courthouse, 515 Rusk Street, Houston, Texas 77002.

On August 4, 2020, defendant Q'Max America, Inc. filed a petition under Chapter 7 of the Bankruptcy Code under Case No. 20-60030, Suggestion of Bankruptcy, Docket Entry No. 145. A petition filed under 11 U.S.C. § 301, et seq., operates as a stay of the continuation of a judicial proceeding against the debtor that was commenced before the initiation of the bankruptcy proceeding. 11 U.S.C. § 362(a)(1). Accordingly, defendant Q'Max America, Inc. is **DISMISSED**. Plaintiff may reinstate this action against Q'Max America, Inc. upon notice to this court of the discontinuance of the stay pursuant to 11 U.S.C. § 362(c)(2), provided such notice is filed within 30 days after the bankruptcy stay is discontinued. This action remains pending against the other defendants.

SIGNED at Houston, Texas, on this the 6th day of August, 2020.

SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

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Document Number: 146

Docket Text:
MEMORANDUM OPINION AND ORDER denying without prejudice [126] MOTION to Exclude Testimony of David Leathers and Expert Testimony on Copyright Damages, granting [128] MOTION for Summary Judgment *as to Copyright Infringement*, granting [134] MOTION to Enforce the Terms of the Protective Order and Compel the Destruction of an Inadvertently Produced Document (Compliance due on or before 8/16/2020. Scheduling Conference set for 8/21/2020 at 02:00 PM in Courtroom 9B before Judge Sim Lake.), Q'Max America, Inc. terminated (Signed by Judge Sim Lake) Parties notified. (aboyd, 4)

4:18-cv-01099 Notice has been electronically mailed to:

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Appendix “E”

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

M-I L.L.C. d/b/a M-I SWACO, Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-18-1099
Q'MAX SOLUTIONS, INC.; Q'MAX AMERICA, INC.; and SANJIT ROY; Defendants.	§	

MEMORANDUM OPINION AND ORDER

Plaintiff M-I L.L.C. ("M-I") sued defendants Q'Max Solutions, Inc.; Q'Max America, Inc. (collectively, "Q'Max"); and Sanjit Roy ("Roy") (collectively, "Defendants") alleging a number of claims, including federal and state trade secret misappropriation claims against Q'Max and Roy and a breach of contract claim against Roy. Pending before the court is Plaintiff M-I LLC's Motion for Summary Judgment as to Trade Secret Misappropriation and Breach of Contract ("M-I's Motion") (Docket Entry No. 74). For the reasons explained below, M-I's Motion will be granted in part and denied in part.

I. Factual and Procedural Background

M-I developed Virtual Hydraulics ("VH") and Presspro RT ("PPRT"), which are hydraulics simulation software used in oil and

gas drilling.[1] Roy worked as a developer at M-I for over 20 years.[2] During his tenure at M-I Roy worked to develop VH and PPRT among other well applications software.[3] While employed at M-I, Roy signed an Employee Invention and Confidential Information Agreement, wherein he agreed as follows:

> 5. I shall not, during the term of my employment or thereafter, disclose to others or use any confidential technical or business information belonging either to M-I or to a customer or client of M-I except as authorized in writing, respectively, by M-I or such customer or client. "Confidential technical or other confidential business information" means any information which I learn or originate during the course of my employment, regardless of whether it is written or otherwise tangible that (a) is not generally available to the public and (b) gives one who uses it an advantage over competition.
>
> 6. Upon termination of my employment, I shall surrender to M-I any and all things such as drawings, manuals, documents, photographs and the like (including all copies thereof) that I have in my possession relating to the business of M-I or any division or subsidiary thereof.[4]

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[1] See Brief in Support of Plaintiff M-I LLC's Motion for Summary Judgment as to Trade Secret Misappropriation and Breach of Contract [SEALED] ("M-I's Brief"), Docket Entry No. 75, p. 11 ¶¶ SOF 4 - SOF 7. "SOF" refers to the paragraphs in the "Statement of Undisputed Facts" in M-I's Motion. [All page numbers for docket entries in the record refer to the pagination inserted at the top of the page by the court's electronic filing system, CM/ECF.]

[2] See id. at 12 ¶ SOF 13.

[3] See id.

[4] See Employee Invention and Confidential Information Agreement (the "Confidentiality Agreement"), Exhibit 3 to M-I's Brief, Docket Entry No. 75-3, p. 2.

Roy left M-I in May of 2014 and after a brief stint with Weatherford, another M-I competitor, Roy joined Q'Max in April of 2015.[5]

M-I alleges that before his departure Roy copied and retained documents containing M-I's confidential information. M-I's forensic expert, David Cowen, concluded that Roy copied M-I files onto various drives during his employment at M-I.[6] Notably, after accepting his position at Weatherford (and two days before his departure from M-I), Roy copied a number of files to an external drive.[7] Cowen's investigation found M-I's confidential data on computers and external drives in Roy's possession, including on Roy's Q'Max computer.[8] Cowen also concluded that Roy kept a full backup of his M-I computer that contained a number of confidential documents, including the source code for various versions of VH and PPRT.[9]

After Roy started at Q'Max he began developing MAXSITE Hydraulics ("MAXSITE"), a software program with the same models as

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[5]See Complaint, Docket Entry No. 1, p. 5 ¶ 15.

[6]See Expert Report of David L. Cowen (the "Cowen Report"), Exhibit 7 to M-I's Brief, Docket Entry No. 75-7, pp. 8-10 ¶ 23.

[7]See id.

[8]See id. at 10-11 ¶ 25.

[9]See id. at 25-26 ¶ 39.

VH that could compete with VH.[10] In this action M-I claims that Roy used confidential documents he retained from his time at M-I to develop MAXSITE.[11] M-I's Complaint includes claims for copyright infringement in violation of 17 U.S.C. §§ 501, et seq.; violation of the Federal Defend Trade Secrets Act, 18 U.S.C. §§ 1836, et seq.; violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code §§ 134A.001, et seq., against all Defendants; and breach of contract against Roy.[12] M-I's Motion only addresses its federal and state trade secret misappropriation claims and its breach of contract claim against Roy.[13] Defendants responded to M-I's Motion on May 2, 2019.[14] M-I replied to Defendants' Response on May 9, 2019.[15] M-I filed briefing supplementing its Motion with

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[10]See M-I's Brief, Docket Entry No. 75, p. 15 ¶ SOF 30.

[11]See Complaint, Docket Entry No. 1, pp. 7-15.

[12]See id. at 7-17. Although M-I plead claims against David Wilson in its Complaint, M-I has since voluntarily dismissed Wilson from this action. See id.; Order Granting Plaintiff M-I L.L.C.'s Unopposed Motion for Voluntary Dismissal of Claims Against Defendant David Wilson Without Prejudice, Docket Entry No. 65.

[13]See M-I's Motion, Docket Entry No. 74, p. 1; M-I's Brief, Docket Entry No. 75, p. 7.

[14]See Defendants' Response in Opposition to M-I's Motion for Summary Judgment [SEALED] ("Defendants' Response"), Docket Entry No. 81.

[15]See Reply in Support of Plaintiff M-I L.L.C.'s Motion for Summary Judgment as to Trade Secret Misappropriation and Breach of Contract [SEALED] ("M-I's Reply"), Docket Entry No. 85.

new evidence on June 28, 2019,[16] to which Defendants responded on July 17, 2019.[17]

II. Standard of Review

Summary judgment is appropriate if the movant establishes that there is no genuine dispute about any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Disputes about material facts are genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986).

The party moving for summary judgment must show the absence of a genuine issue of material fact. Exxon Corp. v. Oxxford Clothes, Inc., 109 F.3d 1070, 1074 (5th Cir. 1997). "If the moving party fails to meet this initial burden, the motion must be denied, regardless of the nonmovant's response." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam) (citing Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986)). If the moving party meets this burden, Rule 56(c) requires the nonmovant to go beyond the pleadings and show by affidavits, depositions, answers to interrogatories, admissions on file, or

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[16] See Plaintiff M-I L.L.C.'s Supplement With New Evidence in Support of Motion for Summary Judgment as to Trade Secret Misappropriation and Breach of Contract ("M-I's Supplement"), Docket Entry No. 105.

[17] See Defendants' Response in Opposition to M-I's Supplement to Motion for Summary Judgment ("Defendants' Response to M-I's Supplement"), Docket Entry No. 109.

other admissible evidence that specific facts exist over which there is a genuine issue for trial. Id. The nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 106 S. Ct. 1348, 1356 (1986).

In reviewing the evidence "the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097, 2110 (2000). The court resolves factual controversies in favor of the nonmovant, "but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little, 37 F.3d at 1075.

III. Analysis

M-I moves for summary judgment on its state and federal trade secret misappropriation claims against Defendants and its breach of contract claim against Roy. Defendants argue that genuine issues of fact remain as to M-I's trade secret misappropriation claims. Defendants also argue that summary judgment is not appropriate on M-I's breach of contract claim against Roy because Roy has raised fact issues as to his affirmative defenses of waiver and laches.

A. Trade Secret Misappropriation Against Defendants

In its Complaint M-I alleges that documents retained by Roy after he left M-I contain trade secrets under both the Defend Trade Secrets Act ("DTSA") and the Texas Uniform Trade Secrets Act ("TUTSA").[18] M-I argues that it is entitled to summary judgment on its misappropriation claims because no genuine dispute of material fact remains as to whether Roy and Q'Max misappropriated M-I's trade secrets through wrongful acquisition, disclosure, and use.[19] Defendants disagree, arguing that disputes of material fact remain as to (1) whether the documents relied on by M-I in its Motion contain trade secrets and (2) whether Q'Max or Roy "used" M-I's alleged trade secrets.[20] Because M-I's TUTSA and DTSA claims will require proof of the same elements in this case, the court will consider M-I's federal and state trade secret misappropriation claims together.[21]

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[18]See Complaint, Docket Entry No. 1, pp. 10-11 ¶¶ 40-41, 13 ¶ 54.

[19]See M-I's Brief, Docket Entry No. 75, pp. 24-26.

[20]See Defendants' Response, Docket Entry No. 81, pp. 14-25.

[21]The parties do not present separate arguments addressing M-I's claims under TUTSA and the DTSA. Further, as discussed in detail below, TUTSA's definitions for "trade secrets," "improper means," and "misappropriation" are functionally identical to those in the DTSA, which is TUTSA's federal counterpart.

1. Trade Secret Misappropriation Under TUTSA and the DTSA

Both TUTSA and the DTSA permit recovery of damages for trade secret misappropriation. Tex. Civ. Prac. & Rem. Code § 134A.004; 18 U.S.C. § 1836(b)(1) (permitting recovery for trade secret misappropriation if a trade secret is "related to a product or service used in, or intended for use in, interstate or foreign commerce"). "To prevail on a misappropriation of trade secrets claim, a plaintiff must show that (1) a trade secret existed, (2) the trade secret was acquired through breach of a confidential relationship or discovered by improper means, and (3) the defendant *used* the trade secret without authorization from the plaintiff." GE Betz, Inc. v. Moffitt-Johnston, 885 F.3d 318, 325 (5th Cir. 2018) (internal quotation marks omitted) (emphasis in original). "Improper means" includes, but is not limited to, a breach of a duty to maintain the secrecy of a trade secret. Tex. Civ. Prac. & Rem. Code § 134A.002(2); 18 U.S.C. § 1839(6). TUTSA defines "trade secret" as:

> [A]ll forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:
>
> > (A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

> (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. at § 134A.002(6).[22] "Whether a trade secret exists is a question of fact." GlobeRanger Corporation v. Software AG United States of America, Incorporated, 836 F.3d 477, 492 (5th Cir. 2016). Texas courts weigh six factors to determine whether a trade secret exists:

> (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Id. (citing In re Union Pacific Railroad Co., 294 S.W.3d 589, 592 (Tex. 2009)).

"A cause of action for misappropriation of trade secrets accrues when the trade secret is *actually used*." GE Betz, 885 F.3d

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[22]The DTSA's definition of "trade secret" is functionally identical: "the term 'trade secret' means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing." Compare 18 U.S.C. § 1839(3), with Tex. Civ. Prac. & Rem. Code § 134A.002(6).

at 325-26 (quoting Computer Associates International, Inc. v. Altai, Inc., 918 S.W.2d 453, 455 (Tex. 1996)) (emphasis in original). Texas courts and courts in the Fifth Circuit rely on The Restatement of Unfair Competition to determine what constitutes "use":

> Any exploitation of the trade secret that is likely to result in injury to the trade secret owner or enrichment to the defendant is a "use" under this Section. Thus, marketing goods that embody the trade secret, employing the trade secret in manufacturing or production, relying on the trade secret to assist or accelerate research or development, or soliciting customers through the use of information that is a trade secret . . . all constitute "use."

See Restatement (Third) of Unfair Competition § 40 cmt. c; see also Bohnsack v. Varco, L.P., 668 F.3d 262, 279 (5th Cir. 2012) (citing and quoting Restatement (Third) of Unfair Competition § 40 cmt. c); Wellogix, Inc. v. Accenture, L.L.P., 716 F.3d 867, 877 (5th Cir. 2013) (same); Southwestern Energy Production Company v. Berry-Helfand, 491 S.W.3d 699, 722 (Tex. 2016) (defining "use" by citing and quoting Restatement (Third) of Unfair Competition § 40 cmt. c). "Proof of trade secret misappropriation often depends on circumstantial evidence." Southwestern Energy Production Company v. Berry-Helfand, 411 S.W.3d 581, 598 (Tex. App. -- Tyler 2013), rev'd on other grounds, 491 S.W.3d 699 (Tex. 2016). "Circumstantial evidence often requires a fact finder to choose among opposing reasonable inferences." Id. at 591.

2. M-I's Trade Secret Misappropriation Claims against Defendants

Defendants argue that summary judgment on M-I's misappropriation claims is not appropriate because: (1) fact issues exist as to whether the documents discussed by M-I in its Motion contain trade secrets under the DTSA and TUTSA, and (2) fact issues remain as to whether Defendants "used" the alleged trade secrets.

In its Complaint M-I bases its claims under TUTSA and the DTSA on "trade secrets in the components of M-I's engineering application tools VIRTUAL HYDRAULICS, VIRTUAL COMPLETION SOLUTIONS, and PRESSPRO RT; in the computer program code of such software applications; in other confidential programming code; and in proprietary constants, methods, plans, designs, concepts, improvements, modifications, research data and results, and know-how related to M-I's engineering application tools, interactive content, modeling, predictive modeling, and certain proprietary databases."[23] M-I's Brief only addresses trade secrets allegedly present in a few of these documents, including: a slide deck entitled "VIRTUAL HYDRAULICS, Basic Concepts," a VH Spreadsheet, a "snapshot" of a VH signature plot, and the VIRTUAL HYDRAULICS 3.3

[23] See Complaint, Docket Entry No. 1, pp. 9 ¶ 36, 12 ¶ 50.

Handbook Draft. Similarities between these M-I documents and corresponding Q'Max documents form the basis of M-I's Motion.[24]

Defendants dispute whether the specific documents referenced in M-I's Motion contain trade secrets.[25] M-I's Brief includes only a generalized argument that VH has independent value and that M-I uses reasonable efforts to maintain the secrecy of its "Confidential Information."[26] M-I fails to explain why the specific documents referenced in its Statement of Undisputed Facts contain trade secrets. General arguments that VH is a trade secret and that M-I's "Confidential Information" contains trade secrets are not sufficient to persuade the court that a trade secret exists in the documents upon which M-I bases its Motion. Fact issues therefore remain as to whether the documents relied on by M-I contain trade secrets.

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[24]See M-I's Brief, Docket Entry No. 75, pp. 16-22 ¶¶ SOF 35 - SOF 50.

[25]Defendants present a number of arguments as to why the documents referenced by M-I do not contain trade secrets. For example, Defendants argue that the slide deck referenced in M-I's Statement of Undisputed Facts was presented to clients and therefore efforts were not made to keep the information secret. See Defendants' Response, Docket Entry No. 81, p. 18. The court need not reach these arguments because M-I has failed to meet its initial burden to show the absence of a genuine issue of material fact as to whether the documents referenced in M-I's Brief contain trade secrets.

[26]See M-I's Brief, Docket Entry No. 75, pp. 22-23.

M-I has also failed to meet its initial burden to show the absence of a genuine issue of fact as to whether Defendants "used" M-I's alleged trade secrets. M-I relies on the Cowen Report to show that Roy and Q'Max "used" and "accessed" M-I's confidential data.[27] But the Cowen report does not prove that Defendants used M-I's information in developing MAXSITE. Cowen concluded that Roy possessed and accessed M-I's confidential data during his time at Q'Max, making his report consistent with M-I's allegations, but not conclusive on the issue of use.[28]

M-I also argues that an e-mail chain between Roy and other Q'Max employees conclusively establishes that Defendants "used" a M-I document in developing MAXSITE.[29] Chase Brignac, a Q'Max employee, sent an e-mail to Roy and other Q'Max employees saying "[t]his is what I have been using to try and review a different look for the output."[30] Attached to Brignac's e-mail was a Q'Max document that M-I alleges contains M-I's data that was "copied and

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[27]See M-I's Brief, Docket Entry No. 75, pp. 24-25.

[28]See Cowen Report, Exhibit 7 to M-I's Brief, Docket Entry No. 75-7, pp. 14-15 ¶¶ 30-35, 25 ¶ 37, 40-41 ¶¶ 83-89.

[29]See M-I's Brief, Docket Entry No. 75, p. 25; M-I's Reply, Docket Entry No. 85, p. 7.

[30]See E-Mail Chain Between Chase Brignac, Sanjit Roy, and Steve Lattanzi [With Attachment], Exhibit 2 to M-I's Brief, Docket Entry No. 75-2, pp. 2-4.

simply rearranged."[31] Roy instructed Brignac to "keep playing around" with the software outputs because they were "too close to you know what."[32] This e-mail chain is circumstantial evidence but is not conclusive on the issue of use.

M-I has presented strong circumstantial evidence of misappropriation: Roy downloaded confidential documents during his time at M-I and kept those documents while working for M-I's competitors. M-I documents were found on Roy's Q'Max computer and forensic analysis shows that Roy accessed M-I's confidential documents. Roy e-mailed Brignac instructing him to "keep playing around" with Q'Max's software because it was too similar to "you know what," likely referring to VH. VH and MAXSITE also have a similar look and similar features.[33] To be entitled to summary judgment, however, M-I would need to demonstrate the absence of a genuine dispute of material fact as to whether Q'Max and Roy actually used M-I's documents to develop MAXSITE. While similarities between VH and MAXSITE may be sufficient to raise an inference that Defendants used M-I's trade secrets, see Spear

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[31]See id.; M-I's Brief, Docket Entry No. 75, p. 17 ¶ SOF 41.

[32]See E-Mail Chain Between Chase Brignac, Sanjit Roy, and Steve Lattanzi, Exhibit 12 to M-I's Motion [Without Attachment], Docket Entry No. 75-11, pp. 3-4.

[33]Q'Max also points to several important differences between VH and MAXSITE: the two programs are written in different programming languages, use "different graphics packages," and each contains features that the other does not. See Defendants' Response, Docket Entry No. 81, pp. 22-24.

Marketing, Inc. v. BancorpSouth Bank, 791 F.3d 586, 601 (5th Cir. 2015), such an inference is insufficient to entitle M-I to summary judgment.

In the cases cited by M-I, specifically GlobeRanger and Wellogix, the Fifth Circuit reviewed the sufficiency of evidence to support a jury's determination as to whether a defendant misappropriated trade secrets. See GlobeRanger, 836 F.3d at 499; Wellogix, 716 F.3d at 877. A jury could conclude after reviewing the circumstantial evidence presented that Defendants misappropriated M-I's trade secrets in developing MAXSITE. But M-I's summary judgment burden is greater than the one it will ultimately bear at trial.

For the reasons explained above, M-I has failed to satisfy its initial burden to show that there is no genuine dispute of material fact as to (1) whether the documents upon which M-I relies contain trade secrets and (2) whether Defendants used M-I's alleged trade secrets. The court will therefore deny M-I's Motion seeking summary judgment on its federal and state trade secret misappropriation claims.

B. Breach of Contract Against Roy

M-I alleges that Roy retained a number of M-I's confidential documents after leaving M-I in violation of the Confidentiality

Agreement.[34] M-I argues that the facts regarding Roy's violation of the Confidentiality Agreement are undisputed and that it is entitled to summary judgment against Roy.[35] Roy does not deny that he breached the Confidentiality Agreement by retaining M-I's documents. Roy argues that M-I is not entitled to summary judgment on its breach of contract claim against him because he has raised fact issues as to his affirmative defenses of waiver and laches.[36]

Under Texas law the elements of a breach of contract claim are "(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach." Mullins v. TestAmerica, Inc., 564 F.3d 386, 418 (5th Cir. 2009). Texas courts recognize waiver and laches as affirmative defenses to a breach of contract claim. "Waiver is the intentional relinquishment of a right actually known, or intentional conduct inconsistent with claiming that right." Ulico Casualty Co. v. Allied Pilots Association, 262 S.W.3d 773, 778 (Tex. 2008). "The elements of waiver include (1) an existing right, benefit, or advantage held by a party; (2) the party's actual knowledge of its existence; and (3) the party's actual intent to relinquish the right, or intentional conduct inconsistent

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[34] See Complaint, Docket Entry No. 1, pp. 15-16 ¶¶ 69-70.

[35] See M-I's Brief, Docket Entry No. 75, pp. 26-27.

[36] See Defendants' Response, Docket Entry No. 81, pp. 25-29.

with that right." Id. "To invoke the equitable doctrine of laches, the moving party ordinarily must show an unreasonable delay by the opposing party in asserting its rights, and also the moving party's good faith and detrimental change in position because of the delay." In re Laibe Corp., 307 S.W.3d 314, 318 (Tex. 2010). Texas courts generally find that laches do not apply if a statute of limitations applies. Graves v. Diehl, 958 S.W.2d 468, 473 (Tex. App. -- Houston [14th Dist.] 1997, no pet.). The Texas statute of limitations for a breach of contract is four years. Tex. Civ. Prac. & Rem. Code § 16.051.

Roy argues that M-I waived its breach of contract claim by not discovering that he breached the Confidentiality Agreement sooner.[37] M-I argues that it performed forensic analysis after it realized Roy's potential breach of contract -- specifically, after Q'Max announced the MAXSITE sample images on its website in 2017.[38] M-I did not have an affirmative obligation to investigate whether Roy had violated the Confidentiality Agreement when he left M-I in 2014. The summary judgment evidence establishes that M-I did not have actual knowledge of Roy's breach until after its forensic investigation revealed that he had downloaded confidential M-I documents to external drives and was still in possession of those documents. Roy has presented no evidence that M-I intended to

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[37] See id. at 27.

[38] See M-I's Reply, Docket Entry No. 85, p. 11.

relinquish its breach of contract claim or that M-I engaged in intentional conduct inconsistent with its breach of contract claim. The evidence shows the opposite: M-I promptly filed this action after its forensic investigation revealed that Roy had retained documents in violation of the Confidentiality Agreement.

Roy also argues that laches applies to bar M-I's claim. He argues that M-I waited "just shy of 4 years" after Roy's departure to bring its breach of contract claim against Roy.[39] He therefore does not dispute that M-I's breach of contract claim was brought within the applicable statute of limitations. Roy has presented no evidence or argument that laches should bar M-I's breach of contract claim despite its being brought within the statute of limitations. The court therefore finds the doctrine of laches inapplicable in this action.

No issues of fact remain regarding Roy's affirmative defenses of waiver and laches, and Roy does not dispute that he breached the Confidentiality Agreement by retaining M-I's documents after leaving M-I. Roy will therefore be liable to M-I for breaching the Confidentiality Agreement. Fact issues remain as to the scope of

[39]M-I argues that it did not discover Roy's breach until 2017 and filed this action "within months of actual knowledge of a claim." See M-I's Reply, Docket Entry No. 85, p. 12. The court need not determine when the statute of limitations began to run because under both parties' arguments, M-I's breach of contract claim was brought within the applicable four-year statute of limitations.

Roy's breach, and consequently the amount of damages M-I is entitled to.

IV. Conclusion

For the reasons explained above, fact issues remain regarding M-I's trade secret misappropriation claims against Defendants. While the court has found that Roy breached the Confidentiality Agreement, the scope of the breach (and M-I's damages) will be determined at trial. Plaintiff M-I LLC's Motion for Summary Judgment as to Trade Secret Misappropriation and Breach of Contract (Docket Entry No. 74) is therefore **GRANTED IN PART** and **DENIED IN PART**.[40]

SIGNED at Houston, Texas, on this the 6th day of August, 2019.

SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

[40]Because the court's normal practice is to allow each party to file only one dispositive motion, M-I may not file another motion for summary judgment.

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SOUTHERN DISTRICT OF TEXAS

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Case Number: 4:18-cv-01099
Filer:
Document Number: 111

Docket Text:
MEMORANDUM OPINION AND ORDER granting in part and denying in part [74] MOTION for Summary Judgment *as to Trade Secret Misappropriation and Breach of Contract* (Signed by Judge Sim Lake) Parties notified. (aboyd, 4)

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Appendix “F”

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 20-34791-H1-15
	§	HOUSTON, TEXAS
Q'MAX SOLUTIONS, INC.,	§	FRIDAY,
	§	OCTOBER 2, 2020
DEBTOR.	§	11:13 A.M. TO 12:00 P.M.

MOTION HEARING BY VIDEO CONFERENCE

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (SEE NEXT PAGE)

CASE MANAGER: LINH THU DO

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INDEX

WITNESS:	Direct	Cross	Redirect	Recross
(NONE)				

EXHIBITS:	Marked	Offered	Received
DEBTOR'S EXHIBITS			
Nos. R-1 through R-7:		9	11
Nos. R-9 and R-10:		11	12

HOUSTON, TEXAS; FRIDAY, OCTOBER 2, 2020; 11:13 A.M.

(VIDEO CONFERENCE)

THE COURT: All right. Good morning. We're here in the Q'Max Solutions case. It is Case No. 20-34791.

Let's go ahead and take appearances.

Can you tell me who all we have that wish to appear today? We'll start with you, Mr. Cornwell.

MR. CORNWELL: Thank you, Your Honor. Good morning. John Cornwell, on behalf of KPMG, the Receiver for Q'Max Solutions, Inc., the only debtor before Your Honor this morning. With me is Grant Beiner as well, an associate with Munsch Hardt Kopf and Harr. And then on the line is the representative for the Receiver, Ms. Annika Gaddie (phonetic). And then I believe joining us although I don't see his name just yet is the Receiver's Canadian counsel from Osler, Mr. Randal Van de Mosselaer. If he's not here, he will be here soon. And that's it from our side, Your Honor.

THE COURT: All right. And who also wishes to appear today.

MR. STRUBECK: Good morning, Judge. It's Lou Strubeck at Norton Rose Fulbright, on behalf of HSBC. And I'm actually appearing with my Canadian colleague, Aaron Stephenson.

THE COURT: Thank you.

MR. STEPHENSON: Good morning, sir.

THE COURT: Ms. Replogle, go ahead.

MS. REPLOGLE: Yes. Your Honor, can you hear me?

THE COURT: I can.

MS. REPLOGLE: Okay. Michelle Replogle, on behalf of M-I, LLC, who is the Plaintiff in an intellectual property case that's referred to as an outside action in the filings that are before Your Honor.

THE COURT: Thank you. Are there any other appearances today?

(No audible response.)

THE COURT: Okay. For those of you on the phone, I have all the phone lines open. You won't need to be pressing five star. Everyone's free to speak. We don't have that many people with us.

Mr. Cornwell, what did you want to try and accomplish today?

MR. CORNWELL: Your Honor, it makes sense to just give a bit of housekeeping up front. I'm happy to -- we do have a little slide show presentation to give the Court some background. Also on the line is -- really the only thing that's set for today since the Court has already entered the complex Order is the TRO Motion, Your Honor, which is Docket No. 4 and the status conference to really just set the hearing on our request for final relief by verified petition

at Docket No. 3. So that's the agenda in a nutshell.

THE COURT: All right. I'm not sure what we're doing on No. 4 because I couldn't quite follow what you were trying to accomplish there, but I'm happy to have that initial presentation. Before we get into No. 4, we don't have an adversary proceeding. We do have a TRO proposed. I don't know that we have a dispute about it. I guess we'll hear about that in a moment and let's figure out where we're going, but I'm happy to have that initial presentation but I am a bit lost as to --

MR. CORNWELL: Well, thank you, Your Honor. I'm happy to -- there's no playbook here. I'm happy to take that order. I certainly don't want to fire off too long with the Court not knowing where we're going so maybe it makes sense to just change and give Your Honor a preview.

THE COURT: Okay.

MR. CORNWELL: We have requested by the TRO Motion, Your Honor, provisional relief. I think the law is clear and in the playbook most recently in the *PLS Solutions* case and in our the District Court and Judge Jones' court they have provided with that TRO provision because it's (indiscernible) adopts the TRO procedures and rules, but it is a TRO proceeding itself. It doesn't require an adversary proceeding. So that's the reason it was filed the way that it was.

And we (indiscernible) original release that Section 1519 and by incorporation Section 1521 gives us or allows us to request. Really this is the reason to apply the Canadian proceeding order, the order that adopts or --

THE COURT: I understand -- no, I understand a provisional order that recognizes the Canadian relief. That's not a TRO. That recognizes the Canadian relief and applies it here.

MR. CORNWELL: Your Honor, that's fair. Maybe the problem is a misnomer of our documents. We're asking for provisional relief and nothing more. (Indiscernible) the recognition of the Canadian receivership order and the proceedings and the things that Section 1519 and 1521 gives us in that --

THE COURT: And unless I'm misreading them, I don't think 1519 and 1521 give you a TRO. They give you recognition of the foreign proceeding and apply in general that relief, but it's not a TRO or an injunction as I read it. And I may be reading it wrong so you may need to walk me through this more slowly but.

MR. CORNWELL: Your Honor, no, I agree with everything you just said. I think it adopts the factors for a TRO, but it is just provisional relief that we're requesting. If we put something in our documents that suggests otherwise, just my mistake. It's not intentional.

THE COURT: No. I mean, it's only the title that I think confused me because when I got into the relief, it looked like you were just granted provisional relief and that's what got me a bit confused by the title of the motion, the title of the order but that -- sure, let's do that preliminary presentation so I can learn a little bit more about the case.

MR. CORNWELL: Thank you, Your Honor.

THE COURT: Who's going to make that for us?

MR. BEINER: I will, Your Honor.

MR. CORNWELL: If we can --

MR. BEINER: This is Grant Beiner.

MR. CORNWELL: -- make Mr. Beiner the presenter, that would be great. And before we get there or as we're pulling that up, Your Honor, I would like to go ahead and point the Court to Docket No. 9, the Receiver's witness and exhibit list.

THE COURT: All right.

MR. CORNWELL: And maybe it makes sense to go one by one, but I will offer for admission most of the documents. I've spoken to Ms. Replogle prior to the hearing last night and we're going to take one away and then I think judicial notice is probably more appropriate on the latter.

So, in fact -- I'm sorry, before we get there, it maybe makes sense to just tell Your Honor what we've done to

give notice. Even though there is an *ex parte* relief request here, we've really done everything we can within our power to give notice. We've sent all the documents that were filed by email to all the parties but one where we didn't have a valid email address. I have before this hearing conversations with Ms. Replogle on behalf of M-I and also Ms. Laura Drillhorn (phonetic) who indicated she wasn't going to appear but asked -- and I represent that we did speak last night. And she is counsel, Your Honor, for Atlas who filed the guarantor action in Texas State Court just several days ago. So to the extent that we could, we tried to give full and complete notice of this under the circumstances. And with that, Your Honor --

THE COURT: Ms. Replogle, do you have any notice objection to what's going on today?

MS. REPLOGLE: No, Your Honor, I have no notice objections.

THE COURT: Thank you. All right. Go ahead please, Mr. Cornwell.

MR. CORNWELL: Thank you, Your Honor. So with that, Your Honor, I would offer Exhibit R-1, which is Ms. Gaddie's declaration. I would offer -- do you want to take them one at a time, Your Honor, or would you like me to just run through them?

THE COURT: Why don't you tell me all of them

you're going to offer.

MR. CORNWELL: Thank you. We will offer R-2 with the organizational chart attached to Ms. Gaddie's declaration.

We'll offer R-3, which is Canadian counsel's declaration.

We'll offer R-4, which is the receivership application that was filed by the agent, HSBC Canada, in the Canadian proceeding.

We'll offer R-5, which is the supporting declaration filed by the agent in the Canadian proceeding. And, Your Honor, just for road mapping purposes, that document is large and had a lot of (indiscernible) documents (indiscernible) for the Court and the parties.

We will offer R-6, which is the consent receivership order that was entered appointing KPMG as receiver to QSI, Q'Max Solutions, Inc., Your Honor. If I may, I'll refer to QSI for shorthand.

And then we put on the exhibit list R-7, which is the Rule 1007 statement that was also filed.

Those are the documents that I would offer into evidence.

THE COURT: Is there any objection to the admission of R-1, 2, 3, 4, 5, 6 and 7?

MS. REPLOGLE: No, Your Honor.

THE COURT: All right. R-1 through R-7 are admitted.

(Debtor's Exhibit Nos. R-1 through R-7 received in evidence.)

MR. CORNWELL: Thank you, Your Honor. We also have three additional exhibits on our list. After talking with Ms. Replogle yesterday, for completeness, we're going to take off R-8, which is a recent summary judgment opinion. I frankly learned last night or forgot and relearned that there was an additional summary judgment opinion. I don't think it's necessary for this and we certainly don't want to have an incomplete record of that proceeding so I'm not going to offer that now. To the extent that Ms. Replogle's changed her mind on that, then I'd be happy to have the Court take judicial notice of any of the pleadings in that case as an initial matter.

I would ask that the Court take judicial notice of R-9, which is the M-I complaint, which we called the "MAXSITE" proceeding, and also R-10, which is the guarantor complaint filed by Atlas.

THE COURT: Is there any objection to R-9 and R-10, which if admitted will be admitted solely for the purpose of their existence and not for the truth of any matters asserted in R-9 and R-10?

MS. REPLOGLE: No, Your Honor, no objection.

THE COURT: All right. R-9 and R-10 are admitted solely for notice purposes to show they exist and not for the truth of the matter.

(Debtor's Exhibit Nos. R-9 and R-10 received in evidence.)

MR. CORNWELL: Thank you, Your Honor. So then I think it makes sense to walk through our slide show presentation. I'll do my best to keep this at 30,000-foot view, Your Honor. Obviously it's largely a repetition of the preliminary relief request motion which (indiscernible) motion any longer and also the verified petition at Docket 3 and 4.

So the first slide we have, Your Honor, is the org chart. This is frankly hard to see because it's long so Mr. Beiner is going to do his best to zoom in and help me here, but I'll try and describe as well. Just hard to read. It was also filed with our exhibits which, Your Honor, is R-2.

Your Honor, there are five Canadian debtors in the receivership action only one of which is before Your Honor seeking chapter 15 recognition relief and that is QSI, which is essentially the main parent company here. It operates in the sense that it is a guarantor and provides the financial services to the true operating entities and the other subsidiaries as needed. It is also the entity that holds

the primary stock in whole or in part, as indicated on this chart, Your Honor. The operating entities, which are the subject of either liquidation proceedings or sale proceedings that are pending through the Canadian proceeding.

Along with QSI is QMax Canada Operations, Inc. That is the primary Canadian operating company, Your Honor.

Above in the org chart is Fluids Holdings Corp. It is in Canadian receivership and it's the 100 percent owner of QSI, the Debtor here.

And then there are two others, Your Honor, that are essentially operating -- I'm sorry -- non-operating companies or service providing companies but not forward-facing operating companies as I understand the facts. That's the Canadian receivership, Your Honor.

All those companies as well as the (indiscernible) operating company and the American or the US operating company that is in chapter 7. They're essentially upstream drilling services companies both onshore and offshore.

So going down the chart, Your Honor, we have a few chapter 7 debtors there at the bottom left. That is Q'Max America and Anchor Drilling Fluids. I believe we have a representative for the chapter 7 Trustee here. They've been in chapter 7 for several months now. They are in the middle of -- I guess they've completed a partial sale process and

they're in the middle of liquidating the rest of the assets in those proceedings.

And then finally, Your Honor, we have certain global operating entities that really span half of the globe, Colombia, Mexico, Africa and Middle Eastern countries. These are not subject to any proceeding right now and they're the (indiscernible) the centerpiece of the Canadian proceeding as far as value is concerned. The Receiver is in advanced negotiations for sales of those entities in different tranches and the sales of those entities will happen through the Canadian proceeding as stock sales with full notice to all the parties who are entitled to notice in the Canadian proceedings.

Your Honor, that's really where we are today and how we got here. As described in our papers, the receivership is (indiscernible) by the agent of the primary facility by HSBC Canada. There had been negotiations long before COVID that were strained as I understand and just been (indiscernible) renegotiation of the notes. Then COVID happened and the oil crash or the oil pricing wars and of course (indiscernible) and that's ultimately what precipitated the filing of the Canadian proceedings.

Just to address it up front, these case is (indiscernible) chapter 15 filing in a similar sense that there's just one (indiscernible) filing and really not

significant relative to the whole pie United States assets. It's also unique that we're seeking chapter 15 relief approximately four months into the Canadian proceeding.

And I had questions about that and I suspect Your Honor does and there's really several different explanations for that. One is: the Receiver was trying to be pennywise and I don't think (indiscernible). They were watching how they were spending their money. There were summary judgment proceedings pending in the M-I intellectual property lawsuit and they weren't -- the Receiver led by Ms. Gaddie was not convinced a chapter 15 was necessary.

When the rulings came through, the case was not completely disposed of and then the Debtor (indiscernible) filed as we were preparing chapter 15 filing. It became economical with respect to the pendency of the sales process of the global operating companies to file this proceeding. That's why we're here now, Your Honor, and we weren't here on day one or two or three after the consent receivership order was entered.

If we can go to -- oh, you're on that slide. Thank you. So, Your Honor, what you see on the slide now is just a snapshot of the debt picture. As you can see, most of the main facilities are Canadian banks. There is a less than 10 percent piece for US held banks on those. It's approximately $150 million outstanding in combination of

US dollars and Canadian dollars as well as the line of credit -- the letters of credit, excuse me, and some other balances that are not immaterial but are small in comparison to the main facilities.

Again I believe the agent is here. We've coordinated with the agent of note and they've consented to this filing. I think that the papers discuss well enough who the borrowers are, how the guarantor situation works. If Your Honor has any questions about that, I'm most happy to go into the details.

One somewhat extraneous piece to the financial puzzle here is the Encina debt and it's described in the papers at eye level, but the reason we have a chapter 7 proceeding is essentially because of the intercreditor agreement between the agent and Encina and that facilitated treating the US debtors differently and (indiscernible) to their own process.

And as I understand it, the Encina debt was largely paid from the partial sales in the US proceedings and then there was an assumption of the remainder of the debt. I do not even see it as part of this proceeding and I think that's a fair statement, but I'm sure someone will correct if that's a mischaracterization in any way, but I wanted to give the Court the background in any event.

Go to the next please. Your Honor, to true form,

because of the way QSI operated -- and I use that in a colloquial sense -- there's not a bunch of creditors. There's really no (indiscernible) trade creditors because it wasn't an oil and gas services company operator. It's mostly professionals. And the vast majority of the debt, Your Honor, is through the secured debt because QSI again was the borrower and/or guarantor for many of the operating companies, facilities and agreements. It also provided some very basic services contracts at the QSI level down so that's why Your Honor sees a very limited creditor list here.

The sale status, Your Honor -- next slide. Thank you. Again the receivership has been pending for approximately four months (indiscernible) four months now that we're not in October (indiscernible). The Canadian debtors including QSI are not going to be (indiscernible), Your Honor. Certainly the Receiver has kicked all the tires that it could and it's now made the financial or an economical decision that it's just not feasible to sell them as a going concern so they will eventually be liquidated. That process is ongoing but is not completed.

The global operating companies, as I previewed earlier, is a different scenario. The hope is that all the global operating companies will be sold as going concern businesses. That hasn't happened yet so it's possible that

won't be the case, but certainly the expectation is that will be the value driver in this case.

And again in the hopes as being as open (indiscernible) as we could be in filing these proceedings, we indicated in the papers that the expectation here even if the global operating company sales are successful, we're far enough down the road in the receivership proceedings that we've indicated that there's very unlikely to be a distribution to the secured creditors. There's just not enough value to (indiscernible) facility. It looks to be undersecured. Your Honor, that's really the basic presentation.

Before I call off what we're actually asking for today, do you have any questions or is there anything else that I could fill in?

THE COURT: What does QSI own that you're trying to protect?

MR. CORNWELL: One would stop the (indiscernible). That's the primary asset. And (indiscernible) because we've got the litigation pending. It also owns the MAXSITE intellectual property, which is going to be the license, Your Honor, in connection with these sales. It will be not be sold but it will be licensed and that's an important part of the sale process.

THE COURT: All right.

MR. CORNWELL: Thank you, Your Honor. If I can go one more slide? We do have a short summary of the litigation here, Your Honor. I've really taken this out of order. We've got the chapter 7 pending, the M-I lawsuits, and then the guarantor suit. I will say in talking to the Atlas' attorney, Ms. Drillhorn, yesterday I think that the guarantor litigation is likely to be resolved by consent after the representations that we made in pleadings so fearful of putting the cart before the horse, I expect that that case will be nonsuited sometime soon. And I was authorized to make that statement, Your Honor. I think we'll (indiscernible).

THE COURT: All right. Is there anyone else that wants to make any sort of an opening presentation?

MS. REPLOGLE: Your Honor, Michelle Replogle, on behalf of M-I. And this -- obviously for full transparency, bankruptcy is not my area of law. As we were just -- we received the filing late Wednesday night and my bankruptcy colleague that did file a notice of appearance yesterday, Kate Preston, is actually on maternity leave today and my other bankruptcy colleague who will be filing a notice of appearance in short order is actually defending a deposition in a bankruptcy matter that I understand is actually pending before Your Honor as well, but she was unable to join today. So with some apologies in advance, there are a couple of

points that I would like to make but quite frankly I don't know for sure when is the right time for me to make those couple of points with respect to the underlying action.

THE COURT: Now is probably a good time.

MS. REPLOGLE: All right. Okay. So there's just two points I wanted to make today just to make sure that Your Honor is aware of. The first point is that M-I (indiscernible) position that Q'Max Solutions owns MAXSITE software, that that is an asset of the Debtor. Our position is it is not. It is properly an asset of M-I.

The underlying MAXSITE action that's pending before Judge Lake right now that's a trade secret misappropriations is wrongful conversion case and that case is set to go for docket call November 13th. Today is the start of all of our pretrial filings, today, and so that case is set to go to trial very, very shortly. And it's our position that that issue with respect to the ownership of MAXSITE software of that particular piece of intellectual property should be resolved by Judge Lake and should be resolved soon.

And so M-I is still reviewing the information that was filed, but we intend to be before Your Honor in short order with respect to seeking the relief along those lines. So that's my first point I wanted you to be aware of.

The second point is that we did have some concerns

surrounding the timing of Q'Max Solutions' claim of ownership of MAXSITE and the grant of an exclusive license to Q'Max America in this case because both are inconsistent with the representations by Q'Max Solutions in the underlying District Court intellectual property case. So that MAXSITE action again has been pending since 2018 and it's near trial.

M-I only just recently learned that it's Q'Max Solutions that claims to be "the creator and owner of MAXSITE." That's the language that they use in the filings before Your Honor. Throughout discovery in the MAXSITE action, Q'Max Solutions never claims to create or own MAXSITE software. In fact, it verified in interrogatory responses they would refer M-I to Q'Max America and would say repeatedly that the only Q'Max Solutions sole connection to this case is that it is a parent company of Q'Max America.

Throughout the litigation, Q'Max Solutions represented that no licenses or documents relating to any licenses for the MAXSITE software existed. In responding to requests for production asking for licenses and documents related to licenses, their response was "None," there are none.

Now as Your Honor knows, the parties have a duty to supplement their discovery responses and as of today, the

eve before trial coming up, there's been no supplement to any of those discovery responses that I just mentioned.

I also wanted Your Honor to be aware that Q'Max America did not file its suggestion of bankruptcy in the underlying MAXSITE action until August 4th. We now know today or recently that by that time, August 4th, the change of ownership of the MAXSITE software and the exclusive license to Q'Max America and then the subsequent sale of that license, that had already occurred before they ever filed the suggestion of bankruptcy in the underlying District Court case.

So we now know that it was May 24th that Q'Max America filed its voluntary petition for bankruptcy and we now know that on July 1st there was an asset order approval and we now know that in that order, that July 1st order, there is that reference to an exclusive license between Q'Max Solutions and Q'Max America and it's dated May 22nd, two days before Q'Max America filed for the bankruptcy in that particular proceeding.

We now know in that July 1st order itself that the exclusive license I just referenced, that May 22nd license, was sold to a third-party drilling services entity that we know from representations from Q'Max America's counsel is apparently an entity that the equity partner that both Q'Max Solutions and Q'Max America owns.

So we do have serious concerns with respect to the timing of this change of the ownership claim, the immediate grant of an exclusive license two days before the bankruptcy and as I said before, we're looking at these filings and we are here today just to reserve our rights to be before you in short order to request some relief along those lines to the extent you'll entertain them.

If you have any further questions, I'd be glad to try to answer (indiscernible).

THE COURT: What kind of relief are you anticipating requesting?

MS. REPLOGLE: Yes. I'm aware of a couple of forms of relief, Your Honor, that today and also given -- understandably I don't want to misstate anything -- I just -- I don't know that I can -- I don't feel comfortable letting you know what we're thinking at this moment, but first no final decisions have been made but we do plan to do it in very short order, Your Honor, which it means to be done in a couple more days or a few days. Thank you.

THE COURT: All right. Mr. Cornwell?

MR. CORNWELL: Yes, Your Honor.

THE COURT: What are you looking for me to do today that's going to affect the MSI litigation?

MR. CORNWELL: Your Honor, to grant provisional recognition which would implement the stay among other

things that is built into the consent and receivership order. There's a stay of all proceedings. And there's also a grant of authority to the Receiver to seek recognition of that stay again along with the rest of the powers of protection in the consent and receivership order internationally. That's what we're seeking today, Your Honor.

THE COURT: If it turns out that Ms. Replogle's client demonstrates some of the conduct that she has just described as, A, true and, B, undertaken in bad faith, if I do something today, where are her remedies?

MR. CORNWELL: That's a good question, Your Honor. The first remedy is anything that was -- (indiscernible) excuse me. With respect to the operating companies or QSI's assets, it may happen on full notice including to M-I, Ms. Replogle's client in the Canadian proceeding. That's option one.

Option two is: I assume that Ms. Replogle -- among the options of Ms. Replogle and her co-counsel are considering is seeking some kind of relief from the stay. I can't say that that's an available remedy, but I expect that there would be an opportunity at least to present Your Honor with some form of formal request and we can balance the harm and determine whether or not the Canadian stay upon recognition by this Court is applicable to the pending

action.

THE COURT: Well, I guess I'm not sure what you're telling me. Let's assume for a minute that there were some transfers made within the United States that were made fraudulently and that -- she's not using that word, but just make that assumption with me.

MR. CORNWELL: Okay.

THE COURT: Am I doing something today that would protect the fraud without me ever hearing whether it's fraudulent or am I doing nothing today that would protect the fraud? Because next week they can come in and if there's fraud, I can decide that it would not be consistent with US policy to grant the relief. I'm trying to figure out what I would be doing today and how irrevocable it is because her client has a right to be heard on those issues before (indiscernible).

MR. CORNWELL: I completely understand Your Honor's question. I don't think you're going to do anything today if you grant every bit of the relief that we've requested that would impact those rights at all. Nothing is going to happen imminently in the Canadian proceeding or otherwise to my knowledge that would affect Ms. Replogle's rights or affect some transfer of the intellectual property, which is at the center of the M-I lawsuit. She's also --

THE COURT: Well she's saying that your entity doesn't own it and so --

MR. CORNWELL: She does --

THE COURT: And so that's -- if QSI doesn't own it, does my order today in any way stop the proceeding before Judge Lake?

MR. CORNWELL: It certainly does with respect to the action against QSI and QAI. So, Your Honor, there was -- and I don't mean to pick at Ms. Replogle at all, those he -- a bit of sort of mixing the pronouns if you will in some of her statements and the term "debtor" was not referring I think the several times she used it to QSI. She's referring to QAI, which is the American entity that is in chapter 7 bankruptcy and has been for some time, and that the transfer of the license right before their filing, it happened months ago and it happened in connection with that case. Any transfer of assets of anything that happened with respect to the intellectual property would be under that case entirely and totally separate from QSI and this chapter 15 proceeding so that's item one.

THE COURT: Did QSI make false disclosures before Judge Lake?

MR. CORNWELL: The first I've heard of that. I certainly do not believe so. I will tell you that --

THE COURT: Am I stopping Judge Lake from figuring

that out?

MR. CORNWELL: I don't see how.

THE COURT: These are clearly serious allegations and if somebody's been -- I'm making no finding that anyone's done anything wrong, but let's assume somebody went and lied to Judge Lake.

Am I now saying that the Canadian Court has control over somebody lying to Judge Lake in Houston?

MR. CORNWELL: I don't think that's what you're saying at all, Your Honor. I think we're seeking recognition of the Canadian proceeding which will result in a stay, not a dismissal of that action. It would just be a stay. It would be in this court and this Canadian essentially and certainly depending upon how this Court would rule, Judge Lake an opportunity to hear this thing.

I will say this is the first that I've heard of those allegations and whether they're true or not, I just don't know. I'm the bankruptcy guy here and I've got a handle on the facts but I certainly know all the details so I won't pretend to. But I don't think any relief we're requesting now would affect those rights, Your Honor.

THE COURT: Why do we need -- we've waited four months. Why are we going to rule today instead of in two weeks? What's happening today that I need to rule today?

MR. CORNWELL: So that's really the elephant in

the room and I recognize it and the short answer is: there's a pretrial going on right now and say if you combine what's happening in the M-I lawsuit with the advanced stages of the sale process and the real value driver through the Canadian proceeding and then you marry that and it's sort of the triangle here with the stay that has always existed in the Canada proceeding, then there's a real challenge to value that the Receiver's trying to gain by moving forward any further in the M-I proceeding. When I read the --

THE COURT: But M-I says it's their property.

Am I taking away M-I's property in allowing the Canadian court to sell it in relation to this order?

MR. CORNWELL: The Canadian Court's not going to sell it so the answer is "No."

THE COURT: Okay. Can the Canadian Court authorize it be licensed and then M-I loses its interest?

MR. CORNWELL: So that would presume, Your Honor, that the Canadian Court is willing to do something without notice. There's nothing pending in front of the Canadian Court right now. We can -- really just a recognition of the stay that exists so nothing can happen with full notice in the case.

THE COURT: If there's nothing pending, why am I acting today instead of in --

MR. CORNWELL: Because -- I'm sorry for talking

over you, Your Honor. Because there's a stay in the Canadian proceeding that should be applicable here and there's a lawsuit going on right now that is (indiscernible) pretrial pending. It's been pending for -- since 2018 approximately two years and it is now because of summary judgment rulings and because of the status of the sale proceedings -- or the sale efforts -- it's not a sale proceeding right now -- the sale efforts by the Receiver is potentially harmful to value maybe significantly so.

But I'm not suggesting that that means we should be able to go do something through the Canadian proceedings to affect Ms. Replogle's rights. I'm just saying that the current action that really should be stayed and will be by operation of law if this is recognized --

THE COURT: I'm asking why after four months are we doing this with effectively no notice instead of waiting until next week or the week after to determine if this relief is appropriate? What is the urgency? If the urgency is filing some pretrial documents, I don't think that's fairly urgent when you all sat on your rights. You knew this was coming. Why are we doing it today?

MR. CORNWELL: I mean -- and really if what I've said -- I'm afraid I don't have any additional answer, but the Receiver is focusing on selling these global operating entities or that sale's going to be a license

(indiscernible) that's ultimately approved. And there was really a very large -- two very large summary judgment orders entered by Judge Lake one of which dismissed QAI and dismissed some of the causes of action that were asserted in the complaint. Now some survived. We know that now. We didn't know that a month ago. We've known that for a couple of weeks, if I've got my timeline right. And because of the advanced nature of sale discussions, implementing the stay now is important to the Receiver.

THE COURT: Can you all be ready for a full hearing on this on October 13th, at 3:30?

MR. CORNWELL: Certainly can be ready, Your Honor. If you'll allow me to check my calendar, make sure there are no conflicts?

MS. REPLOGLE: And, Your Honor, may I speak? Are you addressing that question to me as well?

THE COURT: Yes, I am.

MS. REPLOGLE: Okay. Yes, we can be ready, certainly more ready than we are today by October 13th. And part of my concern is that we will be seeking a motion for expedited discovery before Judge Lake. We actually submitted a joint status report to Judge Lake at Docket 150 in that pending proceeding laying out exactly the concerns that we had. When we found out what had happened again long before that suggestion of bankruptcy was ever filed in our

case so allowing a couple of weeks would be very, very helpful so that we could go ahead and file something with Your Honor as well as before Judge Lake and try to figure out what happened with respect to that transfer.

THE COURT: For those of you that don't know Judge Lake well, I mean, I would put my (indiscernible) in his hands all day long. And so Judge Lake may very well say, "This is entirely up to the Bankruptcy Court, if he thinks it's appropriate, to stay it" and respect -- and Judge Lake may say anything else -- and I'm going to not only follow it because that's what the Constitution requires, but I'm going to jump to follow it because I know Judge Lake and he'll rule the right way.

I am not saying that anything is wrong in what the Debtors are asking. I'm simply saying -- and I'm not saying that you are free to move ahead because it may be that your (indiscernible) with respect to the Canadian proceeding even without my order. All that I am saying is I don't think I should wait four months, handle something on one day's notice when you're effectively telling me this is being done to perpetrate a fraud. And again I know you didn't use those words. That's the implication of what --

MS. REPLOGLE: Right, just laid out the facts.

THE COURT: And I want to have Judge Lake take a look at what he's wants to do. If he says, "We're going to

sit back a couple weeks, I'm going to let Isgur take a look at it," that's fine. I didn't encourage him to do that because I might have that picture of what's going on in the Canadian proceeding before me by that point, but I think hearing it on one day's notice isn't appropriate where we are. I've already got two chapter 7 cases going on in this district. This looks like a pretty big mess and I want to understand it better before I rule.

Is there anyone that's not available on the 13th at 3:30?

MR. CORNWELL: Your Honor, Ms. Gaddie and Mr. Van de Mosselaer, the -- we've confirmed though they're -- we are available from counsel's side, Your Honor.

MS. GADDIE: I'm available, Your Honor.

THE COURT: Thank you, Ms. Gaddie.

MR. VAN DE MOSSELAER: That time should be, Your Honor.

THE COURT: Thank you. Mr. Strubeck, are you okay?

MR. STRUBECK: Yes, Your Honor, I'm okay. Thank you.

THE COURT: All right. So to make it clear, I am not ruling today on whether Ms. Replogle's client is allowed to proceed before Judge Lake or is running afoul of the Canadian ruling. I'm simply not ruling today. I'm not

authorizing anything, I'm not dis-authorizing anything. I want to understand it better and I want to have some evidence before me. And essentially I want to be sure that the standards that are required by chapter 15 are being met including that we're not offending public policy of the United States. I have no reason to believe -- I'm confident that's not the purpose of whatever the Canadian Court's doing, but if we have an existing lawsuit already going on in our court, I need to understand it. So I'll see you all on the 13th.

MR. CORNWELL: I didn't jot it down.

Did you say 1:30 on the 13th?

THE COURT: 3:30.

MR. CORNWELL: 3:30. Thank you.

THE COURT: All right. I want a witness and exhibit list filed in accordance with the rules, if there's any additional witnesses or exhibits that are going to be offered at that time.

MR. CORNWELL: Thank you, Your Honor. May I just to make sure I copied it right. If we don't have additional -- if we do have additional, can we incorporate what we've already filed and not refile those?

THE COURT: Yeah, whatever's there is already there. Yeah, you don't need to refile anything. What we've already admitted we already admitted. But if you're

going to have some new witnesses, new exhibits and if Ms. Replogle's clients are going to have some witnesses and exhibits, they need to get them on file. There's a local rule that will give you the deadline for doing that, Ms. Replogle, and I --

MS. REPLOGLE: Thank you.

THE COURT: It's Local Rule 9013.

MS. REPLOGLE: Okay. I appreciate that. And I do have one question. And again I don't know if it -- and I have a question. I'm not quite sure what the answer is obviously.

Is there any mechanism to use any type of discovery? And for just a little bit of background, I know Mr. Cornwell mentioned this is kind of the first he heard of it and whatnot. With respect to Q'Max America's bankruptcy attorney and then Q'Max Solutions' bankruptcy attorney, we sent them some questions outlining our concerns about the fact that it transpired and asked specifically for the production of that exclusive license agreement and any documents related to the transfer of ownership for approval, and we've not received any response much less any documentation. Is there a mechanism that we can appropriately ask for prior to that hearing in order to get it ordered or filed, whatever you want. I'm just -- that's an outstanding issue. I don't have my hands on it and some

people do right now.

THE COURT: Is Ms. Curtis the trustee? Who's the trustee of that one? I'm not sure who the trustee is on most cases.

MS. REPLOGLE: I do. Chris Murray is the bankruptcy trustee for Q'Max America and Gerry Gorton (phonetic) is the attorney. And again the -- sorry.

THE COURT: Consult with them, tell them that I have an emergency hearing coming up. And if you all are unable to reach an agreement on the production of materials to you, you're free to file an emergency motion before me.

MS. REPLOGLE: Okay.

MR. CORNWELL: Your Honor, just make sure the Record is clear if nothing else. Ms. Replogle and I spoke yesterday. I'm most happy to engage in formal discovery -- or formal discovery for that matter to the extent that we've got control of the documents. I will remind the Court that QAI has been dismissed from the pending litigation by Judge Lake.

THE COURT: I understand that. Again that doesn't mean -- I don't know what's going on and --

MR. CORNWELL: I get it.

THE COURT: -- I'm not authorizing discovery, I'm not unauthorizing it. It's the same thing. She's entitled to make inquiries and if she's believes she's entitled to

discovery they won't give her, having informed that it's an emergency matter before me, I'll hear on Monday or Tuesday or Wednesday what I need to hear about orders for emergency discovery from a trustee. But in general the trustees will cooperate with you and not require you to go through formal discovery. I don't know what's going on. I know those people well. I wouldn't expect you to have a problem.

MS. REPLOGLE: Understood. And just one point of clarification, Your Honor. Again the Receiver in Q'Max Solutions in this proceeding is asserting that they're the owner of that MAXSITE software and they have granted that license to Q'Max America which has then been sold, so I do believe that some of the documentation would be within their possession as the owner of this asset. I just wanted to clarify that.

MR. SPEAKER: I don't disagree with that and that's why I just wanted to clear it up. The QAI and QSI are separate which has been part of the presentation. Certainly not trying to block at all. And if we can do this in a clean friendly way, then we should. I ran into Ms. Replogle yesterday. We're going to work together and try to take a picture.

MS. REPLOGLE: That's great.

THE COURT: Okay. Thank you. We're in adjournment.

MR. CORNWELL: Thank you, Your Honor.

MS. REPLOGLE: Thank you.

(Hearing adjourned at 12:00 p.m.)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability due to the condition of the electronic sound recording of the video conference proceedings in the above-entitled matter.

/S/ MARY D. HENRY

*CERTIFIED BY THE AMERICAN ASSOCIATION OF ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337*

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

JTT TRANSCRIPT #62792

DATE FILED: OCTOBER 7, 2020

Appendix “G”

From: Van de Mosselaer, Randal
Sent: Thursday, October 08, 2020 3:47 PM
To: MReplogle@winston.com
Cc: Cornwell, John; Beiner, Grant; Martin, Jarrod B.; JKeville@winston.com; CHardman@winston.com; MlRodriguez@winston.com>; Gadia, Anamika
Subject: M-I/QMAX - Q'Max Bankruptcy: Case No. 20-34791 (Ch. 15 - MI)
Attachments: Notice to Terminate License Agreement; QMax - License of IP - QSI to QAI.PDF; Letter to QMax Acquisition and US Trustee re_ ELA dated July 15 2020.pdf

KPMG Inc. in its capacity as Court-appointed Receiver (the "Receiver") of Q'Max Solutions Inc. ("QSI") and not in its personal or corporate capacity advises as follows in response to your various questions below set out in your email of October 5, 2020 (with the Receiver's responses noted in red font):

QSI Ownership:

1. Does Q'Max Solutions, Inc. currently own the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, when did it obtain ownership and was it through a transfer from Q'Max America? If not, who does?

   Insofar as the Receiver is aware, Q'Max Solutions Inc. ("QSI") is and at all relevant times has been the owner of the MAXSITE software and the intellectual property related to the MAXSITE software. The Receiver is not aware that there was ever a transfer of such ownership from Q'Max America Inc. ("QAI") to QSI.

2. Are you willing to produce (1) documents ("documents" include emails and other communications) related to that transfer, (2) documents related to the value of that transfer, and/or (3) the Exclusive License Agreement between Q'Max Solutions and Q'Max America dated May 22, 2020?

   In light of the previous answer, the Receiver is unable to answer the first two of these sub-questions. A copy of the Exclusive License Agreement granted by QSI to QAI and dated May 22, 2020 is attached. (The Receiver also learned in July 2020 that essentially identical forms of license agreements were granted by QSI to various of QSI's international subsidiaries also dated May 22, 2020.) The Receiver first became aware of the existence of this Exclusive License Agreement in July 2020 and raised its concerns about the date of the grant of the license with Drilling Services, LLC. A copy of a July 15, 2020 letter from counsel to the Receiver to the predecessor in interest to Drilling Services, LLC is attached. The Receiver has therefore put Drilling Services, LLC on notice that it has concerns about the grant of this license and has been in discussion with Drilling Services, LLC with respect to this license. As a result of the foregoing, on August 31, 2020 Paragon Integrated Services Group LLC (as successor in interest to Drilling Services, LLC) provided the attached email and letter re: "Notice of Termination of Exclusive License Agreement" to the Receiver.

3. Can you tell us who was involved in the transfer of the MAXSITE software and/or the intellectual property, and also who was involved in the exclusive license to Q'Max America?

   As noted, the Receiver is unaware of any such transfer of the MAXSITE software. The Receiver's only knowledge with respect to who was involved in the Exclusive License Agreement is that it appears to have been signed on behalf of QAI and QSI by Rafael Diaz-Granados (in his capacity as (former) President and CEO of QSI and President of QAI).

4. What is the intent of the receiver of Q'Max Solutions in regard to the disposition of the MAXSITE software and/or the intellectual property related to the MAXSITE software?

   No decision has been made in this regard.

5. Has the corporate ownership structure and control of Q'Max Solutions changed since the October 2, 2019 organization chart that was presented at the hearing last Friday? If so, please identify all such changes.

   The Receiver currently has no information to suggest that there have been any such changes to the corporate ownership structure. Control of QSI changed with the appointment of the Receiver on May 28, 2020.

QAI Exclusive License:

6. Did the Exclusive License contain a provision requiring consent by Q'Max Solutions prior to an assumption or an assignment of the license? If so, did Q'Max Solutions provide consent to the assumption and assignment of the Exclusive License Agreement from Q'Max America to Drilling Services, LLC ("DSL") and if so, what was the rationale or reasons behind providing such consent?

   See attached. The Receiver did not provide its consent to the assumption or assignment of the license.

7. Are you willing to produce documents related to the sale of the Exclusive License Agreement to Drilling Services? For instance, we are looking for the Exclusive Agreement itself and any drafts of such agreements.

   The Receiver is not a party to the sale to Drilling Services, LLC.

8. All communications (email or otherwise) related to what became the May 22, 2020 Exclusive License Agreement, including all communications between QSI and QAI related to the drafting and execution of the Exclusive License Agreement.

   The Receiver is currently not aware of any such communications.

9. Were any cure amounts owed on account of the Exclusive License Agreement?

   The Receiver does not know but did not receive any cure amounts, and the Receiver has not received any payments from either QAI or Drilling Services, LLC pursuant to the Exclusive License Agreement since the Receiver's appointment.

Assignment of Exclusive License to Drilling Services

10. Who are the equity owners and who are the officers of Drilling Services, LLC?

    The Receiver is unable to answer this question as it has no control over Drilling Services, LLC.

11. An identification of all owners of DSL that are current owners of Q'Max Solutions and/or Q'Max America and also an identification of all owners of DSL that were former owners of Q'Max Solutions and/or Q'Max America.

    The Receiver does not know who the "owners" of DSL might be and is therefore unable to answer this question.

12. We also want to know whether DSL will likely be a competitor to M-I, in what technology areas, and in what locations.

    The Receiver has no information about DSL or its business.

13. All communications (email or otherwise) related to the assumption and assignment of the Exclusive License Agreement from Q'Max America to Drilling Services, LLC.

    As the Receiver is Receiver of QSI (and not QAI) the Receiver has no such communications.

We trust that the foregoing is satisfactory.

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

osler.com

From: Van de Mosselaer, Randal on behalf of Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: Thursday, October 08, 2020 1:21 PM
To: Van de Mosselaer, Randal
Subject: Notice to Terminate License Agreement
Attachments: Notice to Terminate License Agreement August 31 2020.pdf

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From: Rafael Andres Diaz-Granados <radg@paragonisg.com>
Sent: Monday, August 31, 2020 5:44 PM
To: Gadia, Anamika <agadia@kpmg.ca>; James Katchadurian <James.Katchadurian@cr3partners.com>; Martin, Jarrod B. <Jarrod.Martin@chamberlainlaw.com>; christopher.murray@jmbllp.com
Subject: Notice to Terminate License Agreement

Dear Anamika and James,

As we have discussed, attached please find Paragon's notice terminating the License Agreement. We drafted it formally so the syndicate can feel comfortable with the termination.

I'm looking forward to seeing the revised TSA later this week.

Best,

Rafael

Rafael Andres Diaz-Granados
Paragon Integrated Services Group
(305) 407-6653

PARAGON INTEGRATED SERVICES GROUP LLC
200 Enterprise Drive, Newcomerstown, Ohio 43832

VIA EMAIL: agadia@kpmg.ca

August 31, 2020

Q'Max Solutions Inc.
c/o KPMG Inc., as the Receiver
205 5th Avenue SW, Suite 3100
Calgary, AB T@P 4B9
Attention: Ms. Anamika Gadia

Re: **Notice of Termination of Exclusive License Agreement**

Dear Ms. Gadia:

On July 1, 2020, the Bankruptcy Court for the Southern District of Texas (Houston Division) entered the *Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Certain Assets by the Trustee; (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (III) Authorizing the Assumption, Sale and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* [Docket No. 196] (the "Sale Order") in the chapter 7 cases captioned *In re Q'Max America, Inc.*, *et al.*, Case No. 20-60030 (CML).

Pursuant to the Sale Order, Christopher R. Murray, Chapter 7 Trustee for the bankruptcy estate of Q'Max America Inc. ("QAI") and Anchor Drilling Fluids USA, LLC ("Anchor Drilling") assumed and assigned that certain Exclusive License Agreement (the "License Agreement") dated May 22, 2020 by and between Q'Max Solutions Inc. ("Q'Max") and QAI to Paragon Integrated Services Group LLC f/k/a Drilling Services, LLC (the "Company").

Pursuant to Section 1.6 of the License Agreement the Company hereby terminates the License Agreement effective August 31, 2020. Effective immediately, neither the Company nor Q'Max shall have any obligations under the Agreement and the Agreement shall be considered null and void and of no further force and effect.

Sincerely,

PARAGON INTEGRATED SERVICES GROUP LLC

By: _____
RAFAEL DIAZ-GRANADOS
CHIEF EXECUTIVE OFFICER

cc: Christopher R. Murray
Jones Murray & Beatty LLP
4119 Montrose Blvd, Suite 230
Houston, TX 77006
Email: christopher.murray@jmbllp.com

Chamberlain, Hrdlicka, White, Williams & Aughtry, P.C.
1200 Smith Street, Suite 1400
Houston, TX 77002-4310
Attention: Jarrod Martin
Email: jarrod.martin@chamberlainlaw.com

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("**QSI**") and Q'Max America Inc. ("**Licensee**").

1. **LICENSE AND PAYMENT**

1.1 **License**. QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.

1.2 **Delivery**. Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.

1.3 **Trademarks**. Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.

1.4 **Maintenance Services**. During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.

1.5 **Payment and Expenses**. No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI $2500 in U.S. dollars.

1.6 **Term and Termination**. This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

1.7 **Disclaimer**. **The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided "AS IS" and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee's requirements.**

1.8 **Definitions**. As used in this agreement, the following definitions apply:

(a) "**Intellectual Property Rights**" means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, "**Trademarks**"); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as "moral rights," "artist's rights," or "droit moral."

(b) "**Licensed Software**" means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.

(c) "**Territory**" means the United States, including any of its territories.

2. **MISCELLANEOUS**

2.1 **Governing Law**. New York law governs all adversarial proceedings arising out of this agreement.

2.2 **Exclusive Jurisdiction**. Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.

2.3 **Severability**. The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

2.4 **Waiver**. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

2.5 **Assignment**. Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.

2.6 **Amendment**. No modification of this agreement will be effective unless it is in writing and signed by the parties.

2.7 **Notices**. For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

QSI Notice:	**Licensee Notice:**
Rafael Diaz-Granados	Chris Pennington
President & CEO	US Vice President
11700 Katy Freeway, Suite 200	11700 Katy Freeway, Suite 200
Houston, Texas 77079	Houston, Texas 77079
Email: RADG@qmax.com	Email: CPennington@AnchorUSA.com

2.8 **Entire Agreement**. This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.

2.9 **Effectiveness and Date**. This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) (the "**Effective Date**"). If a party signs this agreement but fails to date their signature, the

date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Q'MAX SOLUTIONS INC.

Date: May 22, 2020

By: _____

Name: Rafael Diaz-Granados

Title: President & CEO

Q'MAX AMERICA INC.

Date: May 22, 2020

By: _____

Name: Rafael Diaz-Granados

Title: President

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street S.W.
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403.260.7000 MAIN
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OSLER

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Toronto
Montréal
Ottawa
Vancouver
New York

July 15, 2020

Randal Van de Mosselaer
Direct Dial: 403.260.7060
rvandemosselaer@osler.com
Our Matter Number: 1211096

SENT BY ELECTRONIC MAIL

QMax Acquisition Corp.
C/O
Palladium Equity Partners
1270 Avenue of The Americas, Suite 31
New York, NY 10020
Attention: Caleb Clark and Scott Kirschner
Email: cclark@palladiumequity.com / skirschner@palladiumequity.com

Christopher R. Murray
Jones Murray & Beatty LLP
4119 Montrose Blvd, Suite 230
Houston, TX 77006
Email: christopher.murray@jmbllp.com

Dear Sirs:

Re: ***HSBC Bank Canada, As Agent v Q'Max Solutions Inc. ("QSI"), et al.***
Alberta Court of Queen's Bench Action No. 2001-06722 (the "Action")

Please be advised that we are counsel to KPMG Inc. in its capacity as Court-appointed Receiver (the "**Receiver**") of all of the current and future assets, undertakings, and properties of every nature and kind whatsoever belonging to QSI (and various related companies) by virtue of an Order granted in the Action on May 28, 2020. We write to you in your capacities as: (a) the Chapter 7 Bankruptcy Trustee (the "**QAI Trustee**") of QSI's affiliate, Q'Max America Inc. ("**QAI**"), and (b) the representatives of QMax Acquisition Corp. (the "**Buyer**"), the Purchaser under a Second Amended and Restated Purchase and Sale Agreement between (amongst others) the Buyer and the QAI Trustee.

The Receiver has recently become aware of a troubling development which occurred on the virtual eve of its appointment on May 28, 2020 and on the eve of the commencement of the Chapter 7 proceedings against QAI on May 24, 2020.

The Receiver recently learned that on May 22, 2020, the former management of QSI and QAI caused QSI and QAI to enter into an "Exclusive License Agreement" ("**ELA**"). A copy of the ELA is enclosed herewith. Pursuant to the terms of the ELA, QSI purported to grant to QAI an exclusive, perpetual, worldwide license of all Intellectual Property Rights (as that term is defined in the ELA) owned by QSI. Significantly, the ELA purports to grant such license to QAI on terms which are extremely favourable to QAI (and extremely prejudicial to QSI), and covers all trademarks and other intellectual property belonging to QSI. Most importantly, the exclusive license granted by the ELA may arguably extend to the QSI proprietary "MAXSITE" suite of engineering software (although the language of the ELA is not entirely clear whether MAXSITE falls within the definition of Intellectual

Property Rights, which is what is covered by the license). In any event, paragraph 1.2 of the ELA does impose very prejudicial obligations on QSI with respect to MAXSITE, and grants unreasonably favourable terms to QAI with respect to MAXSITE.

The Receiver has very serious concerns with respect to the negotiation and execution of the ELA and the terms on which the ELA purports to strip QSI of its rights with respect to its ability to use its own intellectual property and MAXSITE. Those concerns include, but are not limited to, the following:

1. The license fee payable by QAI to QSI under the ELA is a mere USD $2,500 per month. Given the very significant costs incurred by QSI to develop MAXSITE (which may or may not be included within the ambit of the license granted by the ELA), and the value associated with the other intellectual property covered by the ELA, the license fee under the ELA is woefully inadequate, and is conspicuously less than fair value for the use QSI's intellectual property and MAXSITE;

2. It is worth noting that the license fee under the ELA is insufficient even to pay for QSI's costs of having MAXSITE hosted on a third-party server. Those hosting costs are significantly more than the license fee under the ELA, and accordingly there is simply no economic benefit to QSI under the ELA;

3. It is noteworthy that (and as you are well aware) prior to the Receiver's appointment on May 28, 2020, and prior to the commencement of the QAI bankruptcy proceedings in the United States on May 24, 2020, QSI and QAI had common management and their respective operations were highly intertwined. Accordingly, it is clear that the negotiation of the ELA was not done on an arm's length basis. Indeed, Mr. Diaz-Granados (the former President of both QSI and QAI) signed the ELA on behalf of both QSI and QAI;

4. The clandestine nature of the negotiation of the ELA, and the fact that it was kept secret from the Receiver until recently, raises further serious concerns. Although the ELA was negotiated and executed mere days before the Receiver's appointment (and also on the eve of the appointment of the QAI Trustee), and although the Receiver, the QAI Trustee, and Buyer negotiated and executed a Transition Services Agreement ("**TSA**") on July 2, 2020 (which expressly dealt with, amongst other things, Newco's read-only access to and use of MAXSITE for a defined period of time), at no time prior to July 9, 2020 was the existence of the ELA brought to the Receiver's attention. This is all the more outrageous given the fact that many of the principals of QSI, QAI, and Buyer were the same individuals. Although the inclusion of read-only access to and use of MAXSITE by Buyer would be pointless if the ELA were valid and enforceable, the principals of Buyer failed to raise this point with the Receiver. On the contrary, during the course of

negotiating the TSA the Receiver was advised that the Buyer would not require access to MAXSITE beyond the two month period covered by the TSA;

5. Indeed, it is noteworthy that the disclosure of the existence of the ELA to the Receiver occurred mere days after the US Bankruptcy Court approved the sale of certain QAI assets to the Buyer – and that the Buyer ensured that the ELA was included on the schedule of QAI contracts which were to be assumed by the Buyer.

The transaction represented by the ELA is not in the best interests of either QSI or any of QSI's international subsidiaries and affiliates which rely on MAXSITE and other QSI intellectual property to carry on their business. Indeed, the ELA is highly prejudicial to the interests of both. Now that the Buyer's principals (who were formerly QSI and QAI's principals) have disclosed the existence of the ELA to the Receiver, it has become abundantly clear that the negotiation of the ELA was conducted as part of a covert scheme by QSI and QAI's former management (and Buyer's current management) to attempt to transfer the use and benefit of QSI's intellectual property and MAXSITE to the Buyer, without any regard whatsoever to the damage that would be done to QSI, or its international subsidiaries and affiliates, or any of its other stakeholders, as a result of such transfer.

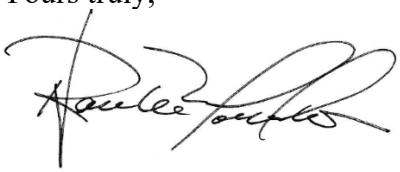
Moreover, the ELA was negotiated by (then existing) QSI management and Directors without any regard whatsoever to the significant harm that would be occasioned to QSI as a result of this transaction. As a result, it is clear that the ELA was negotiated in blatant violation of the duties which the former QSI Directors and Officers involved in the negotiation and execution of the ELA owed to QSI. The negotiation and execution of the ELA was also oppressive and unfairly prejudicial to and unfairly disregarded the interests of QSI's creditors and other stakeholders.

Finally, for the reasons set out above, the ELA clearly constitutes a reviewable transaction and transfer at undervalue, given: (i) the terms of the ELA, (ii) the lack of financial benefit to QSI under the ELA, (iii) the economic harm that would be suffered by QSI as a result of the ELA, (iv) the related party nature of the transaction, and (v) the covert manner in which the ELA was negotiated, executed, and attempted to be implemented.

Accordingly, the Receiver does hereby put the Buyer and the QAI Trustee on notice that, for all of the foregoing reasons, the Receiver intends to bring proceedings in the Court of Queen's Bench of Alberta for a declaration that the ELA be set aside, and for other ancillary relief. The Receiver will also consider what other remedies and claims may be appropriate in the circumstances in light of this transparent attempt to strip value out of QSI for the benefit of the Buyer. We have no doubt that we will be successful in obtaining such relief in light of the facts as enumerated above. We will be in touch with you in the near future with respect to the scheduling of such proceedings.

In the interim, the Receiver will continue to honour the terms of the TSA by which the Buyer will continue to have read-only access to MAXSITE so that it can continue to operate its business. We understand that Buyer has had access to and use of MAXSITE since the date of the TSA.

Yours truly,



Randal Van de Mosselaer
RV:ep

cc:

QAI Trustee Counsel Chamberlain, Hrdlicka, White, Williams & Aughtry, P.C. 1200 Smith Street, Suite 1400 Houston, TX 77002-4310 Attention: Jarrod Martin Email: jarrod.martin@chamberlainlaw.com	Buyer Counsel O'Melveny & Myers LLP Times Square Tower 7 Times Square New York, NY 10036 Attention: Nancy Mitchell, Esq. / Matthew Hinker, Esq. / David Schultz, Esq. Email: nmitchell@omm.com / mhinker@omm.com / dschultz@omm.com
CR3 Partners 450 Lexington Avenue, 4th Floor, New York, NY 10017 4801 Woodway Drive, Suite 300 East, Houston, TX 77056 Attn: James Katchadurian Email: James.Katchadurian@cr3partners.com	Canadian Counsel to Syndicate Norton Rose Fulbright Canada LLP 400 3rd Avenue SW, Suite 3700, Calgary Alberta T2P 4H2 Canada Attn: Howard Gorman and Aaron Stephenson Howard.Gorman@nortonrosefulbright.com Aaron.stephenson@nortonrosefulbright.com
US Counsel to Syndicate Norton Rose Fulbright US LLP 2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States Attn: Louis R. Strubeck, Jr. louis.strubeck@nortonrosefulbright.com	KPMG Inc. in its capacity as Receiver of Q'Max Solutions Inc. Attn: Anamika Gadia: agadia@kpmg.ca/ Neil Honess: NHoness@kpmg.ca

Appendix “H”

From: Van de Mosselaer, Randal
Sent: Thursday, October 15, 2020 12:00 PM
To: Replogle, Michelle
Cc: John Cornwell; Grant Beiner; Gadia, Anamika; Martin, Jarrod B.; Chris Hanslik; Andrew Pearce; JKeville@winston.com; Hardman, Carrie
Subject: FW: M-I/QMAX - Q'Max Bankruptcy: Case No. 20-34791 (Ch. 15 - MI)
Attachments: IP License Agreements; Qmax renewal contract march 2019.pdf; Qmax March 2019 upgrade contract.pdf; Qmax dec 2017 colo contract.pdf; qmax Oct 2017 Hypervisor contract.pdf; General Terms & Conditions.pdf; Managed Hosting Terms and Conditions (Intensive).pdf

KPMG Inc. in its capacity as Court-appointed Receiver (the "Receiver") of Q'Max Solutions Inc. ("QSI") and not in its personal or corporate capacity advises as follows in response to your various questions below set out in your email of October 13, 2020 (with the Receiver's responses noted in red font):

14. Has the Receiver identified all of the "essentially identical forms of license agreements [that] were granted by QSI to various of QSI's international subsidiaries also dated May 22, 2020"?

The Receiver believes it has done so, and that they are attached to the attached email. The Receiver became aware of the existence of these license agreements as a result of discussions it had concerning the license agreement which had been assigned to Drilling Services, LLC/Paragon Integrated Service Group LLC, of which the Receiver became aware in July 2020. The attached email was forwarded to the Receiver some time after the July 10, 2020 date which it bears.

15. Does the Receiver intend to identify and/or locate each of these agreements? Does the Receiver intend to ensure that each of those agreements is terminated and has the Receiver taken steps to do so? If so, please describe.

See answer to previous question. Whether these agreements will need to be terminated or not will depend on what will happen with each of the licensee subsidiaries, which has not been determined. (It should be noted that one of the licensees is Q'Max Canada Operations Inc., which is one of the companies in Receivership and whose assets are in the process of being liquidated. This license agreement will not be assigned as a result of this liquidation.)

16. Please provide copies of any license agreements (referenced in #14) received, any terminations (referenced in #15), and any relevant correspondences to or from the Receiver on this particular issue (referenced in either #14 or #15).

See answers to previous questions, including the attached email. This email was forwarded to the Receiver on July 28, 2020.

17. Has the Receiver received confirmation from Chapter 7 Trustee that QAI does not have within its possession the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, please describe and provide any relevant documents evidencing the same.

The Receiver has not received specific confirmation but believes that the only copy of the source code for Maxsite is in QSI's possession, which is stored on a third party server which is controlled by the Receiver. Attached please find contracts between QSI and Rackspace (a third party provider) for the storage of Maxsite on Rackspace's server.

18. Has the Receiver received confirmation from Drilling Services, LLC and Paragon Integrated Services Group LLC (as successor in interest to Drilling Services, LLC) that neither have within its possession the MAXSITE software and/or the

intellectual property related to the MAXSITE software? If so, please describe and provide any relevant documents evidencing the same.

Same answer as #17. The Receiver has no reason to believe that Drilling Services, LLC/Paragon Integrated Service Group LLC has a copy of Maxsite. In fact, Drilling Services, LLC/Paragon Integrated Service Group LLC required read-only access to Maxsite for a period of time pursuant to a transition services agreement (strongly suggesting that they do not have a copy of Maxsite).

19. To the extent any other license agreement (referenced in #14) has been identified and terminated, has the Receiver received confirmation that the named licensee (or successor in interest) does not retain any copies of the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, please describe and provide any relevant documents evidencing the same.

Same answer as #17. Other than the license agreement to QAI, the Receiver has not taken steps to terminate any other license agreement. The Receiver has no reason to believe that any licensee (or successor in interest to any licensee) has a copy of Maxsite.

20. Does the Receiver have an understanding as to what entities globally have within its possession the MAXSITE software and/or the intellectual property related to the MAXSITE software at this time? If so, please identify or describe what you do know.

See answer to #17. Insofar as the Receiver is aware the only copy of the Maxsite source code is in the possession and control of the Receiver and accordingly no other entities have possession of the Maxsite software. The global subsidiaries of QSI have historically had read-only access to Maxsite and have used (and continue to use) Maxsite in their day-to-day operations. In preparation for potential sales of various international subsidiaries the Receiver does intend to set up separate instances of Maxsite to be stored in each local foreign jurisdiction rather than on the Rackspace server in the U.S. in order to reduce costs associated with this storage and allocate jurisdiction-specific data to each international subsidiary as appropriate.

Following up on #3:

21. Please provide any correspondences or communications with or relating to Rafael Diaz-Granados regarding the issues described herein, e.g., #1-3, 16-19.

The Receiver is not presently aware of any non-privileged emails or other communications received from Rafael Diaz-Grandos regarding the issues described in items 1 to 3 or 16 to 19.

Following up on #4:

22. Our understanding is that the Receiver for QSI intends to sell the MAXSITE software and/or the intellectual property related to the MAXSITE software at a sale to take place in Canada and is actively looking for a buyer for that sale (such as a buyer in either South America or the Middle East). Is that understanding correct? Could you please revisit your prior answer to #4 and explain the Receiver's current intentions and if any of our understanding is incorrect.

Your understanding is not correct. The Receiver is not taking any steps in an effort to sell Maxsite. The Receiver has been running sale processes with respect to the shares of various international subsidiaries.

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Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

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From: Replogle, Michelle <MReplogle@winston.com>
Sent: Tuesday, October 13, 2020 9:24 AM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Cc: Cornwell, John <jcornwell@munsch.com>; Beiner, Grant <gbeiner@munsch.com>; Martin, Jarrod B. <Jarrod.Martin@chamberlainlaw.com>; Keville, John <JKeville@winston.com>; Hardman, Carrie <CHardman@winston.com>; Rodriguez, Maria <MlRodriguez@winston.com>; Gadia, Anamika <agadia@kpmg.ca>
Subject: RE: M-I/QMAX - Q'Max Bankruptcy: Case No. 20-34791 (Ch. 15 - MI)

Randal –

Thank you for the responses and documents provided in your email below. As we mentioned in prior conversations, we do have some follow up questions on certain of the answers provided. Please find those questions below.

Following up on #2:

14. Has the Receiver identified all of the "essentially identical forms of license agreements [that] were granted by QSI to various of QSI's international subsidiaries also dated May 22, 2020"?
15. Does the Receiver intend to identify and/or locate each of these agreements? Does the Receiver intend to ensure that each of those agreements is terminated and has the Receiver taken steps to do so? If so, please describe.
16. Please provide copies of any license agreements (referenced in #14) received, any terminations (referenced in #15), and any relevant correspondences to or from the Receiver on this particular issue (referenced in either #14 or #15).
17. Has the Receiver received confirmation from Chapter 7 Trustee that **QAI** does not have within its possession the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, please describe and provide any relevant documents evidencing the same.
18. Has the Receiver received confirmation from **Drilling Services**, LLC and **Paragon Integrated Services Group** LLC (as successor in interest to Drilling Services, LLC) that neither have within its possession the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, please describe and provide any relevant documents evidencing the same.
19. To the extent any other license agreement (referenced in #14) has been identified and terminated, has the Receiver received confirmation that the named licensee (or successor in interest) does not retain any copies of the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, please describe and provide any relevant documents evidencing the same.

20. Does the Receiver have an understanding as to what entities globally have within its possession the MAXSITE software and/or the intellectual property related to the MAXSITE software at this time? If so, please identify or describe what you do know.

Following up on #3:

21. Please provide any correspondences or communications with or relating to Rafael Diaz-Granados regarding the issues described herein, e.g., #1-3, 16-19.

Following up on #4:

22. Our understanding is that the Receiver for QSI intends to sell the MAXSITE software and/or the intellectual property related to the MAXSITE software at a sale to take place in Canada and is actively looking for a buyer for that sale (such as a buyer in either South America or the Middle East). Is that understanding correct? Could you please revisit your prior answer to #4 and explain the Receiver's current intentions and if any of our understanding is incorrect.

Let us know if anything above is unclear or if you wish to discuss further.

Many thanks in advance for expediting responses, as possible, given the hearing on October 20.

Thanks,

Michelle

Michelle Replogle
Winston & Strawn LLP
D: +1 713-651-2607
winston.com
<image001.jpg>

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: Thursday, October 8, 2020 4:47 PM
To: Replogle, Michelle <MReplogle@winston.com>
Cc: Cornwell, John <jcornwell@munsch.com>; Beiner, Grant <gbeiner@munsch.com>; Martin, Jarrod B. <Jarrod.Martin@chamberlainlaw.com>; Keville, John <JKeville@winston.com>; Hardman, Carrie <CHardman@winston.com>; Rodriguez, Maria <MlRodriguez@winston.com>; Gadia, Anamika <agadia@kpmg.ca>
Subject: M-I/QMAX - Q'Max Bankruptcy: Case No. 20-34791 (Ch. 15 - MI)

KPMG Inc. in its capacity as Court-appointed Receiver (the "Receiver") of Q'Max Solutions Inc. ("QSI") and not in its personal or corporate capacity advises as follows in response to your various questions below set out in your email of October 5, 2020 (with the Receiver's responses noted in red font):

QSI Ownership:

1. Does Q'Max Solutions, Inc. currently own the MAXSITE software and/or the intellectual property related to the MAXSITE software? If so, when did it obtain ownership and was it through a transfer from Q'Max America? If not, who does?

Insofar as the Receiver is aware, Q'Max Solutions Inc. ("QSI") is and at all relevant times has been the owner of the MAXSITE software and the intellectual property related to the MAXSITE software. The Receiver is not aware that there was ever a transfer of such ownership from Q'Max America Inc. ("QAI") to QSI.

2. Are you willing to produce (1) documents ("documents" include emails and other communications) related to that transfer, (2) documents related to the value of that transfer, and/or (3) the Exclusive License Agreement between Q'Max Solutions and Q'Max America dated May 22, 2020?

In light of the previous answer, the Receiver is unable to answer the first two of these sub-questions. A copy of the Exclusive License Agreement granted by QSI to QAI and dated May 22, 2020 is attached. (The Receiver also learned in July 2020 that essentially identical forms of license agreements were granted by QSI to various of QSI's international subsidiaries also dated May 22, 2020.) The Receiver first became aware of the existence of this Exclusive License Agreement in July 2020 and raised its concerns about the date of the grant of the license with Drilling Services, LLC. A copy of a July 15, 2020 letter from counsel to the Receiver to the predecessor in interest to Drilling Services, LLC is attached. The Receiver has therefore put Drilling Services, LLC on notice that it has concerns about the grant of this license and has been in discussion with Drilling Services, LLC with respect to this license. As a result of the foregoing, on August 31, 2020 Paragon Integrated Services Group LLC (as successor in interest to Drilling Services, LLC) provided the attached email and letter re: "Notice of Termination of Exclusive License Agreement" to the Receiver.

3. Can you tell us who was involved in the transfer of the MAXSITE software and/or the intellectual property, and also who was involved in the exclusive license to Q'Max America?

As noted, the Receiver is unaware of any such transfer of the MAXSITE software. The Receiver's only knowledge with respect to who was involved in the Exclusive License Agreement is that it appears to have been signed on behalf of QAI and QSI by Rafael Diaz-Granados (in his capacity as (former) President and CEO of QSI and President of QAI).

4. What is the intent of the receiver of Q'Max Solutions in regard to the disposition of the MAXSITE software and/or the intellectual property related to the MAXSITE software?

No decision has been made in this regard.

5. Has the corporate ownership structure and control of Q'Max Solutions changed since the October 2, 2019 organization chart that was presented at the hearing last Friday? If so, please identify all such changes.

The Receiver currently has no information to suggest that there have been any such changes to the corporate ownership structure. Control of QSI changed with the appointment of the Receiver on May 28, 2020.

QAI Exclusive License:

6. Did the Exclusive License contain a provision requiring consent by Q'Max Solutions prior to an assumption or an assignment of the license? If so, did Q'Max Solutions provide consent to the assumption and assignment of the Exclusive License Agreement from Q'Max America to Drilling Services, LLC ("DSL") and if so, what was the rationale or reasons behind providing such consent?

See attached. The Receiver did not provide its consent to the assumption or assignment of the license.

7. Are you willing to produce documents related to the sale of the Exclusive License Agreement to Drilling Services? For instance, we are looking for the Exclusive Agreement itself and any drafts of such agreements.

The Receiver is not a party to the sale to Drilling Services, LLC.

8. All communications (email or otherwise) related to what became the May 22, 2020 Exclusive License Agreement, including all communications between QSI and QAI related to the drafting and execution of the Exclusive License Agreement.

The Receiver is currently not aware of any such communications.

9. Were any cure amounts owed on account of the Exclusive License Agreement?

The Receiver does not know but did not receive any cure amounts, and the Receiver has not received any payments from either QAI or Drilling Services, LLC pursuant to the Exclusive License Agreement since the Receiver's appointment.

Assignment of Exclusive License to Drilling Services

10. Who are the equity owners and who are the officers of Drilling Services, LLC?
    The Receiver is unable to answer this question as it has no control over Drilling Services, LLC.
11. An identification of all owners of DSL that are current owners of Q'Max Solutions and/or Q'Max America and also an identification of all owners of DSL that were former owners of Q'Max Solutions and/or Q'Max America.
    The Receiver does not know who the "owners" of DSL might be and is therefore unable to answer this question.
12. We also want to know whether DSL will likely be a competitor to M-I, in what technology areas, and in what locations.
    The Receiver has no information about DSL or its business.
13. All communications (email or otherwise) related to the assumption and assignment of the Exclusive License Agreement from Q'Max America to Drilling Services, LLC.
    As the Receiver is Receiver of QSI (and not QAI) the Receiver has no such communications.

We trust that the foregoing is satisfactory.

<image002.gif>
Randal Van de Mosselaer

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rvandemosselaer@osler.com

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
<image003.gif>

From: Celina Carter <celina.carter@qmax.com>
Sent: Friday, July 10, 2020 12:57 PM
To: Guido Rivas
Subject: IP License Agreements
Attachments: QMax - License of IP - QSI to Business Units.zip

Guido,

For your file, I wanted to share the license agreements with you in case the topic comes up and the Receiver would like to have them. I do not know if they have a copy. They should have a copy. They are located in the contract management system that they have access to. But I can't find an email where I shared them and I do not remember. Thanks.

Regards,

Celina Carter

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and QMAX CANADA OPERATIONS INC. ("Licensee").

1. **LICENSE AND PAYMENT**

1.1 **License**. QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.

1.2 **Delivery**. Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.

1.3 **Trademarks**. Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.

1.4 **Maintenance Services**. During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.

1.5 **Payment and Expenses**. No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI $2500 in U.S. dollars.

1.6 **Term and Termination**. This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

1.7 **Disclaimer**. **The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided "AS IS" and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee's requirements.**

1.8 **Definitions**. As used in this agreement, the following definitions apply:

(a) "**Intellectual Property Rights**" means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, "**Trademarks**"); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as "moral rights," "artist's rights," or "droit moral."

(b) "**Licensed Software**" means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.

(c) "**Territory**" means the country of Canada.

2. **MISCELLANEOUS**

2.1 **Governing Law**. New York law governs all adversarial proceedings arising out of this agreement.

2.2 **Exclusive Jurisdiction**. Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.

2.3 **Severability**. The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

2.4 **Waiver**. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

2.5 **Assignment**. Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.

2.6 **Amendment**. No modification of this agreement will be effective unless it is in writing and signed by the parties.

2.7 **Notices**. For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

QSI Notice:	**Licensee Notice:**
Rafael Diaz-Granados	Christopher Kostiuk
President & CEO	Country Manager
11700 Katy Freeway, Suite 200	1210 – 585 8th Ave. SW, Calgary, AB T2P 1G1
Houston, Texas 77079	Calgary, Canada
Email: RADG@qmax.com	Email: Chris.Kostiuk@qmax.com

2.8 **Entire Agreement**. This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.

2.9 **Effectiveness and Date**. This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) (the

"**Effective Date**"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Q'MAX SOLUTIONS INC.

Date: May 22, 2020

By: _____

Name: Rafael Diaz-Granados

Title: President & CEO

QMAX CANADA OPERATIONS INC.

Date: May 22, 2020

By: _____

Name: Rafael Diaz-Granados

Title: President