

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

In re:

VERTEX ENERGY, INC., et al.¹

Debtors.

Chapter 11

Case No. 24-90507 (CML)

Objection Deadline: October 21, 2024

**GLOBAL AEROSPACE, INC., AS INSURANCE POOL MANAGER FOR AMERICAN
ALTERNATIVE INSURANCE CORPORATION, AMERICAN COMMERCE
INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY, AND TOKIO
MARINE AMERICA INSURANCE COMPANY'S
LIMITED OBJECTION TO NOTICE OF CURE COSTS AND RESERVATION OF
RIGHTS REGARDING POTENTIAL ASSUMPTION AND
ASSIGNMENT OF CERTAIN CONTRACTS OR LEASES**

[Relates to Dkt. No. 158]

Global Aerospace, Inc., as Insurance Pool Manager for American Alternative Insurance Corporation, American Commerce Insurance Company, National Indemnity Company, and Tokio Marine America Insurance Company (“Global”), by and through its undersigned counsel, hereby files this limited objection (the “Limited Objection”) to the Notice of Cure Costs and Potential Assignment of Executory Contracts and Unexpired Leases in Connection with Sale [Dkt. No. 158] (the “Cure Notice”) and in support of the Limited Objection, Global respectfully states as follows:

BACKGROUND

The Bankruptcy Case

1. On September 24, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.



United States Bankruptcy Court for the Southern District of Texas. The Debtors' cases are being jointly administered under Case No. 24-90507 (CML).

The Insurance Policy

2. Prior to the Petition Date, Global issued a certain Aviation Insurance Policy for Unmanned Aircraft Systems identified as Policy No. 9032529 (as may be renewed, amended, modified, endorsed, or supplemented from time-to-time, collectively, the "Policy")² to debtor Vertex Refining Alabama, LLC as an insured (the "Insured").

3. Pursuant to the Policy, Global provides, *inter alia*, certain liability and physical damage coverage for certain scheduled unmanned aircraft weighing up to 55lbs that are owned and operated by the named insured for a specified policy period subject to certain limits, deductibles, retentions, exclusions, terms, and conditions, as more particularly described therein and the insured is required to pay to Global certain amounts and perform certain actions in furtherance of the terms of the Policy (collectively, the "Policy Obligations").

4. The Insured's payment obligations under the Policy have been satisfied as of the date of this Limited Objection for the current policy period, but additional sums may be incurred between this date and the date of any potential assumption and assignment and such amounts remain subject to future audits and adjustments and the potential for retrospective premiums.

5. On September 24, 2024, the Debtors filed their Emergency Motion for Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, an Auction, Objection Deadlines, and a Sale Hearing, (III) Approving The Assumption and Assignment Procedures, (IV) Approving the Form and Manner of Notice of a Sale Transaction,

² The full policy is voluminous and in the possession of the Debtors. Global reserves the right to submit the Policy to the Court to the extent that there is any disagreement over its stated terms.

the Auction, the Sale Hearings, and Assumption and Assignment Procedures, and (V) Granting Related Relief [Dkt No. 5] (the “Sale Motion”).

6. On September 25, 2024, the Court entered the Order (I) Approving the Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, an Auction, Objection Deadlines, and a Sale Hearing, (III) Approving The Assumption and Assignment Procedures, (IV) Approving the Form and Manner of Notice of a Sale Transaction, the Auction, the Sale Hearings, and Assumption and Assignment Procedures, and (V) Granting Related Relief [Dkt. No. 55] (the “Bid Procedures Order”) establishing an auction and sale process to sell some or substantially all of Debtors’ assets to one or more buyers.

7. On October 9, 2024, the Debtors filed the Cure Notice and served the notice on Global via electronic mail and U.S. Mail. The Cure Notice lists the Policy as an executory contract between the Insured and Global subject to potential assumption and assignment to an unknown buyer for a cure amount of “\$0.00”.

8. To date, Global has not been provided with any adequate assurance of future performance under the Policy by the Debtors or any proposed assignee of the Policy.

LIMITED OBJECTION

9. Global files this Limited Objection to the Cure Notice as the proposed cure costs under the Policy must be evaluated at the time of actual assumption and the Debtors and the Buyer cannot modify the Policy to rule out retroactive adjustments.

10. To the extent the Insured seeks to assume and assign the Policy, it must assume and assign the Policy in its entirety. Further, as more particularly described in the Policy, the Insured is required to pay and perform the Policy Obligations, and therefore, amounts may become due and owing under the Policy either prior to or after the assumption thereof.

11. Global has contingent, unliquidated claims against the Insured for the Policy Obligations, given the nature of the Policy and the Policy Obligations. By way of example and not limitation, premiums may be adjusted and payable at audit under the terms of the Policy, based upon factors as they exist throughout the coverage period. Therefore, Global has contingent, unliquidated claims against the Insured for any additional premiums that may become due upon completion of audit(s).

12. The amount owed by the Insured on account of the Policy Obligations may vary from day-to-day, and is subject to ongoing reconciliation based on, among other things, claims submitted to Global.

13. Accordingly, any cure amounts must be determined at the time of assumption and further, as a condition for the assignment of the Policy, the assignee must remain liable for all of the Insured's obligations and liabilities (including the Policy Obligations), whether now existing or hereafter arising, under the Policy including, without limitation, paying and/or performing the Policy Obligations as they become due.

RESERVATION OF RIGHTS AS TO ADEQUATE ASSURANCE

14. Debtors have not yet identified the proposed purchaser and assignee of some or all of its assets and has merely notified Global that its Policy is subject to potential assumption. As such, Global has not yet been definitively advised as to whether a buyer intends to seek assignment of the Policy, let alone been provided with risk, claim, and other financial information about the buyer to determine if adequate assurance of future performance by the buyer exists at this time.

15. Pursuant to section 365(f)(2) of the Bankruptcy Code, any assignee of a contract must provide adequate assurance of future performance.

16. Global does not have, and the Debtors have not supplied, any information, much less sufficient information, or a reasonable amount of time to determine if any particular proposed buyer would be ready, willing, and able to provide adequate assurance of future performance and whether the proposed buyer would satisfy Global's credit and underwriting criteria. Accordingly, Global is unable, at this time, to assess whether a proposed buyer would satisfy those criteria and be able to perform all required Policy Obligations.

17. Further, as a condition precedent for any assignment of the Policy to the Buyer, in addition to the written consent of Global, the Policy would need to be amended by an endorsement issued on Global's behalf by the Policy Issuing Office set forth in the Declarations section to the Policy. Such an endorsement has not been requested by the Insured, let alone negotiated and issued for this Policy. Failure to coordinate with Global on such basic matters does not instill confidence that the future performance under the Policy by the buyer is in any way adequately assured.

18. Accordingly, Global further objects and reserves its right to assert future objections on the basis that Debtors and the buyer have not provided adequate assurance as required by section 365(f)(2) of the Bankruptcy Code and reserves the right to assert additional objections to the proposed sale, the assumption and assignment of executory contracts, or cure amounts or any documents relating to any of the foregoing.

WHEREFORE, Global requests that: a) the cure amount for the Policy remain subject to amendment by Global up to the actual date of assumption; and b) that any cure of the Policy requires the Policy Obligations to remain subject to ongoing audit and reconciliation based on, among other things, claims submitted to Global.

Dated: October 21, 2024

MEHAFFY WEBER, P.C.

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ALTERNATIVE INSURANCE CORPORATION,
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NATIONAL INDEMNITY COMPANY, AND TOKIO
MARINE AMERICA INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of October 2024, the foregoing document to be served as provided under the Court's CM/ECF system.

/s/Blake Hamm
Blake Hamm