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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESTERNGECO LLC . 4:09-CV-01827
PLAINTIFF . HOUSTON, TEXAS
vs. . MAY 14, 2010
 . 9:00 A.M.
ION GEOPHYSICAL .
CORPORATION .
DEFENDANT .
.

TRANSCRIPT OF MARKMAN HEARING AND MOTION TO COMPEL HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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09:23 1 Fugro entities. Just to be clear, it is not this list, this
2 large list of different Fugro entities that we are
3 concentrating on that are relevant to any more of the dispute.
4 It is just the four Fugro Geoteam entities, and they all have
09:24 5 overlapping managers and directors. It is ultimately form over
6 substance to say these overlapping managers and directors can't
7 access the documents of their sister companies.

8 This issue about the Hague convention, when we
9 decided to file our subpoenas from this Court, first of all, we
09:24 10 believe these are the proper parties to subpoena. Second of
11 all, we wanted to have a court that is familiar with the
12 technology, a Court that is familiar with the case and familiar
13 with any relevance issues to adjudicate the scope of the
14 subpoena. Serving requests from the Hague Convention is a very
09:24 15 uncertain prospect as well, taking many, many months to do.
16 It's likely they couldn't be done in time for the trial that is
17 scheduled in this case. We decided to subpoena the U.S.
18 entities because we do have a good faith belief, based on our
19 publicly-obtained information, that they do have control. They
09:24 20 do have access to these documents. They are running jobs using
21 these products.

22 THE COURT: But your evidence consists of overlapping
23 officers and directors?

24 MR. GILMAN: Overlapping officers and directors. They
09:25 25 are marketing themselves as a single business entity.

09:25 1 THE COURT: They hold themselves out as a single
2 entity?

3 MR. GILMAN: I'm sorry?

4 THE COURT: They hold themselves out as a single
09:25 5 entity?

6 MR. GILMAN: Correct. They roll their financial
7 statements into a single consolidated statement, and the
8 particular jobs where they are cooperating together, they are
9 operating together.

09:25 10 THE COURT: Say the last part again.

11 MR. GILMAN: In these particular jobs in Exhibit 79,
12 they are working together on a day-to-day basis on particular
13 jobs using the accused products. That seems to be the
14 definition of control. They are running the job that's using
09:25 15 foreign subsidiaries and foreign sister companies.

16 THE COURT: Thank you.

17 MR. ELSLEY: Your Honor, I will be less than a minute.
18 We have never run a job together. AS runs the seismic
19 equipment and bought the seismic equipment. And this job that
09:26 20 he is referring to, again, is a future job, and the reference
21 he is making to "we will be running the seismic job" is a
22 reference that Statoil is making, not a reference --

23 THE COURT: We have got a fact question though, don't
24 we?

09:26 25 MR. ELSLEY: Well, I would agree with counsel that we

09:26 1 actually don't. Because if you look at the full content of the
2 documents that he has submitted, WesternGeco has submitted with
3 their reply, you will see that, in fact, the documents show the
4 operator of the vessel to be AS, and they actually just
09:26 5 reference Inc. to be the project manager. And the project
6 manager, as I told the Court, they are not even on the vessel.
7 It is just a person who sits in the Houston office and will
8 follow the job on a daily basis but does not operate the
9 seismic equipment. The seismic crew is still employed by the
09:27 10 Norwegian entity.

11 Of course, this is a future job and -- so we
12 don't even have the documents on this job yet. There would be
13 no documents to respond to a job that relates to August of
14 2010. That current vessel, Geo Celtic, is over in Australia
09:27 15 now under charter to the Norwegian entity.

16 MR. GILMAN: If there is a true factual dispute about
17 how much control Fugro Geoteam has over this job or has over
18 other jobs operating outside the United States, it may be
19 appropriate to have very limited discovery on this issue, one
09:28 20 or two depositions and an evidentiary hearing on that.

21 We believe that the evidence we submitted is
22 sufficient. But thank you, Your Honor.

23 THE COURT: I'm going to take this under advisement.
24 I don't want to rule hastily. I appreciate both counsel's
09:28 25 participation. Thank you. If you want to be excused, you may

10:11 1 provided by Schlumberger's in-house counsel, were discussing
2 royalty disputes related to oilfield tools. They don't claim
3 that it has any relevance to this litigation whatsoever. In
4 fact, they kind of skip over the whole relevance issue in their
10:11 5 motion. They don't discuss that these oilfield tools gave rise
6 to any products, relate to any products that are at issue here.
7 They don't talk about any technology at issue here. In fact,
8 they don't say that WesternGeco was involved in that. They say
9 that Schlumberger, the parent company, was the one that worked
10:12 10 with these three consultants.

11 When you examine this work that they are talking
12 about, ION will present evidence later that shows that it
13 really was a preliminary -- what has turned into an audit plan
14 on some damages issue. Schlumberger was, it appeared, reaching
10:12 15 out to people saying: "We may want to hire you to help us out
16 with this royalty dispute. Would you be willing to do it?"

17 From what we understand from FTI Consulting is
18 that they submitted this preliminary plan, which is what the
19 invoice is for that is attached to the WesternGeco motion.
10:12 20 This was just preliminary issues. They ended up not being
21 hired. Schlumberger did not continue on with them.
22 Schlumberger doesn't offer any evidence -- WesternGeco doesn't
23 offer any evidence that there was a continued relationship
24 after September 2007, any other contacts with them after
10:12 25 September 2007. They don't even assert that is what happened.

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