

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

WESTERNGECO L.L.C.,

Plaintiff,

v.

ION GEOPHYSICAL CORPORATION,

Defendant.

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CIVIL ACTION NO. 4:09-cv-01827

JURY TRIAL DEMANDED

**PETROLEUM GEO-SERVICES, INC.'S  
RESPONSE TO PLAINTIFF'S DOCUMENT SUBPOENA**

Pursuant to Fed. R. Civ. P. 45 and all other applicable laws and rules, Petroleum Geo-Services, Inc. hereby submits the following objections and responses to the subpoena served upon it on January 22, 2010 by Plaintiff WesternGeco L.L.C. (“WesternGeco”).

**PRELIMINARY STATEMENT**

WesternGeco, a party to litigation pending in the United States District Court for the Southern District of Texas, has served Petroleum Geo-Services, Inc., a non-party, with a Subpoena Duces Tecum (the “Subpoena”). The Subpoena seeks the production of documents related to, among other things, products and services purchased or licensed from ION Geophysical Corporation (“ION”), a Defendant in the pending litigation. Although all this information could be obtained directly from ION, Petroleum Geo-Services, Inc. (“PGS, Inc.”), subject to the objections set forth below, will produce certain responsive documents that reflect marketing activities of ION, to the extent such documents can be located with a reasonable search.

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In addition to the ION-related documents, WesternGeco also seeks other information from PGS, Inc. that is not limited to ION-related products, and that has little relevance, if any, to its pending lawsuit with ION. Essentially, WesternGeco seeks every document in PGS, Inc.'s possession that relates to Streamer Control Devices, regardless of whether such devices originate from ION. WesternGeco is a direct competitor of PGS, Inc. This discovery sought by WesternGeco is nothing more than a fishing expedition by WesternGeco to probe into the business of PGS, Inc. To the extent that such discovery is at all relevant, it is substantially outweighed by the potential harm and burden placed on non-party, PGS, Inc. For that reason, PGS, Inc. objects to the Subpoena, and will produce only documents related to communications with ION.

In addition, WesternGeco requests that PGS, Inc. produce documents from the files of other foreign entities that are related to PGS, Inc. This attempt to force PGS, Inc. to produce documents that are in the custody or control of a foreign company is improper. PGS, Inc. has previously communicated with WesternGeco and advised WesternGeco that the documents it sought, to the extent they existed, were in the possession of PGS, Inc.'s Norwegian parent company, Petroleum Geo-Services ASA. Rather than seeking discovery from Petroleum Geo-Services ASA, WesternGeco has served this subpoena on PGS, Inc., which has only limited contacts with the products of ION. Thus, despite being informed of the proper custodian of the documents it seeks, WesternGeco has proceeded with issuing a subpoena in the name of this Court, seeking to order the production of documents that are not in the custody or control of PGS, Inc.

More specifically, the Subpoena is directed at PGS, Inc., a Delaware corporation with its principal place of business in Houston, Texas, but requests documents from "PGS," defined as follows:

Petroleum Geo-Services, Inc. and all its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, partnerships and affiliates thereof (including, but not limited to, Petroleum Geo-Services ASA, Petroleum GeoServices (U.S.), Inc., PGS Onshore do Brasil, PGS Onshore Inc., PGS Mexicana, PGS Onshore Peru, PGS de Venezuela, PGS Geophysical AS, PGS Technology (Sweden) AB, PGS Reservoir Ltd., PGS - Kazakhstan LLP, PGS CIS LLP, PGS Data Processing Middle East, PGS Angola Ltd., PGS Exploration (UK) Ltd., PGS Exploration (Nigeria) Ltd., Petroleum Geo-Services Asia Pacific Pte. Ltd., PGS Australia Pty. Ltd., PGS Japan K.K., Petroleum Geo-Services Exploration, PGS Data Processing & Technology Sdn. Bhd., and PT. Petroprima Geo Servis Nusantara), and all directors, officers, agents, employees, attorneys and other persons acting on their behalf.

WesternGeco's definition of "PGS" includes an expansive group of separate and distinct entities stretching across the world. PGS, Inc. does not have control of these foreign entities, and does not have possession, custody, or control of their documents. The Hague Convention provides the proper avenue for obtaining documents in the possession of these foreign entities, and PGS, Inc. has directed WesternGeco to seek discovery directly from entities it believes have documents related to its pending litigation with ION. Imposing the burden of producing such documents on PGS, Inc. improperly exceeds the scope of discovery allowed by the Federal Rules of Civil Procedure and places an undue burden and expense on PGS, Inc.

Further, WesternGeco is attempting to use the Subpoena to gather information unrelated to its litigation with ION. In the Subpoena, WesternGeco lists only three devices by name (the ORCA, DigiFIN, and DigiBIRD) that are apparently related to its infringement action against ION. However, in the Subpoena, WesternGeco seeks information regarding broad classes of products and services, including products neither sold by ION to PGS, Inc. nor forming any apparent basis for WesternGeco's accusations against ION. The scope of discovery sought from PGS, Inc. is properly limited to documents regarding those devices specifically named by WesternGeco.

Finally, it should be noted that PGS, Inc. is not a party to this lawsuit, and the vast majority of the relevant documents that WesternGeco seeks should be in the possession of ION, who is a

party to the lawsuit. Further, locating all of the information that WesternGeco seeks would impose an unreasonable burden on non-party, PGS, Inc., requiring it to expend a large amount of time and money to search for potentially responsive documents. Given the substantial burden placed on PGS, Inc., and the marginal relevance that such documents would have beyond the documents already produced by ION, PGS, Inc. submits that this discovery is unreasonable, unwarranted, and unduly harassing. Consequently, PGS, Inc. will only produce communications and documents related to the marketing and sales of ION products that are in the possession of PGS, Inc., and which can be located with a reasonable search of the files of PGS, Inc. employees that have directly communicated with ION during the relevant period.

These and other objectionable aspects of the Subpoena are detailed below.

#### **GENERAL OBJECTIONS**

1. PGS, Inc. generally objects to the Subpoena to the extent that it purports to impose on PGS, Inc. any duty not expressly required by, or that is inconsistent with, the Federal Rules of Civil Procedure.
2. To the extent that the Subpoena seeks the production of documents not in the possession, custody, or control of PGS, Inc., PGS, Inc. objects to the Subpoena on the grounds that it seeks documents beyond the scope of the Federal Rules of Civil Procedure.
3. To the extent that the Subpoena seeks the production of documents possessed or maintained in a foreign jurisdiction, PGS, Inc. objects to the Subpoena on the grounds that it is unduly burdensome and seeks documents beyond the scope of the Federal Rules of Civil Procedure.
4. To the extent that the Subpoena seeks the disclosure of information that is protected by the work product doctrine or that is privileged, including, but not limited to, information that is

protected from discovery under the attorney-client privilege, the joint defense privilege and/or the party communication privilege, PGS, Inc. objects to the Subpoena on the basis that it exceeds the permissible scope of discovery set forth in the Federal Rules of Civil Procedure. PGS, Inc. objects to the Subpoena to the extent it seeks the disclosure of the mental impressions, conclusions, opinions, or legal theories of the attorneys or other representatives of PGS, Inc. concerning this litigation. PGS, Inc. will not disclose any such privileged information.

5. PGS, Inc. objects to the Discovery Requests, to the extent that any such request calls for production of documents without a relevant time period limitation, as being unduly burdensome and overly broad.

6. PGS, Inc. objects to the Subpoena to the extent that it seeks disclosure of highly confidential documents with minimal relevance to this litigation. The potential prejudice to PGS, Inc. in producing such document greatly outweighs the probative value of such documents to WesternGeco in this litigation. PGS, Inc. is a non-party, and it should not be required to strip bear its highly confidential documents to its competitor under the guise of discovery. PGS, Inc. objects to the Subpoena to the extent that it seeks production of documents that are not relevant to the subject matter of this litigation or are not reasonably calculated to lead to the discovery of admissible evidence, including but not limited to requests for information unrelated to ION or PGS, Inc.'s interactions with ION.

7. PGS, Inc. objects to the Subpoena's definition of "PGS" to the extent that it includes entities other than PGS, Inc. and "directors, officers, agents, employees, attorneys and other persons acting on . . . behalf" of entities other than PGS, Inc. because this definition includes several distinct companies in numerous countries and PGS, Inc. has no control over these entities

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