

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

<b>IN RE:</b>  <b>STRIKE, LLC, <i>et. al.</i>,<sup>1</sup></b>  <b>Debtors</b>	§ § § § §	<b>Chapter 11</b>  <b>CASE NO. 21-90054 (DRJ)</b> <b>(Jointly Administered)</b>
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**LIMITED OBJECTION TO THE NOTICE OF ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH  
SALE AND CURE COSTS**  
[RELATES TO DOCKET #309]

Enterprise Texas Pipeline LLC, Enterprise Products Operating LLC, Enterprise Crude Pipeline LLC, Enterprise Pelican Pipeline, L.P., South Texas NGL Pipelines, LLC, and Acadian Pipeline Systems, (collectively, with their affiliates, “Enterprise”), by and through the undersigned counsel, hereby file this Limited Objection to the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale and Cure Costs (the “Cure Notice”) and in support thereof respectfully states as follows:

**PRELIMINARY STATEMENT**

1. Enterprise does not object to the assumption and assignment of its unexpired executory contracts to the Stalking Horse Bidder<sup>2</sup> (or other Court-approved purchaser that acquires all or substantially all of the Debtors’ assets and employs the current workforce performing work Enterprise), provided that *all* defaults under any of its contracts are cured as part of the sale and contract assumption and assignment process.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Strike, LLC (2120); Strike HoldCo, LLC (0607); Delta Directional Drilling, LLC (9896); Strike Global Holdings, LLC (4661); Capstone Infrastructure Services, LLC (0161); and Crossfire, LLC (7582). The location of Debtor Strike, LLC’s principal place of business and the Debtors’ service address is: 1800 Hughes Landing Boulevard., Suite 500, The Woodlands, Texas 77380. Additional information regarding this case may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/StrikeLLC>.

<sup>2</sup> Unless otherwise indicated, capitalized terms used but not defined herein, shall have the same meaning ascribed to them in the Bidding Procedures Order [Dkt. No. 279].

2. As provided for herein, Enterprise files this Limited Objection to preserve and reserve all its rights and remedies to have all contract defaults under the Enterprise Contracts cured as part of the sale and contract assumption and assignment process, and not just those cure amounts as scheduled by the Debtors. Further, Enterprise files this Limited Objection to reserve and preserve its right to receive adequate assurance of future performance from any Court-approved winning bidder for any assumed and assigned Enterprise Contracts.

### **BACKGROUND**

3. On December 6, 2021 (the “Petition Date”), each of the above-captioned Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to act as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

4. On December 6, 2021, the Debtors filed the Debtors’ Emergency Motion for Entry of Orders: (I) (A) Establishing Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors’ Entry Into a Stalking Horse Agreement and Approving the Reimbursable Expenses (C) Establishing Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of Related Notices, and (E) Scheduling a Hearing to Consider the Proposed Sale; (II) (A) Authorizing and Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (Docket No. 60) seeing, among other things, approval of bidding procedures for the sale of substantially all of the Debtors’ assets (Docket No. 60).

5. On December 23, 2021, the Court entered the Order (A) Establishing Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors’

Entry into Stalking Horse Purchase Agreement and Approving the Expense Reimbursement, (C) Establishing Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving Form and Manner of Related Notices, (E) Scheduling a Hearing to Consider the Proposed Sale, and (F) Granting Related Relief (Docket No. 279).

6. On December 29, 2021, in connection with the proposed sale of substantially all of the Debtors' assets, the Debtors filed the Cure Notice.

7. The Cure Notice identifies twenty-two contracts with Enterprise for assumption and assignment (the "Enterprise Contracts"). However, the identification, for most of the contracts, is generic and fails to identify the contract number, AFE or purchase order number so that each contract can be readily identified. Enterprise will continue to attempt to obtain clarification with the Debtors on the Enterprise Contracts. Across all the Enterprise Contracts, Debtors identify a monetary cure amount totaling \$369,690 (the "Cure Amount").

8. To date, Enterprise has received notices from seven of the Debtors unpaid subcontractors and suppliers, namely, Alamo Concrete Products, American Pollution Control Corp., Apex Trench & Mat, LLC, Bayou Technical Services, L.P., J2 Resources, Speed Technical Services, LLC, and Steel Painters, LLC (together the "Subcontractor Notices"). The Subcontractor Notices assert claims against Enterprise (or its property) in the amount of \$1,010,113.13. The Subcontractor Notices relate to the Debtors' failure to pay their subcontractors and suppliers.

#### **LIMITED OBJECTION**

9. Enterprise asserts and expressly reserves and preserves its objection to any potential assumption and assignment of any Enterprise Contract pending clarification and additional information on the Enterprise Contracts that are listed in the Cure Notice. Further, Enterprise asserts and expressly reserves and preserves all of its rights and remedies to ensure full and complete cure of all defaults (whether monetary or otherwise) under each Enterprise Contract, and

not just as listed in the Cure Notice as the Cure Amount.

10. Section 365(b)(1) provides in relevant part:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . .; and (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. §365(b)(1).

11. First, the Cure Amounts listed by the Debtors are inconsistent with the Subcontractor Notices. Second, the Cure Amounts do not take into account amounts that have become due, or may become due, under the various contracts (i) between the filing of the Cure Notice and the effective date of any assumption/assignment of the Agreement by the Debtors; or (ii) after the date of assumption that relate to the pre-assumption period. Any order establishing cure amounts in connection with assumption of the Agreement must require (i) the compliance with all obligations under the contracts pursuant to 11 U.S.C. §365(d)(3) pending the actual assumption of the Enterprise Contracts; and (ii) the payment of all charges incurred or accrued under the contracts between the date of this Objection and the effective date of any assumption and assignment of the Enterprise Contracts.

12. Next, Enterprise asserts and expressly reserves and preserves all of its rights and remedies to ensure full and complete cure of all defaults (whether monetary or otherwise) under each Enterprise Contract, and not just as listed in the Cure Notice. As a matter of blackletter law, a debtor must cure any and all existing defaults under the executory contract as part of assuming that contract. *See* 11 U.S.C. § 365(b)(1); *In re Nat'l Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000). Enterprise expressly reserves and preserves its right to require the Debtors to comply with this cure requirement with respect to all the Enterprise Contracts. Moreover, work continues to be performed under certain of the Enterprise Contracts, including Debtors' post-petition work and

ongoing warranty and indemnity obligations. As a condition to assumption and assignment, all amounts incurred and owed to subcontractors and/or suppliers under the Enterprise Contracts must be cured or paid when they become due.

13. Additionally, Bankruptcy Code section 365 requires a proposed assignee to provide adequate assurance of future performance which covers both financial and operational ability to comply with the contract terms. If the Stalking Horse Bidder is the winning bidder and closes on the purchase of the Debtors' businesses and hires the Debtors' personnel that are currently performing the work under the Enterprise Contracts, the Stalking Horse Bidder should be able to satisfy its statutory requirement of adequate assurance. However, in the event there is a material change to the Stalking Horse Bid, or another party is ultimately approved as the winning bidder, Enterprise expressly reserves its right to amend its objection and/or its right to receive adequate assurance of future performance.<sup>3</sup> Further, Enterprise expressly reserves and preserves its right to assert any other objection asserted by other parties with respect to these issues.

14. The purpose of Section 365(b)(1) is to restore the debtor-creditor relationship to a pre-default condition and bring it back into compliance with the terms of the contract. *In re DBSI, Inc.*, 405 B.R. 698, 704 (Bankr. D. Del. 2009). In addition, Enterprise asserts its rights to be reimbursed as part of its cure payment for all of its actual pecuniary losses, including, but not limited to, attorneys fees and costs expended with regard to enforcing its rights under the various contracts and applicable state law in connection with the Debtors' bankruptcy proceedings.

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<sup>3</sup> There is a timing issue under the bid and sale procedures as it relates to contract assumption and assignment. The deadline for contract counterparties to object to assumption and assignment of their contracts, including requesting adequate assurance, is January 12, 2022. However, bids are not due until January 24, 2022, and the auction (if it occurs) is not until January 26, 2021. Thus, if a party other than the Stalking Horse Bidder ends up being the winning bidder, that party's identity will not even be known until two weeks after contract assignment objections are due. There does not appear to be any procedure for providing information on the winning bidder to contract counterparties in this circumstance, or to provide contract counterparties with the ability to then receive adequate assurance information on that winning bidder. Enterprise expressly reserves its rights with respect to these issues.

**RESERVATION OF RIGHTS**

15. Enterprise specifically reserves its rights to object to any other relief sought by the Debtors in connection with the proposed assignment of the contracts, including but not limited to any proposed showing of adequate assurance of future performance.

WHEREFORE, Enterprise Texas Pipeline LLC, Enterprise Products Operating LLC, Enterprise Crude Pipeline LLC, Enterprise Pelican Pipeline, L.P., South Texas NGL Pipelines, LLC, and Acadian Pipeline Systems, request that the Court (i) order, as a condition to assumption and assignment of any Enterprise Contract, that the Debtors, or the Stalking Horse Bidder (or another Court-approved winning bidder), cure all pre-petition and post-petition defaults under all the Enterprise Contracts, (ii) require any assignee to provide adequate assurance of future performance, and (iii) grant such other and further relief as this Court deems just and proper.

Dated: January 12, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2022, a true and correct copy of the foregoing Objection was served via the Court's Electronic Notification System on the parties listed below.

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