

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

	X	
In re	:	Chapter 11
	:	
LIMETREE BAY SERVICES, LLC, <i>et al.</i> , ¹	:	Case No. 21-32351 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	X	

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF THE GOVERNMENT
OF THE U.S. VIRGIN ISLANDS WITH RESPECT TO THE DEBTORS’ NOTICE OF
DESIGNATION OF ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACT**

The Government of The United States Virgin Islands (the “USVI”), by and through its undersigned counsel, hereby submits this Limited Objection and Reservation of Rights (the “Limited Objection”) with respect to the Notice of Designation of Assumption and Assignment of Executory Contract [Docket No. 985] and the proposed cure amounts set forth therein, filed on December 24, 2021 by Limetree Bay Services, LLC and its debtor affiliates in the above-captioned cases (collectively, the “Debtors”). In support of this Limited Objection, the USVI respectfully states as follows:

BACKGROUND

1. On July 12, 2021, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas (the “Court”)—thereby commencing the Chapter 11 Cases.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Limetree Bay Services, LLC (1866); Limetree Bay Refining Holdings, LLC (1776); Limetree Bay Refining Holdings II, LLC (1815); Limetree Bay Refining, LLC (8671); Limetree Bay Refining Operating, LLC (9067); Limetree Bay Refining Marketing, LLC (9222). The Debtors’ mailing address is Limetree Bay Services, LLC, 11100 Brittmoore Park Drive, Houston, TX 77041.

2. On December 21, 2021, the Court entered the *Order (I) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II) Authorizing the Debtors to Perform under the Asset Purchase Agreement, (III) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 977] (the "Sale Order").

3. In accordance with paragraph 14.a of the Sale Order, on December 24, 2021, the Debtors filed the *Notice of Designation of Assumption and Assignment of Executory Contract* [Docket No. 984] (the "Notice of Designated Contracts"), pursuant to which the Debtors designated for assumption and assignment to West Indies Petroleum Limited and Port Hamilton Refining and Transportation, LLLP (together, the "Purchaser"), that certain Refinery Operating Agreement dated July 2, 2018 by and between Limetree Bay Refining, LLC and the USVI (the "USVI Operating Agreement").

4. The Debtors, Purchaser and the USVI (together, the "Parties") have engaged in ongoing discussions in an effort to resolve any and all issues pertaining to the assumption and assignment to Purchaser of the USVI Operating Agreement. Because the Parties required additional time to determine whether an amicable resolution can be reached, on December 30, 2021, the Parties filed the *Stipulation and Agreed Order to Extend the Deadline to Object to the Assumption and Assignment of Designated Contract* [Docket No.1002] to, among other things, extend the Designated Contract Objection Deadline with respect to the USVI Operating Agreement from January 4, 2022, through and including January 11, 2022.

5. As of the date of this filing, the Parties have not yet reached an amicable resolution but continue to work toward that goal.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

6. The USVI continues to support the assumption and assignment of the USVI Operating Agreement. The USVI files this Limited Objection to preserve the USVI's rights, particularly its right to receive the correct Cure Amounts (as defined below), while the Parties continue to cooperate to reach a consensual resolution.

7. In order for the Debtors to assume and assign any contracts, they must, *inter alia*, promptly cure all defaults. 11 U.S.C. § 365(b)(1)(A). Further, section 365(b)(1)(B) of the Bankruptcy Code requires, *inter alia*, a debtor to compensate a non-debtor party to an executory contract for any losses as a condition precedent to the debtor's assumption of that contract. It is well-settled that an executory contract cannot be assumed in part and rejected in part. *Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996). If a debtor assumes a contract, it must do so *cum onere*, with all the benefits as well as the burdens. *In re Nat'l Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000).

8. The Notice of Designated Contracts did not list a cure claim for the USVI Operating Agreement. Pursuant to the terms of the USVI Operating Agreement there is currently due and owing **\$7,534,247** to cure defaults under the USVI Operating Agreement (the "Cure Amount"), comprised of the following:

Quarterly payment due 6/30/2021: \$2,493,151 (in Payment Default)

Quarterly payment due 9/30/2021: \$2,520,548 (not in Payment Default)

Quarterly payment due 12/30/2021 \$2,520,548 (not in Payment Default)

9. To the extent these monetary defaults are not promptly cured, the agreement may not be assumed and assigned.

10. The USVI therefore files this Limited Objection and expressly reserve all applicable rights to the extent that the Debtors intend to assume the USVI Operating

Agreement without addressing the monetary cures, including paying the Cure Amount and any other amounts due. Despite this Limited Objection, the USVI fully supports the Debtors' and Purchaser's efforts to restart operations at the Refinery. The USVI intends to continue to negotiate in good faith and expect that the Parties will be able to present a consensual resolution to this matter before the date set for hearing before the Court.

11. The USVI reserves its rights (i) to amend, update and/or supplement this Limited Objection at any time and in any respect, (ii) with respect to the proposed cure amounts in the Notice of Designated Contracts, (iii) to file a request for payment of administrative expenses in accordance with sections 503 and 507 of the Bankruptcy Code, (iv) to assert a right of setoff pursuant to section 553 of the Bankruptcy Code or right of recoupment with respect to any claims described herein, and/or (v) to the extent necessary, with respect to the USVI Operating Agreement and any other claims the USVI may have against the Debtors.

Dated: Houston, Texas
January 11, 2022

Respectfully submitted,

WINSTON AND STRAWN LLP

/s/ Daniel J. McGuire

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**COUNSEL FOR THE
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STATES VIRGIN ISLANDS**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 11, 2022, a true copy of the foregoing was filed with the Court using the CM/ECF System, which will provide notice of such filing to all parties requesting such service.

/s/ Daniel J. McGuire