

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:)
Level Propane, Gases, Inc., et. al.) Case No. 02-16172
)
) Ch. 11
)
) Hon. Randolph Baxter
)

**THIRD SUPPLEMENTAL SUBMISSION IN SUPPORT OF THE RENEWED
AND RESTATED MOTION OF WILLIAM H. MALOOF TO REOPEN
EXAMINER'S INVESTIGATION AND FOR
SUBSTITUTE EXAMINER**

**“A Passion for Control Results in an
Orgy of Destruction”**

Now comes William H. Maloof, by and through counsel undersigned, and for his Third Supplemental Submission in Support of his Renewed and Restated Motion to Reopen Examiner's Investigation and for Substitute Examiner states as follows:

The Examiner was appointed on April 21, 2003, that very day he issued and delivered a Request for Production for all documents, including “any computer records (including any information on hardware or software) which is in your possession, custody or control” (see Exhibit “A”).

The very day the Request for Production was issued and delivered, the “MODI” database protocol required to retrieve all the customer transactions prior to April, 2002, simply vanished from the Level system. The very day of the of the Examiner's appointment, the very day of the Request for Production, first Dick Anter (see Exhibit “B”) urgently informed John Verbos by email that the MODI protocol had vanished and

then, minutes later, Art Hulsman (see Exhibit “C”) emailed John Verbos that he explained to Mr. Anter that these transactions could never be retrieved again using the MODI SQL¹ or any other protocol, and asking Mr. Verbos to meet with Mr. Anter to determine how these records might otherwise be found.

From the extraordinary coincidence of the Examiner’s Request for Production and the disappearance of the MODI protocol necessary to retrieve customer accounts tank serial numbers and transactions prior to April, 2002 can be drawn only one inevitable conclusion: that John Verbos knew that the MODI protocol had been destroyed, because it was he who destroyed it, and he destroyed at the instance of his direct superior. His direct superior was Steven Sues, the very man who failed to turn over the audiotapes to the Examiner. As a direct result of Mr. Verbos’ handiwork, unresolved customer complaints piled up at Level at a rate of 4.75 per hour. It is clear that all of the backup tapes but one were destroyed, and from the data on that one saved tape account resolutions were surreptitiously made. This data was never retrieved, nor were the tapes on which it was stored.

Thus with this undeniable act of obstruction of justice did the passion for control already exhibited by the banks result in an orgy of destruction. With these records

¹ Mr. Hulsman in his email to Dick Anter explained “And since the data is not in the Modi SQL table it is gone but they want to meet about it as soon as you are available to see if there are any other ways to find it.” The Modi SQL table to which Mr. Hulsman referred was the data table that was part of the SQL (Structured Query Language) program installed by Anthony Farranacci (who had graduated first in his class in electrical engineering) at the request of Mr. Maloof, as an overlay on the Advanced Digital Database (ADD) program. This SQL overlay allowed the ADD database to be replicated to accommodate the number of Level customers, which had exceeded the capacity of an individual ADD database. It was the SQL functionality that was disabled so data predating April, 2002, could not be retrieved in the system. The MODI functionality could not be adjusted as to date, rather customer records could be purged from the system so long as 1) the account had a zero balance – with nothing owed by or to the customer – and 2) the account had no transactions within the past 60 days. The SQL functionality, by contrast, could be limited by date so that data while still within the database would be inaccessible if it fell outside of defined date ranges.

irretrievably lost, the record of the existence of *tens of thousands of customer tanks was likewise irretrievably lost*. When Amerigas, only a few months later purchased the remains of Level Propane from Horizon, they received tens of thousands of stolen tanks with customers, which they so much as acknowledged when they stated to the trade press that they did not know how many customers came with Level Propane, while praising with nothing short of wonder Level Propane's computer and satellite communication system (see Exhibit "D").

Wherefore, having further supported his Renewed and Restated Motion to Reopen Examiner's Investigation and for Substitute Examiner, the Movant prays that it be granted.

Respectfully Submitted,

/s/ David C. Eisler
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SERVICE

Service was made by ordinary mail on those listed on the attached form this 26th day of July, 2006.

/s/ David C. Eisler
David C. Eisler

SERVICE LIST

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Ann: Andrew R. Vara
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EXHIBIT “A”

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 02-16172
) (Jointly Administered)
LEVEL PROPANE GASES, INC., *et al.*)
) Chapter 11
Debtors.) Judge Randolph Baxter

**EXAMINER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
LEVEL PROPANE GASES, INC. AND AFFILIATES PURSUANT TO
FEDERAL RULES OF BANKRUPTCY PROCEDURE 2004 AND 2014**

Pursuant to Rules 2004 and 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), G. Ray Warner, examiner (the "Examiner") in the above captioned chapter 11 cases (the "Cases"), hereby requests that Level Propane Gases, Inc. and its affiliates ("Level Propane") produce for inspection and copying, at the Examiner's office of Greenberg Traurig, P.C., 77 West Wacker, Suite 2400, Chicago, Illinois 60601, by May 15, 2003, the documents and items described below which are in the possession, custody or control of Level Propane. In support of the this request for production (the "Request"), the Examiner states as follows:

A. Definitions

1. "Document" means all writings of any nature or any medium upon which intelligence or information can be recorded, maintained or retrieved in the possession custody or control of Level Propane, including, without limitation, the original and each copy, regardless of the origin and location, of any correspondence (including any written memorandum of a telephone conversation, other communication, discussion, agreement and any other act, transaction or activity), book, pamphlet, periodical, letter, e-mail, memorandum (including any

memorandum or report of a meeting or conversation), contract, agreement, study, report, analysis, invoice, bill, time sheet, time cards, expense voucher, receipt, book of account (including cash disbursement journal, cash receipt journal, income statement or reconciliation statement), financial statement, order form, record, bond, requisition, plan, drawing, specification, sound recording, minutes, diary, bylaws, articles of incorporation, calendar, telegram, message, handwritten note, draft, working paper, photostat, microfilm, film, photograph, comparison, print, graph, drawing, sketch, chart, summary, data sheet, data processing card, tape, advertisement, and any other written, recorded, transcribed, punched, taped, filmed, or graphic, photographic, or electronic matter of any kind or nature (including marginal comments appearing on any documents or any other writing), however produced or reproduced, and any computer records (including any information on hardware or software) which is in your possession, custody or control, or which you have a right or privilege to examine upon request or demand.

2. "Level Propane" means Level Propane Gases, Inc. and each of its present or former officers, directors, agents, employees, representatives, or others who act, purport to act, have acted, or have purported to act on its behalf, its predecessors or successors by merger, acquisition or otherwise, its current or former divisions, departments, affiliates, subsidiaries, or parents, and any persons or entities otherwise affiliated with Level Propane.

3. "Benesch" means Benesch, Friedlander, Coplan & Aronoff LLP, and each of its present or former officers, directors, agents, employees,

representatives, or others who act, purport to act, have acted, or have purported to act on its behalf, its predecessors or successors by merger, acquisition or otherwise, its current or former divisions, departments, affiliates, subsidiaries, or parents, and any persons or entities otherwise affiliated with Benesch.

4. "Person" means an individual or group of human beings (living or deceased), firm, partnership, corporation, proprietorship, business trust, or any other organization or entity, including any of their respective offices, directors, employees, representatives, agents or other persons who act, purport to act, have acted, or have purported to act on the Person's behalf.

5. "Communication" means any expression, exchange or transfer of thoughts or information, whether oral or written, including, but not limited to discussions, conversations, meetings, conferences, negotiations, agreements, understandings, inquiries, messages, notations or documents.

6. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this discovery any information which might otherwise be construed to be outside of its scope. Singular and plural words shall be interpreted so as to bring within the scope of this request any document which might otherwise be construed to be outside of its scope. Any masculine, feminine, or neuter term includes all other genders; and the present tense includes the past and future tenses.

7. "Relating to" and "referring to" mean in any way concerning or regarding, consisting of, respecting, involving, or otherwise connected with the subject matter of the request. For a document, this means the drafting,

negotiating, execution and termination or destruction of the document, if applicable.

8. "Including" is used in the sense of specification and is not to be construed as a word of limitation.

9. "Disclosure Documents" means the Application for Order Pursuant to Section 327(a) of the Bankruptcy Code Authorizing Employment and Retention of Benesch, Friedlander, Coplan & Aronoff LLP as Attorneys for Debtors and Debtors in Possession and all related documents, which include but are not limited to affidavits, supplemental disclosures, transcript hearings, correspondence or other Communications, filed in or relating to Case No. 02-16172 in the United States Bankruptcy Court for the Northern District of Ohio, captioned *In re Level Propane Gases, Inc., et al.*

10. "Petition Date" means June 7, 2002, the date upon which Level Propane filed its petition for relief under chapter 11 of the United States Bankruptcy Code.

11. "Application Date" means June 27, 2002.

12. "Cases" means *In re Level Propane, Inc., et al.*, Case No. 02-16172 pending in the United States Bankruptcy Court for the Northern District of Ohio.

13. "New Market" means New Market Partners LLC and each of its present or former officers, directors, agents, employees, representatives, or others who act, purport to act, have acted, or have purported to act on its behalf, its predecessors or successors by merger, acquisition or otherwise, its current or

former divisions, departments, affiliates, subsidiaries, or parents, and any persons or entities otherwise affiliated with New Market.

B. Instructions

1. The plural of any word used herein includes the singular and vice versa.

The past tense of a verb used herein includes the present and vice versa.

2. "Date" and "when" mean the exact day, month and year, if ascertainable or, if not, the best approximation thereof.

3. If any information called for by a document request is withheld under any claim of privilege

- (a) identify the document;
- (b) state the subject matter of the information;
- (c) state the basis for the claim of privilege;
- (d) state the part of the document request to which the information is responsive; and
- (e) identify each person to whom the information has been disclosed orally or in writing and the circumstances of such disclosure.

C. Requests for Production

1. All Documents or any other Communications relating or referring to the retention and/or employment of Benesch by Level Propane.

2. All invoices and bills relating to services rendered by Benesch for Level Propane.

3. All Documents or any other Communications, prior to the Application Date, between Level Propane, Charles Sweet, John Rudd or any other Person affiliated with New Market with respect to the Cases or the representation of Level Propane.

EXHIBIT “B”

FW: problem

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Unknown

From: Dick Anter Sent: Tuesday, April 22, 2003 11 :06 AM To: John Verbos Subject: FW: problem

John:

Once again this "MODI" problem has come up. I did not hear anything from you yesterday. I will stop in this afternoon and we can talk.

Is this a problem?

Thanks, Dick

-----Original Message-----From: Dick Anter Sent: Monday, April 21, 2003 3:57 PM To: John Verbos Subject: problem

John:

We need the Modi history that seems to have disappeared with information from March, 2002 back... It seems that it just happened today. We need it. Cindy needs it !I!

This creates a major problem since we have a good number of problems that we need this information to resolve with AG issues across the region.

What do we do now to locate the necessary information within the system?

Please let me know...

Thanks, Dick Anter

EXHIBIT “C”

Lost Modi Data

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Unknown

From:

Art Hulsman

Sent: Monday, April 21, 2003 3:48 PM To: John Verbos Subject: Lost Modi Data Importance: High

John,

Dick Anter and Cindy Shadier want to get together with you and me to discuss how to retrieve missing Modi Data. I explained that Modi data from over a year ago is no longer retrievable out of ADDs. And since the data is not in the Modi SQL table it is gone but they want to meet about it as soon as you are available to see if there are any other ways to find it.

/

They need this data for AG complaints.

To my knowledge only one account has been mentioned as unretrievable. It was a will call account from before April of last year. There were no TO notes explaining the WCA status.

Art

EXHIBIT “D”

Industry Review

Nov 1, 2003
LPGas

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more 

AmeriGas acquires former Level Propane AmeriGas Partners has purchased substantially all of the retail propane distribution assets and business of Horizon Propane LLC in Westlake, Ohio, for \$31.7 million.

Horizon Propane, which purchased Level Propane out of bankruptcy in July for \$24.8 million, was owned by Eaglerock Propane Ltd., an investment group led by developer Richard E. Jacobs.

Once listed as the eighth-largest propane retailer in the United States, Level Propane fell from relative grace in 2002 after mounting accusations of alleged improprieties and multiple lawsuits by attorneys general in several states. Customers complained that they were forced to pay for fuel they did not use in an "underutilization fee," agreements were not honored, and they were unable to get tanks filled during the winter, causing homes to stay cold and pipes to burst. More than 4,000 complaints were filed in Ohio alone.

William H. Maloof, Level Propane's owner and chief executive, was forced to step down, and the company was barred from membership in the National Propane Gas Association.

In 2001, Maloof had reported that Level Propane had sold 111 million retail gallons to 124,000 customers in 25 states the previous year. By contrast, Horizon sold more than 30 million gallons of propane last year to nearly 35,000 customers from about 90 locations in 12 states.

Eugene V.N. Bissell, president and chief executive officer of AmeriGas, said he is unsure whether the drop in reported numbers is a result of inaccurate reporting or serious customer erosion as a result of Level Propane's practices.

"We think we can turn that (erosion) around," Bissell said. "The people who owned it in the interim addressed a lot of those issues. We're trying to make sure their policies now are consistent with AmeriGas."

Among those changes are supplying drivers with their first uniforms, providing employees with significantly better benefits, and bringing in 40 additional AmeriGas

drivers to fill tanks before winter.

All but some duplicated accounting and managerial employees will be retained to serve customers, Bissell said. Jim Palkovic, director of regional operations for Midwest region -- AmeriGas' second in command in the Midwest -- will oversee the former Horizon operations full time.

For all of its troubles, the former Level Propane had instituted some impressive business practices unique to the industry that AmeriGas will study this winter before deciding whether to change. For example, all of the company's 90-some locations were unmanned -- drivers and suppliers visited the locations to make deliveries, Bissell said.

Also, an advanced communications center tracked trucks and stayed in constant contact by satellite. "It's fascinating to see it, all these computer boards on the walls; it's just pretty amazing," Bissell said. "In the propane industry, I've never seen anything like it."

As the largest retailer in the country, Bissell said, AmeriGas has pledged to grow about 20 million gallons each year through acquisitions. He said the Horizon acquisition, with its 30 million gallons, presented a unique opportunity in itself -- with significant potential for growth.

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