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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: ROCKIES REGION 2006 LIMITED PARTNERSHIP and ROCKIES REGION 2007 LIMITED PARTNERSHIP DEBTORS	CASE NO. 18-33513 CHAPTER 11 Jointly Administered

OBJECTION TO DEBTORS' MOTION PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE FOR ENTRY OF (I) A BRIDGE ORDER EXTENDING EXCLUSIVITY ON AN INTERIM BASIS AND (II) A FINAL ORDER EXTENDING THE PERIOD WITHIN WHICH THE DEBTORS HAVE THE EXCLUSIVE RIGHT TO PROPOSE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF

Robert R. Dufresne, as Trustee of the Dufresne Family Trust; Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991 (collectively, "Objectors") in their capacity as, limited partners and parties in interest, subject to and without waiving their request seeking dismissal of this case [Doc. No. 85].

file this Objection to the *Debtors' Motion Pursuant to Section 1121(d) of title 11 of the United States Code for Entry of (i) a Bridge Order Extending Exclusivity on an Interim Basis and (i) a Final Order Extending the Period within which the Debtors have the Exclusive Right to Propose a Chapter 11 Plan and Solicit Acceptances Thereof* [Doc. No. 119] (the "Motion") in opposition to the Debtors' request to extend the exclusivity periods of Section 1121(d) to both propose and solicit acceptances of a plan. Objectors oppose the request as the Debtors have not established "cause" for the extension and would show that absent dismissal of this case cause exists to terminate exclusivity to allow for the filing and solicitation of competing plans. In support of this opposition, Objectors would respectfully show the Court follows:

I. PROCEDURAL BACKGROUND

1. On October 30, 2018 (the "Petition Date"), a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") was filed on behalf of Rockies Region 2006 Limited Partnership ("RR 2006") and Rockies Region 2007 Limited Partnership ("RR 2007," together, the "Debtors"), West Virginia limited partnerships formed in or around 2006 and 2007 respectively.

2. Both petitions were executed by, and filed at the direction of, Karen Nicolaou ("Nicolaou") whom PDC Energy, Inc. ("PDC"), the Debtors' sole managing general partner, had purportedly appointed, authorized and empowered to act for the Debtors as their "Responsible Party."[1]

3. On November 8, 2018, the Court entered an order directing joint administration of

[1] Each Debtor filed a *Debtor's Application for Order (I) Authorizing the Retention of Harney Management Partners to Provide Responsible Party and Additional Personnel, (II) Designating Karen Nicolaou as Responsible Party Effective as of the Petition Date, and (III) Granting Related Relief* [Doc. No. 12] seeking to engage Harney Management Partners ("HMP") to provide a "Responsible Party" and personal and to designate Nicolaou as that "Responsible Party." Objectors filed an objection to each Application which remain pending.

the Debtors' cases.

4. Nicolaou and PDC claim that the Debtors' assets are limited to (a) the ownership of only well bore interests in certain vertical wells located in Colorado's Wattenberg Field (the "Well Interests"), and (b) cash on deposit with Texas Capital Bank (the "Accounts").[2]

5. While the Debtors continue to operate their businesses and manage their assets as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108, they have no employees and no operations. Operations of the Well Interests are conducted and managed by PDC as an operator under Drilling and Operating Agreements (the "DOAs") entered by PDC, as operator, with each of the Debtors. The DOAs were executed by PDC for itself as operator and on behalf of the Debtors in its capacity as their managing general partner. The Accounts were opened by PDC within six months of the Petition Date in anticipation of the filing of these cases.

6. There are no significant non-insider creditors in these cases.[3] RR 2006 has two creditors, PDC its managing general partner and its affiliate RR 2007. PDC asserts claims for advanced costs due under the DOA, for well plugging costs and for certain funds advanced to that entity. RR 2007's sole creditor is PDC, its managing general partner, which has asserted a claim for well plugging costs.[4] As the Debtors' managing general partner PDC is jointly liable for the plugging liabilities.

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[2] See RR 2006 Schedule A/B [Doc. No. 42] identifying assets of only well bore interests valued at $304,000 and a checking account balance of $921.00; and RR 2007 Schedule A/B [Doc. No. 20] identifying assets of only well bore interests valued at $458,000 and a checking account balance of $71,135. Despite the Debtors' assertion that the Litigation Claims the subject of the "Denver Action," described below, constitute derivative claims, these claims are not identified on their respective Schedules. See, *Suggestion of Bankruptcy* filed in the Denver Action [Doc. No. 45] by the Debtors on October 31, 2018.

[3] The IRS has filed claims in both cases in estimated sum of $100.00. In RR 2006, two claims were filed by limited partners based on their investment in that partnership.

[4] See RR 2006 Schedules D, E and F, identifying PDC as holding an unliquidated and contingent unsecured claim of $1,656.000 for plugging liabilities, an unsecured claim of $1,261,662 for operating losses, and an unsecured claim of $105,000 for an advance [Doc. No. 42]; and RR 2007 Schedules D, E

7. Together, the Debtors have an aggregate of 3,700 limited partners – holders of the Debtors' partnership units (collectively, the "Limited Partners"). Objectors are five of these Limited Partners and are the only parties in interest who have appeared in these cases.[5] In conjunction with the filing of the cases the Debtors sought, and obtained approval, to limit notice of its filings in this case.[6] Under its terms, without an interested party's affirmative appearance, the notice limitation effectively eliminated notice to the Limited Partners in these cases except for disclosure and plan confirmation purposes.[7]

8. Each Objector is a limited partner in one or both of the Debtors and is a named plaintiff in a putative class action that was commenced on December 20, 2017, styled *Dufresne et al. v. PDC, Inc. et al.*, Case No. 17-cv-03079, in the United States District Court for Colorado (the "Denver Action") which action remains pending. In the Denver Action, Objectors allege that PDC has injured each of the Debtors' limited partners through breach of the Debtors' respective limited

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and F identifying PDC as holding an unliquidated and contingent unsecured claim of $1,879,000 for plugging liabilities [Doc. No. 20]; see also, PDC proof of claim filed on March 5, 2019, Claim No. 4, asserting an unsecured claim against RR 2006 in the aggregate amount of $1,366,662; and see also, PDC proof of claim filed on March 5, 2019, in RR 2007 case, Claim No. 2, asserting an unsecured claim against for estimated P& A liability in the amount set forth in RR 2007's Schedules. Of note, PDC acknowledges that as of the Petition Date RR 2007 "was current on payment of its costs and expenses" under the DOA.

[5] While several limited partners have filed proofs of claim such claims represent the face value of their investment in acquiring their respective partnership units and constitute equity interests. See 11 U.S.C. § 101(16)(B).

[6] See *Motion for Order Pursuant to Sections 102 and 105(a) of title 11 of the Bankruptcy Code and Bankruptcy Rules 2002(m) and 9007 Establishing Notice Procedures* [Doc. No. 6] (the "Service Motions"). These motions limited notice of virtually all "Filings" in these cases, including, without limitation, notices of asset sales and settlements under Rule 9019, and were filed under the pretense that the cost of serving the 3,700 Limited Partners would impose an undue and expensive administrative and economic burden on the Debtors' estates. Yet, under the Debtors' settlement with PDC of the Litigation Claims proposed in the Debtors' joint Chapter 11 plan PDC committed to funding up to $3 Million for the estates' administrative expenses.

[7] See Service Motions, ¶ 11, and Order on *Motion for Order Pursuant to Sections 102 and 105(a) of title 11 of the Bankruptcy Code and Bankruptcy Rules 2002(m) and 9007 Establishing Notice Procedures* [Doc. No. 30].

partnership agreements and its fiduciary duty to the partners and has breached its fiduciary duty to the Partnerships through abuse of control, gross mismanagement, waste of the Partnerships' assets and unjust enrichment (the "Litigation Claims"). Importantly, the PDC Claims involve *both* derivative claims on behalf of the Debtor Partnerships and separately plead class claims brought directly on behalf of the Objectors and all limited partners in the Debtor Partnerships. Specifically, Objectors allege that PDC breached its fiduciary duty by failing to develop the spacing units owned by the Partnerships and by profiting from its drilling of horizontal wells that pass through those spacing units.

9. Since the commencement of these cases the Debtors have quickly moved to implement PDC's plan to acquire the Well Interests and control and settle the Litigation Claims. First, requesting and obtaining, on an expedited basis, approval of an auction process for sale of the Well Interests,[8] and second, filing of their *Disclosure Statement for Debtors' Joint Chapter 11 Plan* [Doc. NO. 58] and *Debtors' Joint Chapter 11 Plan* [Doc. No. 57] (the "Plan") on November 21, 2018, three weeks after filing these cases. The clear goal of the Plan is implementation of a settlement, and affording PDC a release, of the Litigation Claims the subject of the Denver Action.[9]

10. Following Objectors filing of their motion to dismiss these cases on December 3, 2018, the parties agreed to mediate their disputes and, pending same, abate all pending matters.

11. Immediately prior to the mediation, on February 22, 2019, the Debtors filed the Motion, seeking (i) a short-term extension of exclusivity deadlines of Section 1121(d) until the Court's consideration of the Motion, and (ii) a further extension of those deadlines.

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[8] See, *Emergency Application Pursuant to Sections 327(a) and 328(a) of title 11 of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure Authorizing the Employment of Oil & Gas Asset Clearinghouse, LLC as Auctioneer for the Debtors* [Doc. No. 45].

[9] See Plan, pages 11-12, 20-21.

12. The mediation, held on February 27th and February 28th, was unsuccessful.

II. OBJECTION TO MOTION

13. The Motion should be denied. With the Debtors, PDC and the Objectors – the only parties appearing in this case – unable to make progress through mediation, the best way and most expeditious way forward, other than dismissal of the case, would be to set the stage for the filing of competing plans.

14. Section 1121(d) of the Bankruptcy Code provides that the Court may reduce or increase the l20-day or 180-day exclusive periods for a debtor to file and solicit acceptances of its reorganization/liquidation plan if "cause" exists. 11 U.S.C. § 1l21(d). Requests to extend or reduce a period of exclusivity should "be granted neither routinely nor cavalierly." *In re McLean Indus., Inc.*, 87 B.R. 830,834 (Bankr. S.D.N.Y. 1987); *In re Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992) ("This court will not routinely extend the exclusivity period absent a showing of 'cause' when creditors object to such requests for extensions."); *In re Pine Run Trust, Inc.*, 67 B.R. 432, 434 (Bankr. E.D. Pa. 1986) ("Furthermore, both the language and purpose of this statutory provision require that an extension not be granted routinely.").

15. Thus, the burden is on the Debtors to demonstrate the existence of good "cause" warranting an extension of its exclusivity periods. *In re Mirant Corp.*, 2004 U.S. Dist. LEXIS 19796 at *7-8 (N.D. Tex. Sept. 30, 2004); *In re Newark Airport Hotel LP*, 156 B.R. 444, 451 (Bankr. D.N.J.), *aff'd*, *FGH Realty Credit Corp. v. New Airport/Hotel LP*, 155 B.R. 93 (D.N.J. 1993); *In re Hoffinger Industries, Inc.,* 292 B.R. 639, 643 (8th Cir. BAP 2003) ("the legislative history reveals the intent to facilitate the rehabilitation of debtors in Chapter 11, and therefore the party requesting an extension of the exclusivity period has the burden of establishing good cause." is a primary purpose").

16. The Debtor has failed to meet this burden.

17. Although the applicable statute requires "cause" to be shown for an extension of any exclusivity period (11 U.S.C. § 1121(d)), a "cause" standard alone is not very instructive. While not defined, bankruptcy courts have discretion to extend exclusivity to promote the orderly, consensual, and successful reorganization of a debtor's affairs. *See In re Timbers of Inwood Forest Assocs., Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987) (noting that the meaning of "cause" under section 1121 should be viewed in context of the Bankruptcy Code's goal of fostering reorganization); *Mirant Corp.*, 2004 U.S. Dist. LEXIS 19796 at *8 (noting that an extension of exclusivity is typically granted where "the debtor has shown substantial progress toward reorganization"); *In re Washington-St. Tammany Electric Cooperative, Inc.*, 97 B.R. 852, 854-55 (E.D. La. 1989) (noting that extensions require "likelihood of agreement on a consensual plan … absence of alternative plans… and a showing that the debtor is not using exclusivity to force on its creditors its view of an appropriate plan."); *In re Henry Mayo Newhall Memorial Hosp.*, 282 B.R. 444, 453 (9th Cir. BAP 2002) (the "transcendant consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution.").[10]

18. Courts often use the following factors in determining whether "cause" exists to extend a debtor's exclusive plan filing period:

> (i) the size and complexity of the case; (ii) the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (iii) whether

[10] In *Newhall Memorial Hosp*., the 9th Cir. B.A.P stated that it generally agreed with the notion that termination of exclusivity often facilitates a consensual reorganization, stating:

> Professors Epstein, Nickles, and White have cogently debunked the proposition that complex cases require extended exclusivity, negotiations are facilitated by extended exclusivity, and pending litigation warrants extended exclusivity. [Citation omitted]... There is truth in their observation, backed by examples from prominent cases, that a likely consequence of the denial of an extension of exclusivity is "not that creditor plans will be proposed and approved, but that the threat of such plans will cause the debtor to come forward more quickly than he might otherwise." [Citation omitted.]

282 B.R at 453.

> the debtor has made progress in negotiations with its creditors; (iv) the existence of good faith progress toward reorganization; (v) whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands; (vi) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (vii) the fact that the debtor is paying its bills as they become due; (viii) the amount of time which has elapsed in the case; and/or (ix) whether an unresolved contingency exists.

In re Express One Int'l, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re Adelphia Communs. Corp*., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006).

19. Application of these factors heavily weigh in denying Debtors' the requested relief:

(i) The case is neither large or complex. Besides the Debtors there are only two interested camps – PDC and Objectors. All claims are held by insiders – PDC and RR 2007, and the Debtors assets, per the Debtors, have a value of less than $1 Million. The sole basis for the assertion that this is a "complex" case is the 3700 Limited Partners, all but five of whom have not made appearances, and the Debtors have eliminated notice as to all others save and except for plan purposes.

(ii) The extension is not based on the Debtors contention that they need more time to negotiate a plan and prepare adequate information, but rather on the assumption that the mediation would have resulted in necessary modifications to the Plan and Disclosure Statement – documents which were clearly prepared prior to the Petition Date. Thus, no further time is required.

(iii) The Debtors have made no progress in negotiations with the Objectors.

(iv) The Debtors have not made good faith progress toward reorganization. In fact, there is no rehabilitation contemplated here, only the sale of their assets and settlement of the Litigation Claims against PDC. Further, Debtors have rebuffed Objectors demand to prosecute the estate's derivative claims against PDC.

(v) Debtors are seeking to extend exclusivity for the purpose of maintaining control over the Litigation Claims.

(vi) Debtors have filed the Plan.

(vii) Debtors are not paying the monthly operating costs of their respective Well Interests.

(viii) These cases have spanned about five months.

(ix) No unresolved contingencies exist.

20. Thus, based on these factors' application the Debtors cannot demonstrate that "cause" exists for an extension of its solicitation exclusivity period. Importantly, the Debtors have not made good faith progress toward confirming a consensual plan nor did the mediation result in any developments that impact the Plan currently pending – the underlying basis for the extension request. The Debtors participated in the mediation with PDC and the Objectors in February in an attempt to reach a resolution; the mediation was unsuccessful.[11]

21. The Plan is a non-starter. Filed just three weeks after the commencement of these cases the Plan amounts to nothing more than a litigation tactic by PDC to control and cheaply settle the Litigation Claims for its sole benefit at the expense of the Limited Partners. The Plan was filed as a result of "negotiations" between PDC and Nicolaou in lock step with earlier chapter 11 cases of affiliates filed in this district.

22. Cause has not been established to warrant an extension of the exclusivity period. The Debtors have failed to promulgate a plan that presents a fair and equitable settlement of the estates' interests in the Litigation Claims or a process that maximizes the value of the Debtors' Well Interests. The Debtors have made no progress toward reaching a consensual resolution in these cases with its primary non-insider interested parties. Thus, an extension of the exclusive periods would be counterproductive and merely delay resolution of the parties' dispute.

23. Importantly, subject to the Court's determination on Objectors' pending request for dismissal, this Court's denial of the Debtors' Motion will not end its chances to have a disclosure statement approved or to solicit and confirm a plan. *See, e.g.*, *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1005 (Bankr. N.D. Ind. 1990) ("Denying such a motion only affords creditors its right to file the plan; there is no negative effect upon the Debtor's co-existing right to file its plan."); *In*

[11] See, *Joint Notice of Mediation Results* [Doc. No. 124].

re Grossinger's Assocs., 116 B.R. 34,36 (Bankr. S.D.N.Y. 1990) ("[L]oss of plan exclusivity does not mean the debtor is foreclosed from promulgating a meaningful plan of reorganization; only that the right to propose a Chapter 11plan will not be exclusive with the debtor").

24. Rather, denying the Motion at this time will level the playing field and permit Objectors to file a competing plan. *See, e.g., Curry Corp.*, 148 B.R. at 756 (denying debtor's motion to extend exclusive periods, noting that extensions "should not be employed as a tactical device to put pressure on creditors to yield to a plan that they might consider unsatisfactory"); *In New Meatco Provisions, LLC*, 2014 Bankr. LEXIS 914 at *9-10 (Bankr. C.D. Cal., March 10, 2014) (denying request to extend exclusivity finding "it was time 'the playing field [is] leveled so that all the players, including the debtor, [have] an even chance in proposing a . . . plan which might be acceptable to the creditors in the case.'"). It was the levelling of the playing field by Judge Hale's termination of the debtors' exclusivity in the affiliate cases, *In re Eastern 1996D Limited Partnership, et al*., Case No. 13-34773-hdh-11 (jointly administered), that ultimately lead to a mediated settlement and a jointly filed reorganization plan.

25. Objectors stand ready, willing and able to file their own plan and disclosure statement in these cases in the event of, and promptly upon, the Court either allowing the exclusive periods to expire or upon an affirmative termination.

26. The Motion, similar to the Plan itself, is merely intended as a litigation tactic. This alone is grounds for denying it.

27. The Debtors undoubtedly appreciate that were the Motion denied, absent prompt and meaningful progress in reaching a consensual resolution, Objectors could and would quickly and efficiently propose and confirm their own plan. The Committee's plan likely would vary from the Debtors' in certain key but limited areas, including, without limitation, preservation and

prosecution of the estate's derivative claims against PDC, and other potential claims under Chapter 5 of the Bankruptcy Code and potential claims arising under applicable state law.

28. The Objectors believe that allowing the Debtors' exclusivity periods to expire and affording them to file a plan is the most constructive way to facilitate meaningful negotiations resulting in a resolution among the parties or, otherwise confirmation of a plan acceptable to the Debtors' Limited Partners. As it's the Limited Partners' votes that will ultimately determine the acceptance or rejection of a plan, Objectors submit that having competing plans will provide them a choice. Competing plans would be more efficient, economical and aid the administration of these cases.

29. Based on the foregoing, the Objectors request that the Court deny Debtors' request to extend the exclusivity periods of Section 1121(d) and that the Court allow such periods to expire.

III. PRAYER

WHEREFORE, Objectors respectfully request that the Court deny the Motion and grant them for such other and further relief, at law or in equity, to which they are justly entitled.

DATED this 15th day of March 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 15, 2019, a true and correct copy of the foregoing paper was served by electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case.

/s/ Mark A. Weisbart
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