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COUNSEL TO THE DEBTORS

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

In re:	§	Chapter 11
	§	
ROCKIES REGION 2006 LIMITED PARTNERSHIP and ROCKIES REGION 2007 LIMITED PARTNERSHIP,[1]	§	Case No. 18-33513-sgj-11
	§	
	§	(Jointly Administered)
	§	
Debtors.	§	

REPLY TO OBJECTION TO DEBTORS' EMERGENCY MOTION TO (i) EXCLUDE EXPERT REPORT AND TESTIMONY OF EDWIN C. MORITZ, (ii) EXCLUDE PORTIONS OF EXPERT REPORT AND TESTIMONY OF GREGORY E. SCHEIG, AND (iii) LIMIT SCOPE OF EVIDENCE FOR HEARING ON MOTION TO DISMISS

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for their Reply to the Objection [Docket No. 159] filed by the LP Plaintiffs[2] to *Debtors' Emergency Motion to (i) Exclude Expert Report and Testimony of Edwin C. Mortiz, (ii) Exclude Portions of*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

[2] The LP Plaintiffs are (i) Robert R. Dufresne, as Trustee of the Dufresne Family Trust; (ii) Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; (iii) Ronald Glickman, as Trustee of the Glickman Family Trust established August 29,1994; (iv) Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and (v) William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991.

Expert Report and Testimony of Gregory E. Scheig, and (iii) Limit Scope of Evidence for Hearing on Motion to Dismiss [Docket No. 149] (the "Motion"),[3] respectfully represent:

1. The LP Plaintiffs have the burden to prove the relevance of the Moritz Report and any related testimony, and they have failed to do so.

2. The Objection sets forth two potential bases for relevance (i) "the calculations [contained in the Moritz Report] are certainly relevant to the LP Plaintiffs' contention that Ms. Nicolaou is not a disinterested party and should not be approved as the Responsible Party to work on the Partnerships' behalf," Objection ¶¶ 21-23; and (ii) "Mr. Moritz's damages calculations are absolutely relevant to the Court's determination of bad faith under the 'totality of circumstances,' which specifically provides that the *motives* that lead the debtor to file bankruptcy [are relevant]," Objection ¶¶ 24-27 (emphasis in original). However, the Moritz Report does not have any tendency to make the existence of (i) Ms. Nicolaou's disinterestedness, or (ii) the motives behind the Debtors' bankruptcy filings, more or less probable than it would be without the evidence. *See* FED. R. EVID. 401.

3. First, whether Ms. Nicolaou is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code has nothing to do with the alleged damages associated with the Debtors' derivative claims. The LP Plaintiffs attempt to call into question Ms. Nicolaou's disinterestedness by asking "[h]ow did Ms. Nicoalou determine that the 'PDC Transaction' was fair to the Debtors (and the LP Plaintiffs)," and positing that Ms. Nicoalou's analysis "falls far short of addressing the merits of the claims raised in the Civil Action." Objection ¶ 22. However, such postulations go to the reasonableness of any settlement of estate claims asserted in the Colorado Action, which is not at issue in the Harney Retention (nor the Motion to Dismiss).

[3] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

4. The fact that Ms. Nicolaou engaged Graves to value the Debtors' wellbore interests as part of her pre-petition analysis does not make the Moritz Report—a calculation of alleged damages for the derivative claims asserted in the Colorado Action—relevant to her retention. Objection ¶ 23. Unlike the Moritz Report, which offers opinions regarding the alleged derivative damages suffered by the Debtors, the preliminary Graves report examined the reserves of the Debtors' undisputed oil and gas assets and concluded they have negative value. Any attempt to relate the two analyses is comparing apples to oranges. And again, the extent of the pre-petition analysis Ms. Nicolaou performed pertaining to the estate claims in the Colorado Action does not relate to her disinterestedness but rather to the reasonableness of any settlement of those claims, which is not presently before the Court.

5. Second, the LP Plaintiffs conflate *motive* and *value* as it relates to their bad faith filing allegation. The LP Plaintiffs' position can be summed up as follows: because the estate claims asserted in the Colorado Action are so valuable, the Debtors and Ms. Nicolaou must be under PDC's thumb if they are willing to settle them as part of this bankruptcy. This flawed reasoning ultimately results in the LP Plaintiffs completely missing the mark on what is relevant to a bad faith filing.

6. The factors to be considered on a motion to dismiss for bad faith filing are well-settled and do not include the alleged value of a disputed and unliquidated claim owned by the debtor. Moreover, the cases cited by the LP Plaintiffs in the Objection do not address the relevance of the value of litigation claims in connection with a bad faith bankruptcy analysis, and no specific findings were made in respect of such value in determining whether cases should be dismissed as a litigation tactic. At the end of the day, it does not matter whether the estate claims asserted in the Colorado Action are worth \$100 or \$100 million. The purported value of disputed

and unliquidated derivative claims does not impact the determination of whether Ms. Nicolaou's motive in filing these chapter 11 cases was an attempt to "wrest control" of the Colorado Action from the LP Plaintiffs. Because the opinions in the Moritz Report and any related testimony do not help the Court better understand the underlying motive for filing these chapter 11 cases, it is not relevant to the Motion to Dismiss.

7. The hearings on the Motion to Dismiss and the Harney Retention are simply not about the merits of the claims asserted in the Colorado Action, nor whether the proposed settlement falls within the range of reasonableness as required by Bankruptcy Rule 9019. If and when the proposed settlement is up for approval, the alleged damages associated with the derivative claims will be relevant. As much as the LP Plaintiffs would like to tout a big, flashy damages model at this early stage in the case in an attempt to convince the Court that something nefarious is afoot, this is neither the time nor the place for an evaluation of a proposed settlement.

8. Because the Moritz Report does not meet the standard for relevance under Federal Rule of Evidence 401, it, and all related testimony, should be excluded from the hearings on the Motion to Dismiss and the Harney Retention.

WHEREFORE, the Debtors respectfully request that this Court enter an order (i) granting the Motion; (ii) overruling the Objection; and (iii) granting the Debtors such other and further relief as may be just and proper.

Respectfully submitted this 15th day of May, 2019.

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COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of May, 2019, she caused a true and correct copy of the foregoing document to be served on the parties appearing on the Limited Service List maintained in these cases via first class United States mail, postage prepaid and, where possible, via electronic mail.

/s/ Lydia R. Webb
Lydia R. Webb