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

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

DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DISCLOSURE STATEMENT
[Related Docket Nos. 239 and 241]

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership, the above-captioned debtors and debtors in possession (together, the "Debtors"), for their reply ("Reply") to (i) the objection of the Securities and Exchange Commission (the "SEC") [Docket No. 239] (the "SEC Objection"), and (ii) the objection of the Office of the United States Trustee (the "US Trustee" and together with the SEC, the "Objectors") [Docket No. 241] (the "UST Objection," and together with the SEC Objection, the "Objections"), each relating to the Debtors' disclosure statement [Docket No. 227] (the "Disclosure Statement") for the Debtors'

[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).

first amended chapter 11 plan of reorganization [Docket No. 226] (the "Plan"),[2] respectfully represent:

PRELIMINARY STATEMENT

1. Like moths drawn to the flame, the SEC and the US Trustee cannot help but object to release and exculpation provisions in a chapter 11 plan, irrespective of the underlying terms of the plan or agreement of the parties. The Debtors understand the role of the SEC and the US Trustee in policing the integrity of the bankruptcy process. However, the Objections are misplaced. As discussed more fully below, the releases and exculpations contained in the Plan are appropriate under the circumstances. Not only are they within the bounds of Fifth Circuit law, but they are also being implemented in exchange for the payment of over $11 million to the Debtors' estates – every dollar of which will go directly into the pockets of the Debtors' limited partners (subject to a portion going to counsel for the LP Plaintiffs, depending on how the ultimate waterfall plays out).

2. The Plan and Disclosure Statement are the culmination of over seven months of extensive, heated and hard-fought litigation, motion practice, discovery, mediation and negotiation that ultimately resulted in a global settlement between the Debtors and their two primary constituencies in these chapter 11 cases: PDC Energy, Inc. ("PDC") and the LP Plaintiffs.[3] The essential feature of the global settlement is PDC's payment of $11,130,000 for a general release of any causes of action of the Debtors' limited partners may have against the Released Parties (the "Settlement Payment"); *provided, however*, that any limited partner may

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors' Disclosure Statement or Plan, as the context requires.

[3] The LP Plaintiffs are 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.

refuse to give PDC a release by executing an "opt-out" on the Plan ballot. By executing the opt-out, a limited partner foregoes its share of the Settlement Payment. As part of this transaction, the Debtors and PDC are also releasing all potential claims and causes of action they may have against the limited partners who do not opt-out, and the Debtors are releasing PDC from all estate claims and causes of action as a *quid pro quo* for the consideration being paid by PDC (which includes both cash and assumption of liabilities for and in connection with the Debtors' assets, and the Settlement Payment).[4] The releases and exculpations contained in the Plan were the subject of arms'-length negotiation between the Debtors, PDC and the LP Plaintiffs. Without the releases and exculpations, there is no settlement, and there is no Plan. Without the Plan, there is nothing but a morass of litigation that may result in limited partners receiving nothing on account of their limited partnership interests.

3. The Objections hinge on the incorrect assumption by the SEC and the US Trustee that the release and exculpation provisions are non-consensual third-party releases because the opt-out mechanism does not equate to "consent" to the releases by each Releasing Party. Per the Objectors, the only way a release is consensual is if a party affirmatively opts-in to the release. However, the Objectors ignore black-letter law that a confirmed chapter 11 plan constitutes a contract binding on all parties, regardless of whether a party votes on the plan or otherwise acts in the chapter 11 case. The Objectors cannot carve out the releases and exculpations and require additional consent requirements for these provisions when the remainder of the Plan, assuming it is confirmed, would be binding on those same parties regardless of their actions or failures to act.

[4] The Debtors do not believe the limited partners have any direct claims or causes of action against PDC and instead, believe that any claims or causes of action against PDC are derivative and belong to the estate. *See generally*, *Debtors' Motion Pursuant to Section 541(a) of the Bankruptcy Code for Determination that Certain Claims and Causes of Action Are Property of the Estate* [Docket No. 137] (the "Determination Motion"). An order granting the Determination Motion will be entered as part of the confirmation process. The Determination Motion will be served on all limited partners as part of the solicitation package, and each limited partner will have an opportunity to object to the Determination Motion. Any objections will be taken up at confirmation.

4. Moreover, the release and exculpation provisions are not gratuitous, as third-party releases in chapter 11 plans often are. Instead, PDC is affirmatively paying substantial consideration in exchange for the releases – which consideration will flow directly to the limited partners – which is directly akin to a class action settlement rather than the types of releases of which the Objectors complain. In addition, the releases are mutual, not unilateral. Although there have been a few recent instances where courts in this District have refused to approve an opt-out release provision, those cases are readily distinguishable, and opt-out releases are and have been routinely approved both by this Court and others in the Fifth Circuit. As a result, the unique facts and circumstances of these chapter 11 cases warrant the approval of the release and exculpation provisions.

5. If, however, the release and exculpation provisions are struck from the Plan as being non-consensual (which they are not), there will potentially be two severe consequences: First, there is a high probability that without the releases and exculpations, the entire global settlement would be scuttled and the Debtors would be unable to emerge from chapter 11, as PDC has the option to terminate the settlement in the event that more than 3% of the total amount of the Debtors' outstanding non-PDC owned limited partnership units opts out of the releases. If that happens, then second, the Debtors' limited partners who would otherwise be entitled to receive a meaningful distribution under the Plan will be left with nothing but litigation. Such consequences would be nothing short of disastrous and take money out of the hands of the very people that the SEC and the US Trustee profess to be protecting – the Debtors' limited partners. Rather than maximizing value, sustaining the Objections will have the exact opposite effect and deprive the Debtors' constituents of a meaningful return.

6. As such, based on the specific facts of this case, the Objections should be overruled, and the Disclosure Statement should be approved and authorized for solicitation.

ARGUMENT

7. In their Objections, the US Trustee and the SEC assert that the Disclosure Statement should not be approved because the Plan provides for the release and exculpation of non-debtor third parties, and that such releases are not consensual and are not supported by adequate consideration as to all the Released Parties. The US Trustee also asserts that the Disclosure Statement should not be approved because the release and exculpation provisions render the Plan "unconfirmable" and requests the addition of extensive "clarifying" language related to the preservation of certain governmental claims against the Debtors.

A. The Objections Are Premature Confirmation Objections

8. Whether the releases and exculpations contained in the Plan violate section 524(e) or the Firth Circuit's *Pacific Lumber* decision is not a "now" issue that should prevent the Debtors from proceeding to a confirmation hearing; these provisions in no way make the Plan "unconfirmable on its face." If these provisions are overly broad, then parties can object to confirmation and the Debtors can either voluntarily make a change, or the Court can order those provisions struck from the Plan (or modified) without affecting the remainder of the Plan.[5] *See In re ReoStar Energy Corp.*, No. 10-47176, 2012 WL 1945801, at *3 (Bankr. N.D. Tex. May 30, 2012) ("it appears to the court that many of the issues raised by the objecting parties could be cured at confirmation. For example, the [exculpation language in the plan] may be in conflict with [*Pacific Lumber*]. The exculpation, however, can be easily eliminated or modified at confirmation or by the confirmation order to conform to Pacific Lumber"). As a result, the Objections are premature and should be passed until the confirmation hearing.

[5] Of course, were that to happen, then as stated earlier, that would likely be the death knell of the Plan.

B. The Third Party Release Is Not Prohibited by Section 524(e) of the Bankruptcy Code

9. The Objectors reflexively contend that the third-party release in section 11.4 of the Plan (the "Third Party Release") is not permitted under section 524(e) because (i) it includes the release of non-debtor parties; (ii) the Plan does not adequately describe the consideration provided by, and the identities of, each released party; and (iii) the Third Party Release is not "consensual." The Debtors respectfully submit that the opt-out mechanism is permissible, and the Third Party Release is consistent with applicable law because the Releasing Parties are receiving consideration in exchange for the releases given.

10. As an initial matter, despite *Pacific Lumber*, the Fifth Circuit has not precluded bankruptcy courts from approving a "consensual non-debtor release." *In re CJ Holding Co.*, 597 B.R. 597, 608 (Bankr. S.D. Tex. 2019); *see also In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775–76 (Bankr. N.D. Tex. 2007) ("Consensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and given for consideration do not violate section 524(e)"); *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011) (holding that "the Fifth Circuit does allow permanent injunctions so long as there is consent," and "[w]ithout an objection, [the bankruptcy court] was entitled to rely on [the creditor's] silence to infer consent at the confirmation hearing"). If a party votes in favor of a plan and receives consideration in exchange for a third-party release that is integral to the plan, that act is treated as consenting to the bankruptcy court's jurisdiction to approve the third-party release. *CJ Holding Co.*, 597 B.R. at 609 (finding consideration for third-party release where plan provided release was given "in consideration for the obligations of the debtors and the liquidating trust under this plan and the cash to be delivered in connection with this plan").

11. Here, the Plan contains consensual third-party releases – being given for consideration – which are an integral part of the Debtors' reorganization.

a. The Third Party Release Is Supported by Adequate Consideration

12. Unlike the examples cited by the Objectors, PDC is providing consideration (the Settlement Payment) *specifically* for the Third Party Release. In *Mac Churchill*, the third party seeking to be released contributed new value by pledging an asset to the debtor's secured lender, which allowed the debtor to draw down on its credit line and leave additional value in its estate for payment of general unsecured claims. *See In re Mac Churchill, Inc.*, No. 18-41988-mxm-11 (Bankr. N.D. Tex. April 23, 2019) [Docket No. 143 at pp. 35-36]. Similarly, in *PHI*, the "consideration" the debtors' argued supported the third-party release was general in nature. *See In re PHI, Inc.*, No. 19-30923-hdh-11 (Bankr. N.D. Tex. July 26, 2019) [Docket No. 853 at ¶ 54]. Here, far from simply "residual value" for constituents or concepts of intangible general consideration, PDC is paying $11,130,000 of cold hard cash in exchange for the Third Party Release, and close to every dollar is expected to flow to the limited partners.[6] *See* Plan ¶ 6.2(b) ("In consideration for the release set forth in section 11.4 of the Plan and other releases set forth in this Plan, on the Effective Date, PDC shall pay the [Settlement Payment]").

13. In addition, the Third Party Release is supported by adequate consideration because the release is not a one-way street. Rather, the Third Party Release is reciprocal in that every party approving the Third Party Release is receiving a release from the Debtors and PDC. *See* Plan ¶¶ 6.2(k), 11.3 and 11.4. The terms of the parties' global settlement is set forth in section 6.2 of the Plan. Section 6.2(k) provides as follows:

> Mutual Releases. The Debtors, PDC, the LP Plaintiffs, all limited partners in the Debtors who do not timely and validly opt-out of the releases, the Responsible Party, and each of their respective

[6] As stated in note 4, *supra,* and in the Determination Motion, the Debtors submit that the limited partners do not hold any direct claims against PDC. Because any and all potential claims held by limited partners would be derivative, there are arguably no third-party claims being released pursuant to section 11.4 of the Plan. However, to the extent a limited partner opts out and foregoes her portion of the Settlement Payment, she will retain whatever non-existent claims she thinks she may have against PDC.

> present and former members, managers, officers, directors, employees, partners, affiliates, funds, advisors, attorneys, auditors and agents shall release each other from any and all liability from the beginning of time through the Effective Date, arising out of, relating to, or connected with the subject matter of the Colorado Action and the Chapter 11 Cases.

Plan ¶ 6.2(k). This mutual release provision is implemented by sections 11.3 and 11.4 of the Plan. Section 11.3 relates to releases by the Debtors and PDC, and provides as follows:

> On the Effective Date, the Debtors shall be deemed to have released and shall be permanently enjoined from any prosecution or attempted prosecution of any and all claims, obligations, suits, judgments, damages, rights, remedies, causes of action and liabilities of any nature, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, matured or unmatured, contingent or non-contingent, existing or hereafter arising, in law, equity or otherwise, including any claims or causes of action under Chapter 5 of the Bankruptcy Code or other applicable law which they have or may have against any of their respective members, managers, officers, directors, employees, general partners, ***limited partners who have not opted out of the release in section 11.4 of the Plan,*** affiliates, funds, advisors, attorneys or agents, the Responsible Party, PDC, the LP Plaintiffs and each of their respective members, managers, officers, directors, employees, partners, affiliates, funds, advisors, attorneys, agents and representatives and their respective propert***y***.
>
> On the Effective Date, PDC shall release and be permanently enjoined from any prosecution or attempted prosecution of any and all claims, obligations, suits, judgments, damages, rights, remedies, causes of action and liabilities of any nature, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, matured or unmatured, contingent or non-contingent, existing or hereafter arising, at law, in equity or otherwise, including any claims or causes of action under the Bankruptcy Code or other applicable law which it has or may have against the Responsible Party, the Debtors, ***the Debtors' limited partners who have not opted out of the release in section 11.4 of the Plan***, the LP Plaintiffs and each of their respective members, managers, officers, directors, employees, partners, affiliates, funds, advisors, attorneys, agents and representatives and their respective property.

Plan ¶ 11.3 (emphasis added). Section 11.4 of the Plan is the Third Party Release, which, as discussed extensively, is a release of the Released Parties (the Debtors, PDC, the Responsibly Party and the LP Plaintiffs and their principals and professionals) by all parties entitled to receive a distribution under the Plan who do not opt out (the Releasing Parties).[7]

14. The reciprocal releases serve as mutual consideration—this is true even with respect to parties releasing claims of minimal value. The *Cobalt* case is particularly instructive on this point. In *Cobalt*, the SEC objected to the debtors' equity holders granting third-party releases on the same grounds of insufficient consideration and questioned the value of the releases the equity holders received in exchange for releasing their potential claims. *In re Cobalt Int'l Energy, Inc*., No. 17-36709 (MI) (Bankr. S.D. Tex.), Apr. 4, 2018 Hr'g Tr. 209 ("And whether or not the Debtors are giving a release to equity holders, whether or not that's material consideration, I don't think that that's worth the release they're giving back").[8] Despite multiple opportunities, however, the SEC did not present evidence of any bona fide claims shareholders were releasing. *Id.* at 244 ("The evidence before me is that the public shareholders have no claims that they can assert. I have allowed every party to introduce every piece of evidence that they wanted to in that regard. No one chose to introduce any evidence that the public shareholders had any bonafide [sic] claims"). Considering this complete absence of evidence, Judge Isgur found that a "proverbial peppercorn-for-peppercorn" mutual exchange of releases of unknown claims constituted adequate consideration to support the mutual releases: "I simply find that this is, in effect, the proverbial peppercorn-for-peppercorn and that is adequate consideration for the release, given its mutuality." In questioning the SEC's counsel on the issue of adequacy

[7] The foregoing description is meant as a summary only. Parties should consult section 11.4 of the Plan, and to the extent there is a conflict between the foregoing summary and the Plan, the Plan controls.

[8] Excerpts from the *Cobalt* confirmation hearing are attached hereto as **Exhibit "A"**.

of the consideration, the *Cobalt* court highlighted the precise value of a mutual release: "Let's assume that no one needs a release because of anything they've done wrong; we need the release because of stopping the fight and just all we're going to do is save both sides legal fees. Why isn't that equivalent?" *Id.* at 210. The answer, as the court recognized in its ruling, is that it is equivalent. *Id.* at 244.

15. The sufficiency of mutual releases as consideration has been recognized by the Texas Supreme Court, as well as the Fifth Circuit and its lower courts. *Texas Gas Utilities Co. v. Barrett*, 460 S.W.2d 409, 414 (Tex. 1970) ("The mutual release of the rights of the parties is regarded as a sufficient consideration for the agreement"); *Jaff v. Cal-Maine Foods, Inc.*, 774 F.2d 1314, 1317 (5th Cir. 1985) ("Each parties' promised forebearance from asserting any claim against the other constituted sufficient consideration to support the release"); *In re iHeartMedia, Inc.*, No. 18-31274 (MI) (Bankr. S.D. Tex. Jan. 22, 2019) (approving third-party releases over SEC objection that they were unsupported by consideration); *In re Cobalt In'l Energy, Inc.*, No. 17-36709 (MI) (Bankr. S.D. Tex. Apr. 5, 2018) (same). The ultimate effect of the Third Party Release is to "end the fight"—all parties settle their respective claims as part of the chapter 11 cases, allowing all parties to focus on one common goal with the knowledge that the recoveries obtained through the chapter 11 cases will settle all potential causes of action relating to the Debtors, the Plan or these chapter 11 cases. The Third Party Release therefore easily meets the standards for third-party releases in the Fifth Circuit because it is consensual, sufficiently specific, supported by consideration (in the form of the Settlement Payment and the mutual releases), and integral to the Plan. Accordingly, the Third Party Release should be approved.

b. The Third Party Release Is Consensual

16. A party is only bound by the Third Party Release if such party either (1) abstains from voting or (2) does not opt out of the voluntary release by checking the "opt-out" box on the

Ballot. The "opt-out" ballot mechanism "is in line with what [this Court] has seen used in other cases in this jurisdiction." *See In re 4 West Holdings, Inc.*, Case No. 18-30777-hdh-11 (Bankr. N.D. Tex. June 6, 2018), Hr'g Tr. at 5; *see also In re Erickson Inc.*, No. 16-34393-hdh-11, 2017 WL 1091877, at *7 (Bankr. N.D. Tex. Mar. 22, 2017) (finding third-party releases consensual "because they were conspicuously disclosed in boldface type in the Plan, the Disclosure Statement, and on the Ballots, which provided parties in interest with sufficient notice of the releases, and holders of Claims or Interests entitled to vote on the Plan were given the option to opt-out of the Releases"); *In re CHC Group Ltd.*, No. 16-31854-bjh-11 (Bankr. N.D. Tex. Mar. 3, 2017), Confirmation Order at Docket No. 1794, ¶ UU (confirming the Debtors' plan and approving the opt-out mechanism to establish consensual releases).

17. The Objectors assert that parties who abstain from voting cannot be bound by the Third Party Release because the requisite consent to acceptance of a contract will be lacking. However, this proposition ignores black letter law that a plan constitutes a contract and binds parties, regardless of whether they submitted a ballot or otherwise participated in the chapter 11 case. *See, e.g., In re U.S. Brass Corp.*, 301 F.3d 296, 307 (5th Cir. 2002) (recognizing that after confirmation, the plan essentially functions as a contract between the debtor and the other entities affected by the plan); *U.S. v. Ramirez,* 291 B.R. 386, 392 (N.D. Tex. 2002) (stating that a "confirmed Chapter 11 plan constitute[s] a binding contract"). Indeed, the SEC recently raised this exact same objection before Judge Jones in the *Westmoreland Coal* case, and Judge Jones made the state of the law clear to the SEC on the record:

> **The Court**: So let me ask you this. If your view of the world were correct, so Debtor files a plan. Debtor sends it out. Creditor takes no action. Plan gets confirmed. Plan is binding on that creditor, right?
>
> **Counsel to SEC**: Yes, that's correct, your Honor.
>
> **The Court**: And a plan is a contract, correct?

> [. . .]
>
> **Counsel to SEC**: Actually I might disagree with you there.
>
> **The Court**: I'll tell you that the Texas Supreme Court as well as the Fifth Circuit disagrees with you. The Plan is a contract. You can take a plan and go to State Court and sue for breach of contract if you don't get what you want. That's just unquestioned. So if you assume that to be true, how does your argument [against the opt-out mechanism] hold any water?
>
> **Counsel to the SEC**: I believe, Your Honor, that actually confirmation of a plan results as – through operation of law as opposed to contractual agreement between two parties.
>
> **The Court**: So you believe that when the Texas Supreme Court says that you can go to State Court and sue for breach of contract on a confirmed plan, that they're wrong?
>
> **Counsel to the SEC**: No, I'm not saying that.
>
> **The Court**: Ok, Fair enough. Thank you.
>
> **Counsel to SEC**: Am I dead in the water here? Should I continue?
>
> **The Court**: You're dead. You're done. Thank you ma'am. I appreciate the argument. It's just not one that – we've been through this argument for four years now. And I have walked through all of the Fifth Circuit [precedent]. You just don't get there. I agree that some courts have said to the contrary. I will respectfully disagree. It just doesn't work. I appreciate it. It's not practical and it's also not required.

In re Westmoreland Coal Co., No. 18-35672 (Bankr. S.D. Tex. Dec. 20, 2018) [Docket No. 868, Hr'g Tr. at 104:22-106:7] (excerpt attached hereto as **Exhibit "B"**).

18. In fact, the opt-out provision in the Plan is more akin to a class action settlement, wherein all members of a class are deemed to consent to the settlement unless they affirmatively opt out. Granted, here, no class was certified in the Colorado Action. However, bankruptcy is "collective proceeding" designed to centralize disputes, and maximize distributions to

constituents. *Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1203 (9th Cir. 2005) ("Bankruptcy law accomplishes equitable distribution through a distinctive form of collective proceeding. This is a unique contribution of the Bankruptcy Code that makes bankruptcy different from a collection of actions by individual creditors"); *In re Am. Res. Corp.*, 840 F.2d 487, 489 (7th Cir. 1988) ("The principal function of bankruptcy law is to determine and implement in a single collective proceeding the entitlements of all concerned") (citing, *inter alia*, *Butner v. United States*, 440 U.S. 48 (1979)); *In re Poage*, 92 BR 659, 662 (Bankr. N.D. Tex. 1988) ("Bankruptcy is basically a procedural forum designed to provide a collective proceeding for the sorting out of nonbankrutpcy entitlements") (quoting *In re McClain Airlines, Inc.*, 80 B.R. 175, 179 (Bankr. D. Ariz. 1987)).

19. This is consistent with the goals of, and policy considerations behind, opt-out class action settlements. *See Reed v. Gen. Motors Corp.,* 703 F.2d 170, 172 (5th Cir. 1983) (recognizing that class litigation aids the courts by its coagulation of numerous claims and that opt-out settlements reduce the burdens placed on the judicial system because class members are bound by the settlement); *In re Painewebber Ltd. Partnerships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998) (recognizing that opt-out procedures foster the strong judicial policy of settlements, particularly in the class action context; "[o]pt-out deadlines ensure that parties to a class action can rely on the membership of a class becoming fixed by a specified date and that such members will be bound by the resulting outcome of the legal proceedings. In this manner, these procedures conclusively define, with reasonable certainty, two requisite factors for settlement: the scope of the class and the amount of the claims"). The public policy in favor of settlements is so strong that it favors mandatory class actions (with no opt-outs) as opposed to opt-in classes. *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010), as modified (June 14, 2010), judgment entered (June 18, 2010), enforcement denied, 7:03-CV-102-D, 2011 WL 2413318 (N.D. Tex.

June 15, 2011) ("Moreover, the public interest in settlement is best served when a settlement binds all parties without allowing for individual opt outs"); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985) (holding that opt-out procedures under state law adequately protected class members and rejecting argument that opt-in procedure was required to satisfy due process clause of the Fourteenth Amendment). Because the same policies pervade both kinds of proceedings, the same "opt-out" policy favored in class actions should be applicable here.

20. Moreover, one could argue that the Debtors' limited partners have more rights in this chapter 11 proceeding than they would without this case. That is because not only do they have an opportunity to object to the Plan and an opportunity to opt out of the releases, but they also have an opportunity vote on the Plan (which, could result in the Plan not being confirmed at all). In a class action, class members do not get to "vote" on anything. They can object, or opt out, but that's it.

21. Thus, the third-party releases are consensual and do not implicate section 524(e) of the Bankruptcy Code. The Objections should be overruled.[9]

[9] In its objection, the SEC cites to *Hernandez v. Larry Miller Roofing, Inc.*, 628 F. App'x 281, 287-88 (5th Cir. 2016), for the proposition that the release language in Article IX.B of the Plan is not specific enough to provide for the release of the Released Parties because they are not mentioned by name. SEC Objection, ¶ 17. In *Hernandez*, the relevant portion of the plan provided simply that "Debtor, Reorganized Debtor, the officers and directors of the Debtor and the shareholders shall be discharged and released from any liability for Claims and Debts, except for obligations arising under this Plan." *Hernandez*, 628 F. App'x at 283. The court held that, because the applicable release did not mention the debtor's officer by name and release him from a claim for which he was jointly and severally liable, the officer was not released from such claim. *Id*. at 287-88. As an initial matter, the Debtors note that were the Plan language as vague and ineffectual as the SEC contends, then the SEC Objection should be moot, as the language would simply have no force and effect. But that is not the case. Moreover, the SEC's reliance on *Hernandez*—which involved a post-confirmation lawsuit against an officer of the debtor interpreting the scope, *and not the permissiveness of*, third-party releases in the plan—underscores the fact that the SEC is providing commentary to the scope of the Plan's releases, but not actually raising issues with their legality. To the extent the scope of releases requires further clarifying language, the Debtors will provide such language; but they remain certain that the fact of the releases themselves is supported by the relevant precedent in this District and should be approved.

C. The Exculpation Does Not Preclude Approval of the Disclosure Statement

22. Similar to the Third Party Release, whether the exculpation contained in section 11.2 of the Plan (the "Exculpation") violates section 524(e) or the *Pacific Lumber* case is simply not a "now" issue that prevents the Debtors from proceeding to confirmation. The Objections should nonetheless be overruled because provisions similar to the Exculpation are standard fare in chapter 11 plans in this District, appropriate under the Bankruptcy Code, and provide meaningful relief to the parties that were integral in helping the Debtors during their chapter 11 cases.

23. An exculpation provision represents a legal determination that naturally flows from several different findings a bankruptcy court must reach in confirming a plan, as well as the statutory exculpation in section 1125(e) of the Bankruptcy Code. Once the court makes a good faith finding, it is appropriate to set the standard of care of the parties involved in the formulation of that chapter 11 plan. *See In re PWS Holding Corp.*, 228 F.3d 224, 246-247 (3d Cir. 2000) (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties . . . ."). Exculpation provisions, therefore, properly prevent future collateral attacks against estate fiduciaries and others that participate actively in the Debtors' bankruptcy case and have worked to maximize the Debtors' estates. To that end, the terms of section 1125(e) are not limited to estate professionals or fiduciaries. The clear language of section 1125(e) extends to "a person" that participates in the plan solicitation and voting process. Thus, any person – including the Responsible Party, PDC, the LP Plaintiffs, or anyone else in this case who "solicits acceptance or rejection of [the Plan], in good faith and in compliance with the applicable provisions of this title . . . ." is covered by, and exculpated by, section 1125(e).

24. The Debtors believe that the Exculpation is appropriate under the circumstances of these chapter 11 cases because it provides protection to those interested parties who were essential to the global settlement and who exercised good faith in negotiating and implementing the global settlement and the Plan. The Debtors themselves are indisputably entitled to the relief embodied in the Exculpation. However, courts have also permitted exculpatory relief for non-debtor parties where such parties owe duties in favor of the debtors or their estates and act within the scope of those duties (excluding acts of fraud or gross negligence) or where such parties were integrally involved in the bankruptcy process and the formulation of the debtor's plan. *See* cases cited in note 10, *infra*.

25. The SEC Objection asserts that the Exculpation, as it relates to "numerous non-debtor third parties, including PDC's former and current officers and directors," is actually a non-consensual third-party release, which is not permitted in the Fifth Circuit. However, the Exculpation is hardly as broad as the SEC contends. While the exculpated parties include PDC and its current and former affiliates, officers, and directors, it only covers such parties to the extent they were acting in connection with *post-petition* activities in connection with these chapter 11 cases and the Debtors' Plan—not the unlimited release of all such parties for all activities at any time, as implied by the SEC Objection.

26. Indeed, the Objectors fail to appreciate that the Exculpation is not a third-party release at all. *See In re Nat'l Heritage Found.*, 478 B.R. 216, 234 (Bankr. E.D. Va. 2012), *aff'd sub nom. Nat'l Heritage Found. v. Highbourne Found.*, 760 F.3d 344 (4th Cir. 2014) (distinguishing an exculpation provision from third-party releases and approving the former); *Meritage Homes of Nev., Inc. v. JPMorgan Chase Bank, N.A. (In re S. Edge LLC)*, 478 B.R. 403, 415-16 (D. Nev. 2012) ("[T]the exculpation provision in Section 8.10 when properly interpreted is within the bankruptcy court's power because the bankruptcy court has exclusive jurisdiction

over the parties and their conduct in the bankruptcy proceedings. Section 8.10 sets a standard of care to be applied in the bankruptcy proceeding — a matter which lies within the bankruptcy court's exclusive jurisdiction — and reiterates federal preemption principles"). The Exculpation is limited in scope to include only those actions by the exculpated parties related to, arising out of, or made in connection with the Debtors' bankruptcy cases and does not relieve them from liability for gross negligence or willful misconduct. Additionally, unlike third-party releases, the Exculpation does not affect the liability of third parties *per se*, but rather sets a standard of care of gross negligence or willful misconduct in hypothetical future litigation against an exculpated party for acts arising out of the Debtors' bankruptcy case. *See, e.g., PWS Holding Corp*., 228 F.3d at 245 (holding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code").

27. Moreover, the Exculpation was proposed in good faith and following good faith, arms'-length negotiations among the Debtors, the Responsible Party, PDC, and the LP Plaintiffs. PDC and the LP Plaintiffs were integral participants in the global settlement and Plan negotiation process, support confirmation of the Plan, and, as it relates to PDC, will provide funding imperative to confirmation of the Plan. The Debtors could not have achieved the same or better terms than those provided in the Plan and these bankruptcy cases without the active support, involvement and contributions of PDC and the LP Plaintiffs. To that end, the contributions of PDC and the LP Plaintiffs, both monetarily and their willingness to compromise potential claims, were essential to the global settlement embodied in the Plan, and PDC provided substantial consideration for the Exculpation against which future collateral attack should be limited. Courts in the Fifth Circuit have recognized these as important factors in expanding exculpations to non-debtors. *See e.g., In re Hingham Campus*, LLC, No. 11-33912, 2011 WL 3679057, at *9 (Bankr.

N.D. Tex. Aug. 23, 2011) (approving an exculpation provision that among other things, was "integral to the agreement among the various parties in interest and [was] essential to the formulation and implementation of the Plan"); *In re Idearc Inc.*, 423 B.R. 138, 157 (Bankr. N.D. Tex. 2009) *aff'd sub nom., Equity Comm. v. Idearc, Inc. (In re Idearc, Inc.)*, 662 F.3d 315 (5th Cir. 2011) (approving exculpation provisions that were "integral elements of the transactions incorporated into the Plan," and "important to the overall objectives of the Plan and resolve[d] the Claims that [were] the subject of" the exculpations).

28. Accordingly, the Exculpation complies with the Bankruptcy Code, falls within the spirit of *Pacific Lumber* and its progeny, and is otherwise consistent with other exculpation provisions approved by other courts in this circuit.[10]

29. For all the above reasons, the Objections should be overruled.

D. <u>The Injunction Is Appropriate and Complies with the Bankruptcy Code</u>

30. Finally, the Objectors contend that the exculpation, release and injunction provisions set forth in sections 11.2, 11.4 and 11.5 of the Plan constitute an impermissible discharge of the Debtors. As with the balance of the Objections, the Objectors' issues with the Plan injunction are premature and an issue to be handled at confirmation.

31. In any event, the Exculpation and Third Party Release are appropriate, as discussed at length above. Section 11.5 of the Plan provides that certain parties are permanently

[10] *See, e.g., In re Expro Holdings US Inc.*, No. 17-60179 (DRJ) (Bankr. S.D. Tex. Jan. 23, 2018), Docket No. 212 (overruling objection by the US Trustee based upon third-party release, exculpation, and injunction provisions relating to, among other parties, the Debtors, the DIP Agent, the DIP lenders, and each party's respective professionals); *In re Ultra Petroleum Corp.*, No, 16-32202 (MI) (Bankr. S.D. Tex. Mar. 14, 2017), Docket No. 1324 (approving exculpation provision that applied to the debtors, the official committee of unsecured creditors, the holders, agents, and trustees of the debtors' funded debt, lenders, noteholders, and various other parties); *In re SBMC Healthcare, LLC*, 519 B.R. 172, 181 (Bankr. S.D. Tex. 2014), *aff'd,* No. AP 14-03126, 2017 WL 2062992 (S.D. Tex. May 11, 2017) (referring to an exculpation provision relating to the debtor and its professionals that was earlier approved by the court); *see also Bank of N.Y. Tr. Co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.*), 584 F.3d 229, 253 (5th Cir. 2009) (creditor committee members have qualified immunity for actions within the scope of their duties); *see also PWS Holding Corp.,* 228 F.3d at 246-47 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties").

enjoined from pursuing any claim or liability or otherwise commencing or continuing any cause of action that has been released, discharged, or exculpated. As this injunction provision simply implements the Third Party Release and Exculpation provisions, to the extent the Court finds the Third Party Release and Exculpation are appropriate, the Debtors respectfully submit that the injunction provision is also appropriate. The injunction is necessary to preserve and enforce the Plan's releases and exculpations and is narrowly tailored to achieve this purpose. As a result, the Debtors are not receiving an impermissible discharge under section 1141(d)(3).

E. The US Trustee's Proposed Language Preserving Claims of Governmental Units Is Overbroad

32. The US Trustee closes its objection by requesting that the Plan include a provision stating that no party is released from any claim or cause of action that may be brought by any governmental agency, state or federal. Stripping away the proposed paragraph to its core, this is what the US Trustee would like to see in the Plan:

> Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever . . . against any party or person, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person or any liability of such persons whatever . . . , nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever . . . .

33. The US Trustee could simply have asked that the following language be included in the Plan: "Nothing in Bankruptcy Code or any applicable case law shall in any way apply to the United States or any state, ever." Obviously, regardless of the formulation, the US Trustee's request is absurd. That said, in prior informal communications with the SEC, the SEC requested that the following language to be included in the Confirmation Order:

> Nothing in the Plan or confirmation order is intended to affect the police or regulatory activities of governmental agencies.

The Debtors are generally amenable to adding similar language, modified to ensure that it does not provide a "wholesale exclusion" from the bankruptcy laws. The Debtors are confident that they can discuss the matter and reach consensus with the Objectors on appropriate language.

RESERVATION OF RIGHTS

34. The Debtors reserve the right to further amend their Disclosure Statement and Plan, as necessary, in advance of the Disclosure Statement Hearing.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order (i) approving the Disclosure Statement (as may be amended in advance of or at the Disclosure Statement Hearing), (ii) overruling the Objections; and (iii) granting such other and further relief as may be just and proper.

Respectfully submitted this 23rd day of August, 2019.

GRAY REED & McGRAW LLP

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COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of August, 2019, he caused a true and correct copy of the foregoing document to be served via the Court's CM/ECF system on all those who have so-subscribed and on the parties appearing on the Debtors' limited service list via first class United States mail, postage prepaid and, where possible, via electronic mail.

/s/ Jason S. Brookner
Jason S. Brookner

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 17-36709-H1-11
	§	
COBALT INTERNATIONAL ENERGY, INC., AND COBALT INTERNATIONAL ENERGY GP, LLC,	§	HOUSTON, TEXAS
	§	
	§	WEDNESDAY,
	§	APRIL 4, 2018
DEBTORS.	§	9:14 A.M. TO 7:00 P.M.

CONFIRMATION HEARING (CONTINUED)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

CASE MANAGER: KIM PICOTA

COURT RECORDER: DESIREE SILLAS

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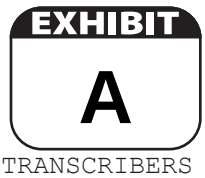

consensus and if the opt-out structure works, which it does with class action lawsuits, I agree with you, then necessarily, as long as they're getting a release in return and they're consenting, but not opting out, then they have consideration.

THE COURT: Okay. What's your legal argument that the mutual release isn't sufficient consideration?

MS. DOUG: I don't think the mutual -- I don't have any case law on that. I don't know that there is any case law on that in any circuit.

THE COURT: What's the theoretical argument that that -- if we assume that opt-out provisions work --

MS. DOUG: Okay. Well, just put that aside for --

THE COURT: Actually, let's not even do that. Let's assume somebody for no consideration, other than the mutual release, opts in, shareholder opts in. And the only thing they're getting for it is a release of them and then they release the third parties. The consideration is the same whether it's opt in or opt out. Is that adequate consideration? So they said yes but, you know, the contract still needs to have consideration, it's mutual. His argument is that's good enough.

MS. DOUG: So I would suggest that if you were opting in you were sitting down and thinking about exactly what it is, what claims you have potentially against the

Debtor, what claims potentially they have against you. Are those equal; is it in your best interest?

And I don't think that's consideration but I think part of it is. When you do have an opt in you can assume that the releasing party has thought more thoroughly about it and that the --

THE COURT: Sure. I mean, there's a difference between opt in and opt out but that's not really the legal question. So let's assume they sign it and they opt in. And then later on they decide they want to go ahead and sue somebody. And that person defends and says, "No, you gave me a release." And they say, "Yeah, but there was no consideration." So who wins that battle? His argument is that the consideration -- the mutual release is in and of itself by definition adequate consideration.

Is he right that if somebody opts in and they do an opt-in exchange of mutual releases that that is definitionally adequate?

MS. DOUG: I think that the consideration that you need to be given -- and I'll use Mr. Husnick's own phrase -- should be material. And whether or not the Debtors are giving a release to equity holders, whether or not that's material consideration, I don't think that that's worth the release they're giving back. But I don't --

THE COURT: But what if it is worth it? Let's

assume that no one needs a release because of anything they've done wrong; we need the release because of stopping the fight and just all we're going to do is save both sides legal fees. Why isn't that equivalent?

MS. DOUG: The public shareholders have made that determination individually that they wanted to --

THE COURT: They checked the box yes, I want to give a release. Can they then later --

MS. DOUG: I think this is one of the reasons --

THE COURT: Can they later defend it by saying there wasn't adequate consideration?

MS. DOUG: I would say probably yes. I think this is one of the reasons that you have the consideration requirement is because when you are dealing with public shareholders they're not sophisticated. They are mom and pops. I mean, there are bigger shareholders here and I hope that they sat down and they really -- you know, they worked with their professionals, they decided whether they wanted to opt out or not. But a lot of these people, I mean, I use the litmus test. Like would your average small-town doctor read this really -- sit down and think about what he or she was giving up. You know, somebody who is well educated, who handles their own portfolio, small as it may be, will they understand this. I just don't think they get the import of it and I think that's why it is especially important to have

do not believe we should keep that language in there.

THE COURT: Okay. The Court has previously in other cases ordered the appointment of an Equity Security Holders Committee when there were, you know, a lot of releases demanded of the equity -- different situation -- when there were unilateral releases demanded or to be obtained from equity s security holders but no consideration back to the equity security holders. No equity security holder, nor the SEC ever requested that we appoint an Equity Security Holders Committee in this case.

That's the remedy in the statute for Counsel. If someone shows up and says, You're demanding a release, and it's not fair, and I previously under that exactly circumstance ordered the appointment of an Equity Security Holders Committee, I think to people's great disappointment. But I did it. But that's the remedy.

And I had the opportunity to have Counsel, the absence of Counsel is not the Debtor's fault nor mine, I find that this is the equivalent in terms of opting out, it's the equivalent of a class action opt out and that opting out in the 5th Circuit is, in fact, allowed particularly in light of recent Supreme Court decisions that say that one can implicitly consent to matters that are going on before the Bankruptcy Court. So insofar as opt in or opt out, I find that opt out works.

As to the releases, I think that a unilateral release -- I accepted the SEC's argument, as you know, at face value, not realizing it was a mutual release. The mutual release argument I think carries the day given the evidentiary record. And I have to decide on the evidence. The evidence before me is that the public shareholders have no claims that they can assert. I have allowed every party to introduce every piece of evidence that they wanted to in that regard. No one chose to introduce any evidence that the public shareholders had any bonafide claims. So I have an uncontested record that there are no claims by the public shareholders. None.

I have no evidence as to what claims there are against the public shareholders, but as I've indicated, one can imagine some. But I don't know if the imagination is accurate or not. I simply find that this is, in effect, the proverbial peppercorn-for-peppercorn and that that is adequate consideration for the release, given its mutuality. So people who opted out are out, people who did not opt out are in.

And I find adequate consideration with respect to the exculpation. The exculpation can only occur for actions that are taken in the capacity as a fiduciary to the relevant constituency, including both the Committee and the estate. And I'm going to require that the language in the

proposed order include such language that makes it unambiguous that we are not releasing any of those parties for any actions that they took not in their capacities as fiduciaries to the respective constituencies. I know that people are telling me that language is there, but I want it to be unambiguously there.

That's my ruling on the SEC dispute. Let's go to the next dispute.

MR. HUSNICK: Thank you, Your Honor.

THE COURT: And I know you've got a plane to catch.

MS. DODD: Can I be excused, Your Honor?

THE COURT: Yeah, if you also -- if you need to make any record, go ahead and then I'll let you go.

MS. DODD: No, I just want to be excused.

THE COURT: Okay.

MS. DODD: Thank you.

THE COURT: Thank you.

MR. HUSNICK: Your Honor, I think the Chevron parties are still -- are they still talking?

UNIDENTIFIED SPEAKER: Yeah.

MR. HUSNICK: They've asked for additional time. It may make sense to dive into closing argument on the bulk of the rest of the stuff, unless the securities law plaintiffs -- anything --

THE COURT: Okay. We're in adjournment then till 10:30 in the morning. You can leave all your things here if you want. There'll be no hearings prior to 10:30. Thank you.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 6:53 p.m.)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability produced from the electronic sound recording of the proceedings in the above-entitled matter.

/S/ MARY D. HENRY

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JTT TRANSCRIPT #58447

DATE FILED: APRIL 6, 2018

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§ CASE NO. 18-35672-H2-11
	§ HOUSTON, TEXAS
WESTMORELAND COAL COMPANY,	§ TUESDAY,
	§ DECEMBER 18, 2018
DEBTORS.	§ 2:10 P.M. TO 6:05 P.M.

MOTION HEARING

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

COURTROOM DEPUTY/ERO: S. SHELBY

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EXHIBIT
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prejudice, of course, to the SEC to raise any issues including that on February 13th.

Unless, Your Honor, has any questions, we'd ask that the Court approve the disclosure statement today and let us commence this solicitation.

THE COURT: All right.

MR. PESCE: Thank you, Your Honor.

THE COURT: Ms. Chase, do you want to come next?

MS. CHASE: Your Honor, I'll be very brief. Our arguments were fully set forth in our disclosure rejection.

But just to recap our view, the commissions view is that releases are only consensual when affected parties are given the opportunity to affirmatively grant the releases.

Separate and apart from voting on the plan and by making a specific election on a ballot or non-voting notice to opt-in to the release.

Here, as you well know, the opt-out mechanism is being provided. So in our view that mechanism does not afford creditors and shareholders the opportunity to affirmatively consent to the releases.

Fifth Circuit hasn't explicitly determined what actually constitutes consent to a non-debtor third party release. In our brief, we do refer to a couple of cases outside of this jurisdiction. The Chasey (phonetic) case from the Southern District of New York Bankruptcy Court and *Arimel*

Development (phonetic) which was also Bankruptcy Court in New Jersey.

We discuss those cases simply as cases that we found to be instructive, hopefully persuasive, on the issue of consent to third party releases.

Those courts and other courts have recognized that the determination of what constitutes consent to release is governed by contract principals. And very briefly again, obviously Your Honor is well aware of contract principals under Texas law. But a general tenant of contract is that silence and inaction generally are not sufficient to constitute an acceptance of the contract.

This is because parties to a binding contract must have a meeting of the minds and each must communicate their consent to the terms of the agreement. So it also follows that the mere failure to object to a unilateral action also doesn't constitute consent to that action.

Generally acceptance to a contract can only be implied by affirmative actions. So in our view, Texas law supports the position that a failure to opt-out is not sufficient consent to the third party release.

THE COURT: So let me ask you this. If your view of the world were correct, so Debtor files a plan. Debtor sends it out. Creditor takes no action. Plan gets confirmed. Plan is binding on that creditor, right?

MS. CHASE: Yes, that's correct, Your Honor.

THE COURT: And a plan is a contract, correct?

MS. CHASE: However, I think --

THE COURT: These are my questions. I listened you, you're now going to listen to me. Plan is a contract, right?

MS. CHASE: Actually I might disagree with you there.

THE COURT: I'll tell you that the Texas Supreme Court as well as the Fifth Circuit disagrees with you. The Plan is a contract. You can take a plan and go to State Court and sue for breach of contract if you don't get what you want. That's just unquestioned.

So if you assume that to be true, how does your argument hold any water?

MS. CHASE: I believe, Your Honor, that actually confirmation of a plan results as -- through operation of law as opposed to contractual agreement between two parties.

THE COURT: So you believe that when the Texas Supreme Court says that you can go to State Court and sue for breach of contract on a confirmed plan, that they're wrong?

MS. CHASE: No, I'm not saying that.

THE COURT: Okay. Fair enough. Thank you.

MS. CHASE: Am I dead in the water here? Should I continue?

THE COURT: You're dead. You're done. Thank you,

ma'am. I appreciate the argument. It's just not one that -- we've been through this argument for four years now. And I have walked through all of the Fifth Circuit president. You just don't get there.

I agree that some courts have said to the contrary. I will respectfully disagree. It just doesn't work. I appreciate it. It's not practical and it's also not required. I gave you your day, you'll have it again at confirmation.

MS. CHASE: I'll try again at confirmation, Your Honor.

THE COURT: Thank you.

MS. CHASE: Thank you.

THE COURT: All right, I want to give -- I didn't mean to ignore the Committee. And Mr. Williams, I'm just saving you for last so you can address everybody.

MR. MARINUZZI: Good afternoon, Your Honor. For the Record, Morrison Forester on behalf of the Official Committee of Unsecured Creditors.

THE COURT: Yes, sir.

MR. MARINUZZI: Your Honor, the Committee filed a response and as Mr. Pesce noted at the onset of this particular hearing, we've agreed with the Debtors that their inclusion of inserts that we've drafted for them would satisfy the Committee's objection to the disclosure statement.

So we're very pleased that the Debtors have been

rights that it's not going to derail confirmation.

THE COURT: You got a lot of other hurdles you got to cross, this needn't be one.

MR. HESSLER: Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Anything else that we need to address this afternoon?

All right. Then I wish all of you a happy holidays, safe travels home.

We'll be adjourned.

(Proceedings were concluded at 6:05 p.m..)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability due to the condition of the electronic sound recording of the proceedings in the above-entitled matter.

/S./ MARY D. HENRY

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DATE FILED: DECEMBER 20, 2018