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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.	§	

PDC ENERGY, INC.'S JOINDER IN SUPPORT OF DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DISCLOSURE STATEMENT
[Relates to Reply at Docket No. 242]

PDC Energy, Inc. ("PDC") files this joinder (the "Joinder") to the *Debtors' Omnibus Reply to Objections to Disclosure Statement* [Docket No. 242] (the "Reply") to the *Objection of the Securities and Exchange Commission to the Approval of the Debtors' Disclosure Statement* [Docket No. 239] (the "SEC Objection") and the *United States Trustee's Objection to the Debtors' Disclosure Statement Under Chapter 11 of the Bankruptcy Code* [Docket No. 241] (the "UST Objection" and together with the SEC Objection, the "Disclosure Statement Objections") and respectfully submits as follows:

[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).

JOINDER

1. The primary focus of the Disclosure Statement Objections relates to the scope of the proposed Third-Party Releases (defined below) as well as the manner in which such releases will be solicited through a standard "opt-out" process whereby parties that elect not to opt-out of the Third-Party Releases are bound by those releases. PDC hereby joins in the Debtors' Reply[2] in support of approval of the Disclosure Statement and requests that the Court overrule the Disclosure Statement Objections.

2. The importance of the Third-Party Releases to the Plan cannot be overstated. The Plan represents a negotiated settlement between the Debtors, PDC and the LP Plaintiffs[3], arrived at after over 18 months of litigation in the District Court of Colorado (the "Colorado Court") in a putative class action filing as well as in these cases before this Bankruptcy Court. During this time, the parties have filed and received rulings on dispositive motions before the Colorado Court,[4] as well as participated in mediation and undertaken extensive discovery before the Bankruptcy Court. The Plan resolves all disputes among the parties, including the putative class action. The terms of the negotiated settlement expressly provide that the Plan include third-party release covering all claims (with no exception for fraud, willful misconduct or gross negligence) solicited via the proposed opt-out process. If either (i) the scope of the Third-Party Releases is modified; or (ii) the process for soliciting the Third-Party Releases is changed, PDC will not

[2] Capitalized terms used herein and not otherwise defined have the meaning set forth in the Debtors' Reply.

[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

[4] Attached hereto as **Exhibit A** is a copy of the Order on Motion to Dismiss entered by the Colorado Court, which, among other things, dismissed claims for breach of fiduciary duty against PDC and dismissed all claims asserted in the proceeding against directors and officers of PDC. On June 4, 2019, the Colorado Court issued an order staying its Order on Motion to Dismiss pending relief from the automatic stay in these bankruptcy cases being granted.

consummate the settlement, and substantial value to the limited partners, the true economic stakeholders in these cases, will be lost. For the reasons set forth herein and in the Reply, the Disclosure Statement Objections should be overruled.

3. The third-party release provision is contained in Section 11.4 of the Plan (the "Third-Party Release") and provides that any person entitled to receive a distribution under the Plan who does not specifically opt-out of the releases on its ballot by submitting the ballot prior to the Voting Deadline (as defined in the Plan) shall be deemed to forever release, waive and discharge the Released Parties (as defined in the Plan), which includes PDC. The proposed Third-Party Release is justified and in conformity with Fifth Circuit precedent which allows third-party releases when the release is *consensual*.[5]

4. Indeed, as noted by a bankruptcy court in this Circuit, "most courts allow consensual nondebtor releases to be included in a plan."[6] Here, the solicitation process will provide, and the Plan expressly allows for, the ability for affected parties in interest to opt out of giving the Third-Party Release, as well as the ability to vote against the Plan if they so choose. Accordingly, the Third-Party Releases are justified under Fifth Circuit precedent as a consensual third-party release.

5. The Disclosure Statement Objections take the position that consent may only be obtained through an "opt in" process whereby only parties that affirmatively submit a ballot

[5] *See*, *e.g.*, *In re CJ Holding Co.*, 597 B.R. 608 (S.D. Tex. 2019) ("The Fifth Circuit does not preclude bankruptcy courts from approving a 'consensual non-debtor release.' Bankruptcy courts within the Fifth Circuit commonly exercise jurisdiction to approve nonparty releases based on agreed plans."); *See also In re Camp Arrowhead*, *Ltd.*, 451 B.R. 678, 701-02 (Bankr. W.D. Tex. 2011) ("the Fifth Circuit does allow permanent injunctions *so long as there is consent*") (emphasis in original). PDC acknowledge the line of decisions from the United States Court of Appeals for the Fifth Circuit that limit or prohibit third party releases. However, as set forth in such decisions, such limitation applies to nonconsensual third party releases, which are not being sought here. *See Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.)*, 701 F.3d 1031, 1059 (5th Cir. 2012); *Bank of New York Trust Co. v. Official Unsecured Creditors' Comm. (In re Pacific Lumber* Co.), 584 F.3d 229, 252 (5th Cir. 2009); *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760-61 (5th Cir. 1995).

[6] *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 775 (Bankr. N.D. Tex. 2007).

electing to grant the Third-Party Release are bound. The objectors cite no controlling authority to support their position. While the Fifth Circuit has not directly defined what constitutes a consensual third-party release, courts within the Fifth Circuit have held that a claimant who received notice of the debtor's chapter 11 filing and the proposed plan, which included a third-party release, but failed to object to the plan, was deemed to have consented to the third-party release.[7] The Fifth Circuit has also shed light on the issue through a series of decisions addressing the *res judicata* effect of a confirmed chapter 11 plan that contains a third-party release provision.[8] For example, in *Republic Supply*, the Fifth Circuit found that the Bankruptcy Code does not preclude a third-party release provision where "it has been accepted and confirmed as an integral part of a plan of reorganization,"[9] and ultimately held that such provision was binding and enforceable.[10] The Fifth Circuit addressed the same issue on three occasions thereafter, analyzing the specificity of the third-party release to determine its *res judicata* effect.[11] *Republic Supply* and its Fifth Circuit progeny ultimately stand for the proposition that "[c]onsensual nondebtor releases that are specific in language, integral to the

[7] *See, e.g.*, *In re CJ Holding Co.*, 597 B.R. at 609 (holding that a claimant who received notice of the Plan and release provisions (which were set off conspicuously in bold font) and failed to object to confirmation of the plan consented to the plan and the third-party releases contained therein).

[8] *See Hernandez v. Larry Miller Roofing*, *Inc.*, 628 Fed. App'x. 281, 286-88 (5th Cir. 2016); *FOMPuerto Rico S.E. v. Dr. Barnes Eyecenter Inc.*, 255 Fed. App'x. 909, 911-12 (5th Cir. 2007); *Applewood Chair Co. v. Three Rivers Planning & Dev. Dist. (In re Applewood Chair* Co.), 203 F.3d 914, 919 (5th Cir. 2000); *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987).

[9] *Republic Supply*, 815 F.2d at 1050.

[10] *Id*. at 1053.

[11] *See generally Hernandez*, 628 Fed. App'x. 281 (comparing the specificity of the third-party release provisions at issue in *Republic Supply*, *Applewood*, and *Dr. Barnes Eyecenter*).

plan, a condition of the settlement, and given for consideration do not violate" the Bankruptcy Code.[12]

6. The Third-Party Releases meet the *Republic Supply* standard. First, the Third-Party Releases are consensual. As set forth in more detail in the Disclosure Statement and proposed solicitation procedures, parties in interest will be provided fair and extensive notice of these chapter 11 proceedings, the Plan, the Third-Party Release, the deadline to object to confirmation of the Plan and the proposed Third-Party Releases. Further, all of the Releasing Parties will receive a ballot expressly containing the provisions of the Third-Party Release, a box to opt-out of the proposed Third-Party Release and clear instructions for submitting such ballot by the deadline. Failure to contest (including exercising an opt-out option) provisions of a proposed plan, including third-party releases, after receiving notice of the Plan and relevant release provisions has been determined to be consent.[13]

7. Second, the language in the Third-Party Releases is sufficiently specific so as to put the Releasing Parties on notice of the claims being released. Indeed, the Third-Party Releases are expressly limited to (i) the subject matter, allegations, or claims in the Colorado Action and any claims that could have been raised therein; (ii) the Debtors; (iii) the Chapter 11 Cases; and (iv) claims affecting property of the Debtors' Estates. *See* Plan, §11.4. These are

[12] *Wool Growers*, 371 B.R. at 776 (citing *Republic Supply*, 815 F.2d at 1050; *Dr. Barnes Eyecenter*, 255 Fed. App'x. at 911-12).

[13] *See, e.g.*, *In re CJ Holding Co.*, 597 B.R. at 609 (holding that a claimant who failed to object to confirmation of the plan consented to the plan and the third-party releases contained therein); *See In re CHC Group Ltd.,* Case No 16-31854-bjh11 (Bankr. N.D. Tex. Mar. 3, 2017), Confirmation Order at Docket No. 1794, §UU (confirming the Debtors' plan and determining the opt-out mechanism was sufficient to establish consensual third-party releases over objection to the contrary). *See* Dec. 18, 2018 Hr'g Tr. at 103-106 in *In re Westmoreland Coal Company, et al.,* Case No. 18-35672 (Bankr. S.D. Tex. 2018) (overruling argument of the SEC to disclosure statement that "opt-out" third party release provisions are not consensual releases and ruling and explaining "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 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.").

issues that have been litigated in two separate forums of which the Releasing Parties have received ample notice, making them well aware of the issues.

8. Third, the Third-Party Releases are integral to the Plan and a condition to the global settlement embodied thereby. As noted above, the crux of the settlement, which comes after over 18 months of hotly contested litigation in two forums, is the proposed estate release and Third-Party Release. The releases must be this broad and follow the opt-out procedure to fully resolve the putative class action as well as these cases. If the releases are not approved in their current form, there is no settlement and the substantial value being conveyed to the limited partners goes away.

9. Fourth, it cannot be credibly disputed that the Third-Party Releases are provided in exchange for significant consideration. All parties in interest benefit from the transactions contemplated by the Plan made possible by PDC. This includes (i) the cash settlement payment of over $11 million under the plan; (ii) funding of up to $3 million in administrative expenses; (iii) waiver of claims by PDC and its right to recover on account of its partnership interests; and (iv) assumption of substantial plugging and abandonment liability. All of these forms of consideration from PDC greatly enhance the recovery to the limited partners, and the enhanced recovery is the direct result of the contributions. Other contributions also include (a) forgoing payment of operating expenses during the pendency of the Chapter 11 Cases (b) negotiating and supporting the Plan, (c) resolving various disputes with the LP Plaintiffs that, if litigated, would have entailed significant estate expenditures which would be paid before equity receives a recovery, delayed the Debtors' emergence from bankruptcy and delayed distributions to limited partners and (d) in the case of the Debtors' and PDC's directors, officers, and employees, their immense efforts on behalf of the Debtors both prior to and throughout the Chapter 11 Cases.

10. Finally, courts have held that creditors who fail to return their ballot have demonstrated their consent to the plan's third party release provisions, and can thus be bound by such releases.[14] Here, the Plan goes further by providing Releasing Parties with the opportunity to opt-out of the Third-Party Releases by indicating their election to opt-out on their Ballot. Only Releasing Parties that do not opt-out of the Third-Party Releases shall be deemed to have released the Released Parties pursuant to the Third-Party Releases.

11. Accordingly, for the reasons set forth herein and in the Debtors' Reply, the proposed Third-Party Releases and the manner of solicitation through an "opt-out" provision are consensual releases consistent with Fifth Circuit case law. The Disclosure Statement Objections should be overruled and the proposed Third-Party Releases and "opt-out" procedure should be approved.

Dated: August 23, 2019

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

By: */s/ Joseph P. Rovira*

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[14] In *In re Indianapolis Downs, LLC*, the court confirmed a plan that provided that creditors were deemed to have consented to the plan's third party release provisions where: (a) the creditor voted to reject or accept the plan and failed to "opt-out"; (b) the creditor failed to return his/her ballot; or (c) the creditor's claims were unimpaired, and therefore, were not entitled to vote. *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing document was served on August 23, 2019 via the Bankruptcy Court's Electronic Case Filing notification system on those parties registered to receive such notices.

/s/ Joseph P. Rovira
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