IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
BANKRUPTCY DIVISION
ST. CROIX, VIRGIN ISLANDS

In re:	)	
	)	Chapter 11
HOVENSA L.L.C.,	)	
	)	Case No. 1:15-bk-10003-MFW
Debtor.	)	
	)	Re: Docket Nos. 547 and 563

SUPPLEMENTAL DECLARATION OF THOMAS E. HILL IN SUPPORT OF CONFIRMATION OF THE DEBTOR'S SECOND AMENDED PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

I, Thomas E. Hill, being duly sworn, depose and say:

1. I am the Chief Restructuring Officer (the "CRO") of HOVENSA L.L.C. (the "Debtor"), a limited liability company organized under the laws of the United States Virgin Islands. I am a Managing Director at Alvarez & Marsal North America, LLC ("A&M"), a financial advisory firm that provides restructuring advice and other related services.

2. I previously submitted the *Declaration of Thomas E. Hill in Support of Confirmation of the Debtor's First Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 547] (the "Initial Declaration"). I submit this supplemental declaration (the "Declaration") in further support of confirmation of the *Debtor's Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 563] (as it may be amended, supplemented, restated, or modified from time to time, the "Plan").[1] In particular, this Declaration supports the resolution between the Commonwealth of Puerto Rico (the "Commonwealth"), the Debtor, HOVIC, Hess, and Hess Energy Trading Company, LLC (n/k/a Hartree Partners, LP) ("HETCO," and together with the Debtor, HOVIC, Hess, as well as

[1] Capitalized terms used but not otherwise defined shall have the meanings ascribed to such terms in the Plan.

their owners, predecessors, successors, assignors, and all past and present officers, directors, and employees, the "Settling Defendants") as reflected in the revised proposed *Order Granting Final Approval of Disclosure Statement and Confirming Chapter 11 Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* filed contemporaneously herewith.

3. Except as otherwise indicated, all facts set forth in this Declaration are based on (a) my personal knowledge, (b) my experience as a restructuring professional and/or chief restructuring officer over the past 25 years, (c) my discussions with other members of the A&M team, the Debtor's consultants, and the Debtor's other professionals, (d) my review of relevant documents, and/or (e) my opinion based on experience, knowledge, and information concerning the Debtor's operations and financial condition. I am authorized to submit this Declaration on behalf of the Debtor and, if called on to testify, I would testify competently to the facts set forth in this Declaration.

A. *Commonwealth of Puerto Rico v. Shell Oil Co., et al.*, Nos. 07-Civ-1505 (CCC) and 07-Civ-10470 (SAS) and *Commonwealth of Puerto Rico v. Shell Oil Co., et al.*, Nos. 13-Civ-01678 (ADC) and 14-Civ-1014 (SAS)

4. In 2007, the Commonwealth, through the Puerto Rico Environmental Quality Board, commenced an action titled *Commonwealth of Puerto Rico v. Shell Oil, et al.*, Nos. 07-Civ-1505 (CCC) and 07-Civ-10470 (SAS) against the Debtor and HOVIC by filing a complaint in the United States District Court for Puerto Rico (the "Puerto Rico Court") alleging that the Debtor and HOVIC were among the defendants that refined, marketed, and/or supplied (directly or indirectly) gasoline and/or other products containing Methyl Tertiary Butyle Ether ("MTBE").[2] Thereafter, in September 2013, the Commonwealth initiated a second lawsuit, titled *Commonwealth of Puerto Rico v. Shell Oil Co., et al.*, Nos. 13-Civ-01678 (ADC) and 14-Civ-

[2] An amended complaint in this matter was filed in December 2012 (the "Initial Lawsuit Amended Complaint").

1014 (SAS), in the Puerto Rico Court against the same defendants addressing additional contamination that was purportedly located in Puerto Rico.[3] As detailed below, the matters are still pending against the Debtor and the other defendants.

5. Generally speaking, the Operative Complaints contend that gasoline containing MTBE is a defective product, given that MTBE inevitably leaks out of underground storage tanks, travels quickly in groundwater, does not biodegrade in the manner of other gasoline constituents, and thus fouls water supplies. The Operative Complaints further allege that, among other things, the Debtor and HOVIC promoted the use of gasoline containing MTBE for their purported octane enhancement and/or environmental benefits and knew or should have known of the harm and threat to public health and welfare represented by proliferation of MTBE. The Operative Complaints assert several causes of action against the Debtor, HOVIC, and the other defendants, and seek remediation and damages for strict product liability, nuisance, trespass, negligence, and other statutory causes of action, including claims arising from the Resource Conservation Recovery Act.

6. The Operative Complaints seek damages on account of contamination at hundreds of "release sites" in Puerto Rico where MTBE was purportedly detected in soils and/or groundwater and other sites with detections of MTBE. The Debtor's and HOVIC's alleged liability is traceable to the St. Croix refinery. Starting in 1994 and continuing to 2005, the St. Croix refinery sold gasoline containing some amount of MTBE to customers who transported the gasoline into Puerto Rico. For the first 4 years of that time period, the refinery was owned by HOVIC. For the remaining 8 years, the refinery was owed by the Debtor.

[3] A third amended complaint was filed in this matter in December 2013 (together with the Initial Lawsuit Amended Complaint, the "Operative Complaints").

7. The matters were consolidated and transferred to the United States District Court for the Southern District of New York (the "MDL Court") for pre-trial activities as part of a multi-district litigation. In 2014 and 2015, several dispositive motions were filed and ruled upon by the MDL Court, including motions filed by certain defendants seeking dismissal of various claims based upon the statute of limitations and lack of causation. Although some of these motions were denied, the Debtor and HOVIC succeeded on a motion to dismiss claims asserted by the Commonwealth arising from the Debtor's and HOVIC's alleged failure to warn purchasers that the gasoline contained some amount of MTBE. Discovery with respect to certain sites has concluded and the parties are in discussions about remanding the matter back to the Puerto Rico Court for trial with respect to these sites, with the remainder of the case remaining in the MDL Court for further discovery. No trial date has been set by the Puerto Rico Court.

B. The Commonwealth Proof of Claim and Class 6 Ballot

8. On November 30, 2015, the Commonwealth filed a Proof of Claim against the Debtor in the amount of $24 million (the "Commonwealth Proof of Claim"). The Commonwealth Proof of Claim, which attaches the Operative Complaints as support, represents one of the largest non-insider claims asserted against the Debtor.

9. In addition, I have been advised that the Commonwealth and counsel of record for Commonwealth received a solicitation package, including a Class 6 Ballot and notice of the Combined Hearing, on or before December 21, 2015 in accordance with the Solicitation Procedures Order.

C. Settlement Negotiations and Proposed Resolution

10. I have been advised that a full and final resolution of the allegations raised against the Debtor and the other Settling Defendants in the Operative Complaints and the Commonwealth Proof of Claim may take several years, require a considerable amount of discovery and motion

practice, cost the Reorganized Debtor and/or the Liquidating Trust significant fees and expenses, and, due to the size of the asserted Claim, cause the Liquidating Trust to delay distributions to Holders of Allowed Class 6 Claims. Due to the amount asserted in the Commonwealth Proof of Claim, the Liquidating Trust may also be required to estimate the Commonwealth Proof of Claim or reserve the entire amount of the $500,000 allocated for payment to Allowed Class 6 Claims. In contrast, a resolution with the Commonwealth removes the potential for significant costs and expenses associated with litigation, the uncertainty regarding the total amount of Allowed Class 6 Claims, and the Liquidating Trustee's ability to fund distributions to Holders of Allowed Class 6 Claims. As a result, I determined that—although the Debtor has significant defenses to the allegations raised by the Commonwealth in the Operative Complaints—a settlement with the Commonwealth would be in the best interests of the Debtor and the Debtor's Estate.

11. Having made this decision, I, along with the Debtor's advisors, engaged in good faith, arm's-length negotiations with the Commonwealth and the other Settling Defendants leading up to the Combined Hearing in an effort to resolve all of the pending allegations against the Debtor, HOVIC, Hess, and HETCO. Among the factors that I considered during the settlement discussions was the potential allocation of liability as between the Debtor and HOVIC based upon the time periods that HOVIC and the Debtor owned the refinery and supplied the gasoline containing some amount of MTBE to customers. Ultimately, the Commonwealth and the Settling Defendants agreed to a resolution that requires the Settling Defendants to pay an aggregate amount of $10 million in exchange for the Commonwealth's release of the Settling Defendants. The effectiveness of the settlement is conditioned upon Bankruptcy Court approval.

12. In full and complete satisfaction of the damages asserted in the Operative Complaints against the Settling Defendants, the resolution provides that: (i) within 5 working

days after the Effective Date, Hess shall pay or cause to be paid to the Commonwealth $3,300,000 and (ii) on the Effective Date, the Reorganized Debtor shall pay the Commonwealth $5,000,000 (the "Reorganized Debtor Settlement Payment"). Further, Hess agreed to pay an additional $1,700,000 within 21 days of the earlier of (i) any date after January 19, 2019 when the price of West Texas Intermediate ("WTI") crude oil trades on the NYMEX at $60 per barrel or (ii) when the average price of WTI crude oil over a twenty day period is greater than $80 per barrel based upon WTI crude oil's intraday high price on the NYMEX for each of the 20 days. The Debtor and the Reorganized Debtor will be released from any liability to the Commonwealth upon payment of the Reorganized Debtor Settlement Payment.

13. By the settlement, the Debtor will be relieved from litigating the validity of the Commonwealth Proof of Claim and the Commonwealth Proof of Claim will be resolved on a consensual and timely basis without incurring additional costs and expenses. The resolution with the Commonwealth will allow the Debtor, the Reorganized Debtor, and the Liquidating Trustee, as applicable, to avoid the risks associated with litigating the Commonwealth Proof of Claim to conclusion. Moreover, the amount of the settlement payment that is allocable to the Debtor is consistent with the period of time that the Debtor supplied the gasoline containing some amount of MTBE to customers who transported the gasoline into Puerto Rico. Finally, the payment of $10 million to the Commonwealth on account of its $24 million Proof of Claim is not expected to exceed the percentage recovery estimated for other Allowed General Unsecured Claims in the Chapter 11 Case. As a result, I believe that the resolution with the Commonwealth is in the best interests of the Debtor, the Debtor's Estate, and the Debtor's stakeholders.

14. I previously testified that the Plan is feasible because the net proceeds of the Sale Transaction, the assets to be maintained by the Reorganized Debtor, and those assets to be

transferred to the Reorganized Debtor, the Liquidating Trust, and the Environmental Response Trust, as applicable, will be sufficient to enable the Manager, the Liquidating Trustee, and the Environmental Response Trustee, as applicable, to make all of the distributions to the Holders of Allowed Claims contemplated under the Plan and to satisfy the Debtor's post-Effective Date obligations. *See* Initial Declaration ¶¶ 71-75. Even with the Reorganized Debtor Settlement Payment, it remains my opinion that the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: January 19, 2016

/s/ Thomas E. Hill
Thomas E. Hill
Chief Restructuring Officer of HOVENSA L.L.C.