IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 11
	§	
SEADRILL LIMITED *et al.*,[1]	§	Case No. 17-60079 (DRJ)
	§	
Debtors	§	(Jointly Administered)

OBJECTION OF THE UNITED STATES TRUSTEE TO
DEBTORS' DISCLOSURE STATEMENT AND MOTION FOR APROVAL
[Refers to Document Nos. 826 and 828]

TO THE HONORABLE DAVID JONES
CHIEF UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Henry G. Hobbs, Jr., the Acting United States Trustee for Region 7, including the Southern and Western Districts of Texas ("UST"), by and through the undersigned counsel, and respectfully submits the following objections to the Disclosure Statement [2] (the "Disclosure Statement,") and Motion for Approval[3] (the "Motion for Approval") filed by the Debtors on December 15, 2017. *See* Doc Nos. 826 and 828.

I. PRELIMINARY STATEMENT

1. Overall, the UST objects to Debtors' Disclosure Statement because it lacks information and detail in critical areas which prevent creditors and interest holders from making an informed decision whether to accept, reject, or object to the Plan. First, the Disclosure Statement and underlying Plan incorrectly classify claims which are not substantially similar. Second, the Disclosure Statement does not provide adequate information regarding pre-petition insider payments/transfers. Third, the Disclosure Statement and underlying Plan do not provide an opt-out process for holders of claims or interests to avoid being bound by the releases, exculpations and injunctions (the "Releases") contained in the Plan. Fourth, the Disclosure

[1] Due to the large number of Debtors in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/Seadrill. The location of Debtor Seadrill Americas Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 11025 Equity Drive, Suite 150, Houston, Texas 75201.

[2] Disclosure Statement Relating to the First Amended Joint chapter 11 Plan of Reorganization of Seadrill Limited and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code.

[3] Debtors' Motion for entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Proposed Joint Plan of Reorganization, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Approving the Rights Offering Procedures and related Materials, (V) Scheduling certain Dates With Respect Thereto, (VI) Authorizing the debtors to Carry Out certain Preliminary Corporate steps, and (VII) Granting Related Relief

Statement and underlying Plan of Reorganization propose overly broad release, exculpation and injunction provisions without adequately providing a legal justification for them. Lastly, the Motion for Approval is unclear regarding the submission of Ballots to certain claim holders.

2. As currently drafted, the Disclosure Statement does not contain adequate information and creditors are unable to make an informed decision whether to accept, reject, or object to the Plan. Moreover, while some of the issues raised herein relate to confirmation, the Court could consider them at this stage to the extent the Disclosure Statement describes an un-confirmable Plan. In the absence of amendments to deal with such matters as are noted below, the UST recommends that the Court not approve the proposed Disclosure Statement as containing "adequate information" under 11 U.S.C. § 1125.

II. JURISDICTION, VENUE, CONSTITUTIONAL AUTHORITY TO ENTER A FINAL ORDER AND STANDING

3. The Court has jurisdiction to consider this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b) (1) and (2) (A). Venue is proper in this district under 28 U.S.C. § 1408.

4. The Court has constitutional authority to enter a final order with respect to this matter. If it is determined that the bankruptcy judge does not have constitutional authority to enter a final order of judgment in this matter, the UST consents to entry of a final judgment by this court in this matter.

5. Pursuant to 11 U.S.C. § 307, the UST has standing to appear and be heard on any issue in a case or proceeding under the Bankruptcy Code. Pursuant to 28 U.S.C. § 586(a) (3), the UST is statutorily obligated to monitor the administration of cases commenced under the Bankruptcy Code, 11 U.S.C. § 101 et seq.

III. BACKGROUND

6. On September 12, 2017 ("Petition Date"), the Debtors filed petitions seeking relief under chapter 11 of the Bankruptcy Code. Since the orders for relief under chapter 11 were entered, the Debtors have operated as debtors in possession under 11 U.S.C. §§ 1107(a) and 1108.

7. On September 13, 2027, the Court entered the Order directing joint administration of these bankruptcy cases. *See* Doc. No. 40.

8 On September 22, 2017, the United States Trustee appointed the Official Committee of Unsecured Creditors. *See* Doc. No. 175.

9. On December 15, 2017, the Debtors filed the Disclosure Statement. *See* Doc. No. 826.

10. On December 15, 2017, the Debtors filed the Motion for Approval. *See* Doc. No. 829.

11. The Disclosure Statement and Motion for Approval are currently scheduled for hearing on January 10, 2018 at 10:00 a.m.

IV. STATUTORY FRAMEWORK

12. Under § 1125(b) of the Bankruptcy Code, a disclosure statement must contain "adequate information" before the debtor may solicit acceptance of a plan of reorganization or liquidation. 11 U.S.C. § 1125(b). The Bankruptcy Code defines "adequate information" as:

> . . . information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical reasonable investor of the relevant class to make an informed judgment about the plan . . .

11 U.S.C. § 1125(a)(1).

13. "Adequate information" is defined to include information of a kind and in sufficient detail insofar as is reasonably practicable in light of the nature and history of the debtor to enable a hypothetically reasonable investor, typical of the holders of claims or interests of the relevant class, to make an informed judgment about a proposed chapter 11 plan of reorganization. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir.), *cert. denied*, 488 U.S. 926 (1988), *In re Divine Ripe, L.C.C., 554 B.R. 395, 401-02 (Bankr. S.D. Tex. 2016). See also In re A.H. Robins Company, Inc.*, 163 F.3d 598 (4th Cir. 1998) ("The disclosure statement must contain 'adequate information,' *i.e.* sufficient information to permit a reasonable, typical creditor to make an informed judgment about the merits of the proposed plan.").

14. Moreover, a bankruptcy court may address the issues usually raised at confirmation at the disclosure statement stage if it is obvious that a later confirmation hearing would be futile because the plan is patently un-confirmable. *See In re American Capital Equip., LLC*, 688 F.3d 145, 154-155 (3rd Cir. 2012). *See also In re GSC, Inc.*, 453 B.R. 132, 158 (Bankr. S.D.N.Y. 2011).

V. OBJECTIONS

A. The Disclosure Statement (and Plan) Incorrectly Classifies Claims

15. The UST objects that Debtors' Disclosure Statement (and Plan) incorrectly classifies the Credit Facility Lenders' (the "Banks") Credit Agreement Unsecured Claims with the general unsecured claims, when they are not substantially similar.

16. Debtors' Disclosure Statement reflects the Banks' claims at $5.662 billion. *See* Disclosure Statement at page 44. Debtors have classified the Bank's claims as both secured and unsecured. Under the Disclosure Statement and Plan, the secured claims will receive amended credit facilities and the unsecured claims, including unsecured guaranty or co-obligor claims, will take nothing. *See* Disclosure Statement at page 9. However, the Disclosure Statement and Plan provide that all Credit Agreement Unsecured Claims will be allowed in full and the Banks will be authorized to vote the full amount of the Credit Agreement Unsecured Claims. *See* Disclosure Statement at page 10.

17. 11 U.S.C Section 1122(a) provides that claims or interests may be placed within the same class if they are substantially similar. The Banks' Credit Agreement Unsecured Claims are dissimilar from the other unsecured claims in that the Banks will take nothing, yet they retain full voting rights and arguably control the class vote.

B. The Disclosure Statement Does Not Provides Adequate Information Regarding Pre-Petition Insider Payments/Transfers

18. The Debtors' Disclosure Statement provides inadequate disclosure of the pre-petition payments/transfers that benefited insiders within one year before filing. While the Debtors' respective Statements of Financial Affairs (the "SOFAs") revealed some information regarding individual insider payments and transfers, there appears to be no discussion or information provided regarding the payments/transfers in the Disclosure Statement.

19. The Debtors filed their respective SOFAs on November 11, 2017. The SOFAs disclosed $23 MM in payments/transfers to individual insiders by category without the specific identity of the insiders to whom the transfers were made. *See* Doc. No. 463 at 48.

20. Debtors' Global Notes and Methodology preceding the SOFAs and the specific disclosures with respect to SOFA Question No. four (4) cite the U.K. Data Protection Act of 1998 (the "Act") as the basis for not identifying the recipients. Creditors and parties in interest are entitled to know more information about the insider payments and the basis for not disclosing the identity of the transferees. The Disclosure Statement should be amended accordingly.

C. The Disclosure Statement (and Plan) Does Not Provide an Opt- Out Provision.

21. The Disclosure Statement and Plan do not provide holders of claims or interests an option to opt-out of the Releases contained in the Plan through the ballots or notices process.

22. The Disclosure Statement and Plan require that holders of claims or interests *must* file a formal objection with the Bankruptcy Court that expressly objects to their inclusion or they will be deemed to have consented. [4] *See* Doc. No. 826 at 23.

[4] IMPORTANTLY, ALL HOLDERS OF CLAIMS OR INTEREST THAT DO NOT FILE AN NOBJECTION WITH THE BANKRUPTCY COURTIN THE CHAPTER 11 CASES THAT EXPRESSLY OBJECTS TO THE INCLUSION OF SUCH HOLDER AS A RELEASING PARTY UNDER THE PROVISIONS CONTAINED IN ARTICLE VIII OF THE PLAN WILL BE DEEMED TO HAVE EXPRESSLY CONSENTED TO THE RELEASE AND DISCHARGE OF ALL CLAIMS AND CAUSES OF ACTION AGAINST THE

23. The UST objects that the Disclosure Statement and Plan improperly shift the burden and expense to opt-out of the Releases contained in the Plan to creditors and interest holders. Rather than include an opt-out box on the ballots or notices, creditors and interest holders are required to lodge a formal objection to the Plan to avoid being bound by the Releases. The Disclosure Statement, Plan, Ballots and Notices should be amended to provide holders a box to check indicating their choice not to be bound by the Releases.

D. The Disclosure Statement and Plan Contain Overly Broad Third Party Releases, Exculpations and Injunctions

24. The Disclosure Statement and Plan are deficient in that they contain broad third-party releases, exculpations and injunctions, without providing any clear legal justification, especially under Fifth Circuit case law. *See* Doc. No. 826 at 24 and Doc. No.

25. The Disclosure Statement does not provide an explanation as to how the proposed third party releases, exculpations and injunctions the Debtors propose meet the requirements set forth by Fifth Circuit case law. The Debtors have not demonstrated in any way, nor to any degree, the appropriateness of the proposed provisions. The Fifth Circuit Court of Appeals has held that non-consensual, non-debtor releases and injunctions are prohibited under section 524(e) and must be struck from plans. *In re Pacific Lumber Co.*, 584 F.3d 229, 252-53 (5th Cir. 2009). In *Pacific Lumber Co.*, the Fifth Circuit evaluated a plan that released and exculpated various parties from liability relating to proposing, implementing, and administering the plan, other than for gross negligence and willful misconduct. It further clearly stated its view:

> In a variety of contexts, this court has held that Section 524(e) only releases the debtor, not co-liable third parties. *See, e.g., In re Coho Resources, Inc.*, 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. National Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *Matter of Edgeworth*, 993 F.2d 51, 53-54 (5th Cir. 1993); *Feld v. Zale Corporation*, 62 F.3d 746 (5th Cir. 1995). These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions.
>
> MRC/Marathon suggests we adopt a more lenient approach to non-debtor releases taken by other courts. . . Besides conflicting with *Feld v. Zale Corp.*, these cases all concerned global settlements of mass claims against the debtors and co-liable parties. . . . In fact, the Bankruptcy Code now permits bankruptcy courts to enjoin third-party asbestos claims under certain circumstances, 11 U.S.C. § 524(g), which suggests non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets. . . . There are no allegations in this record that either MRC/Marathon or their or the Debtor's officers or directors were jointly liable for any of [the debtors'] pre-petition debt. They are not guarantors or sureties, nor are they insurers. Instead, the essential function of the exculpation clause proposed here is to absolve the released parties from any

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DEBTORS AND THE RELEASED PARTIES. THE RELEASES ARE AN INTEGRAL ELEMENT OF THE PLAN. *See* Doc. No 826 at 23.

> negligent conduct that occurred during the course of the bankruptcy. The fresh start § 524(e) provides to debtors is not intended to serve this purpose.

In re Pacific Lumber Co., 584 F.3d at 252.

26. Additionally, the Court in *Pacific Lumber* specifically held that the fresh start of section 524(e) provided to debtors is not intended to serve this purpose of releasing parties from any negligent conduct that occurred during the course of the bankruptcy. *Id.* at 252-53. The Fifth Circuit further held that only the creditors' committee and its members, as the only disinterested volunteers, could obtain a release under this provision, and struck the provision as to all other parties. *Id. See also In re Vitro S.A.B. de CV*, 701 F.3d 1031 (5th Cir. 2012); *In re Bigler LP*, 442 B.R. 537 (Bankr. S.D. Tex. 2010); and *In re Patriot Place, Ltd.*, 486 B.R. 773 (Bankr. W.D. Tex. 2013).

27. Section 524(e) of the Bankruptcy Code prohibits the release and permanent injunction of claims against non-debtors in most circumstances. *See* 11 U.S.C. § 524(e) ("Except as provided in subsection (a)(3) . . . discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."). Coupled with the interpretation of this code section by the Fifth Circuit, the Plan and the overly broad release, injunction and exculpation clauses do not appear to be supported by any legal basis.

E. Submission of Solicitation Packages Should be Clarified

28. The Motion for Approval indicates Debtors will send Solicitation Packages (containing, among other things, an appropriate Ballot) to those holders of Claims in the Voting Classes. *See* Doc. No. 828 at paragraph 47. The Motion for Approval, however, qualifies the submission and seeks authority not to send Solicitation Packages to holders who could have been paid by prior order:

> The Debtors further request that they not be required to mail Solicitation Packages or other solicitation materials to (a) holders of Claims that have already been paid in full during the chapter 11 Cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court…

See Doc. No. 828 at paragraph 60

29. This language can be read that claim holders will not receive a Ballot if they could be paid under a prior order, but in fact have not yet been paid. The proposed order should be clarified to specify that Solicitation Packages will be sent to all holders of Claims entitled to vote that have not been paid.

VI. RESERVATION OF RIGHTS

30. The Acting United States Trustee reserves his rights to object to other deficiencies at the hearing on the Disclosure Statement and Motion for Approval. Moreover, the Acting

United States Trustee is concerned that to the extent that significant amendments to the Disclosure Statement or Motion for Approval are filed prior to the objection deadline or hearing, the parties are deprived of proper notice as required under Bankruptcy Rule 2002; accordingly, the Acting United States Trustee also reserves his rights to object on the grounds that any amendments should require proper notice under the Bankruptcy Rules

WHEREFORE, the UST respectfully requests that this Court enter an order which denies approval of the Debtors' Disclosure Statement and Motion for Approval until the Debtor cures these defects, provides the additional information and disclosures, and otherwise cures the objections presented herein and for any and all further relief as may be equitable and just.

Dated: January 3, 2017

Respectfully submitted,

HENRY G. HOBBS, JR.
Acting United States Trustee
Region 7, Southern and Western Districts of Texas

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OBJECTION OF UNITED STATES TRUSTEE TO DEBTOR'S DISCLOSURE STATEMENT AND MOTION FOR APPROVAL was served upon the parties listed by the indicated means and by all parties registered to receive notice via CM/ECF, on this January 3, 2018.

/s/ Stephen D. Statham
Stephen D. Statham

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 11
	§	
SEADRILL LIMITED *et al.*,[1]	§	Case No. 17-60079 (DRJ)
	§	
Debtors	§	(Jointly Administered)

ORDER GRANTING THE UNITED STATES TRUSTEES OBJECTION TO DEBTORS' DISCLOSURE STATEMENT

CAME ON FOR CONSIDERATION the Disclosure Statement proposed by the Debtors and the Objection of the United States Trustee to the Disclosure Statement. The Court, finding that the objections are well founded and that the Disclosure Statement fails to provide adequate information, it is hereby

ORDERED that approval of the disclosure statement is **DENIED.**

[1] Due to the large number of Debtors in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/Seadrill. The location of Debtor Seadrill Americas Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 11025 Equity Drive, Suite 150, Houston, Texas 75201.