

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
:
In re : **Chapter 11**
:
PARAGON OFFSHORE PLC, et al., : **Case No. 16-10386 (CSS)**
:
: **Jointly Administered**
Debtors.¹ : **Re: Docket Nos. 1214 & 1215**
-----X

**OMNIBUS REPLY OF DEBTORS TO
OBJECTIONS TO APPROVAL OF DISCLOSURE STATEMENT**

Paragon Offshore plc and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) respectfully submit this omnibus reply (the “**Reply**”), to (i) the objection (Docket No. 1214) (the “**Committee Objection**”) of the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) and (ii) the limited objection (Docket No. 1215) (the “**Indenture Trustee Objection**” and, together with the Committee Objection, the “**Objections**”) of Deutsche Bank Trust Company Americas (the “**Indenture Trustee**”) to the *Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing and (IV) Establishing Notice and Objection Procedures for Confirmation of the*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Paragon Offshore plc (6017); Paragon Offshore Finance Company (6632); Paragon International Finance Company (8126); Paragon Offshore Holdings US Inc. (1960); Paragon Offshore Drilling LLC (4541); Paragon FDR Holdings Ltd. (4731); Paragon Duchess Ltd.; Paragon Offshore (Luxembourg) S.à r.l. (5897); PGN Offshore Drilling (Malaysia) Sdn. Bhd. (9238); Paragon Offshore (Labuan) Pte. Ltd. (3505); Paragon Holding SCS 2 Ltd. (4108); Paragon Asset Company Ltd. (2832); Paragon Holding SCS 1 Ltd. (4004); Paragon Offshore Leasing (Luxembourg) S.à r.l. (5936); Paragon Drilling Services 7 LLC (7882); Paragon Offshore Leasing (Switzerland) GmbH (0669); Paragon Offshore do Brasil Ltda.; Paragon Asset (ME) Ltd. (8362); Paragon Asset (UK) Ltd.; Paragon Offshore International Ltd. (6103); Paragon Offshore (North Sea) Ltd.; Paragon (Middle East) Limited (0667); Paragon Holding NCS 2 S.à r.l. (5447); Paragon Leonard Jones LLC (8826); Paragon Offshore (Nederland) B.V.; and Paragon Offshore Contracting GmbH (2832). The Debtors’ mailing address is 3151 Briarpark Drive, Suite 700, Houston, Texas 77042.



Proposed Plan Pursuant to Sections 105, 502, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018, 3020, and 9006 and Local Rules 2002-1, 3017-1, and 9006-1 (Docket No. 1094) (the “Disclosure Statement Motion”) and the Disclosure Statement.² Concurrently with this Reply, the Debtors have filed the *Disclosure Statement for Third Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors*, dated March 10, 2017 (Docket No. 1233) and the *Third Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors*, dated March 10, 2017 (Docket No. 1232).

Preliminary Statement

1. The Disclosure Statement provides extensive, detailed information about all aspects of the Debtors’ proposed Plan, including: (i) information about the Debtors’ businesses, and their assets and liabilities; (ii) the Debtors’ financial projections and valuations; (iii) the comprehensive Plan Settlement between the Debtors and the Secured Lenders; (iv) the treatment of different claims and interests under the proposed Plan; (v) the U.K. Administration and the U.K. Sale Transaction; (vi) the tax consequences of the Plan both in the United States and in the United Kingdom; and (viii) the risks of the Debtors’ proposed restructuring. Creditors have more than sufficient information to make an informed decision about the Plan.

2. Yet, the Creditors’ Committee contends that the Disclosure Statement lacks adequate information. As the Court recognized at the February 21, 2017 hearing, the Creditors’ Committee – comprised of three holders of the Debtors’ Senior Notes – are not newcomers to these cases. Indeed, an ad hoc committee of holders of Senior Notes Claims (the “**Noteholders**”) supported the Second Amended Plan and, throughout these cases, has had access to the Debtors’ data room and public filings, have been provided responses to their ongoing

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Disclosure Statement.

formal and informal document requests, and have met on several occasions directly with the Debtors' management.

3. Beginning in December 2016, the Noteholders were actively involved in discussions regarding the Plan presently before the Court, including the amount of the Secured Lenders' adequate protection claim, an issue that the Creditors' Committee now suggests it knows nothing about. Throughout those discussions, the Debtors responded to the Noteholders' numerous diligence requests and held conference calls and in-person meetings with the Noteholders' counsel – now the Creditors' Committee's counsel – to discuss issues relating to the Plan.

4. The issues raised by the Creditor's Committee – the reasonableness of the Plan Settlement and the Noble Settlement, the methodology for calculating the Adequate Protection Obligations, and the assumptions underpinning the Debtors' valuation and liquidation analyses – are confirmation issues, not adequacy of disclosure issues. The Creditors' Committee will have ample opportunity to be heard on these issues at the Confirmation Hearing, and the Court should not entertain confirmation issues at this juncture.

5. In any event, the Debtors have addressed the Creditors' Committee's and Indenture Trustee's concerns in this Reply, through supplemental disclosures in the Disclosure Statement or through amendments to the Plan. Moreover, with respect to the Committee Objection, neither the Creditors' Committee nor the Indenture Trustee have provided any specific language to be included in the Disclosure Statement in response to the Debtors' inquiries, the Debtors are amenable to including any such appropriate language with appropriate attribution. As discussed further below, the Creditors' Committee's remaining objections should be overruled because they either seek information that is either simply irrelevant to the creditors'

ability to make an informed decision on the Plan, or they bear directly on issues that will be properly addressed at confirmation. Likewise, for the reasons set forth below, the reminder of the Indenture Trustee's objections are meritless and should be overruled.

Reply

A. The Proposed Disclosure Statement Contains Adequate Information as Required by Section 1125(b) of the Bankruptcy Code

6. A debtor's disclosure statement must provide sufficient information to permit impaired creditors entitled to vote on the plan to make an informed judgment about the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) (“[T]he general purpose of the disclosure statement is to provide ‘adequate information’ to enable ‘impaired’ classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan.”). The determination of what is adequate information is subjective and made on a case by case basis. *See In re Phoenix Petroleum*, 278 B.R. at 393. The essential requirement of a disclosure statement is that it “clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Keisler*, No. 08-34321, 2009 WL 1851413, at *4 (Bankr. E.D. Tenn. June 29, 2009) (quoting *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991)).

7. The proposed Disclosure Statement provides adequate information to allow the Debtors' impaired creditors to make an informed decision about the Plan. The proposed Disclosure Statement contains relevant information about the Debtors and their business, the treatment of creditors under the proposed Plan and the consequences of such

treatment, the Plan Settlement, the New Business Plan, the risk factors associated with non-confirmation of the proposed Plan, what would happen if the Debtors liquidated, and the Debtor's current valuation. Nonetheless, the Debtors have supplemented the Disclosure Statement with additional information in response to the specific objections raised by the Creditors' Committee. The Creditors' Committee's objections are addressed in turn.

8. Adequate Protection Obligations: The Creditors' Committee contends that the Disclosure Statement lacks adequate information relating to the amount and basis for the Adequate Protection Obligations. The Debtors have updated the Disclosure Statement to reflect that the Debtors calculated the Adequate Protection Obligations based upon the diminution in value of the Secured Lenders' prepetition collateral from and after the Petition Date and that the Collateral includes, among other things, the Debtors' rigs, receivables, general intangibles, a portion of the Debtors' Cash, and certain of the Debtors' property, plants and equipment. Based upon a review of its rig appraisals, historical financial statements, and the New Business Plan, and with the input of their advisors, the Debtors calculated the diminution in value of the various asset classes comprising the Secured Lenders' Collateral. The analysis revealed that the overall value of the Secured Lenders' Collateral has diminished by over \$300 million since the Petition Date, when taking into account the above factors and all adequate protection payments made and anticipated to be made throughout these cases pursuant to the Final Cash Collateral Order.

9. Alleged Prior Inconsistent Positions. The Creditors' Committee complains that the Debtors have not explained how their positions in the Plan differ from prior positions that they have taken in these cases. *See* Committee Objection ¶¶ 10- 11. The Adequate Protection Obligations were not at issue in the Second Amended Plan because the Revolver Lenders supported the Plan and the Term Loan Agreement was to be reinstated. Moreover, the

Adequate Protection Order entitles the Secured Lenders to adequate protection of their interests in the Collateral, but, in the context of supporting the Second Amended Plan, the Revolving Lenders agreed not to assert a claim for adequate protection. Given that the Term Loan Agreement is no longer being reinstated, and the Secured Lenders have asserted a claim for the Adequate Protection Obligations, this issue has emerged to the forefront. At the Confirmation Hearing, the Debtors will show that the Settled Adequate Protection Claim is fair, reasonable, and in the best interests of the Debtors' estates.

10. The Creditors' Committee also requests additional information on the Debtors' prior position in their liquidation and valuation analysis. *See* Committee Objection ¶ 11. The Disclosure Statement contains a comprehensive liquidation and valuation analyses, prepared by the Debtors' advisors, based upon the Debtor's current circumstances and financial position, which enables unsecured creditors to make informed decisions on the Plan currently before them.

11. Moreover, the key reason for the differences in the valuation analyses of this Plan and the Second Amended Plan are obvious and already disclosed in the Disclosure Statement. The Plan is premised upon the New Business Plan that contemplates a downsizing of the Debtors' business and operations going forward and significantly more conservative dayrate and rig utilization expectations and assumptions, which have been adjusted as a result of, among other things, the Court's Confirmation Decision and the Debtors' actual financial performance in chapter 11 over the course of this past year. *See* Disclosure Statement § IV.C. These changes in the business plan will naturally result in a lower valuation analysis because, under the Plan, the Company will emerge significantly smaller and more focused than as contemplated under the Second Amended Plan.

12. Plan Settlement. The Creditors' Committee complains that the Debtors' disclosure relating to the components of the Plan Settlement is inadequate. *See* Committee Objection ¶¶ 12-15. To the contrary, the Disclosure Statement describes the issues and disputes being settled by the Plan Settlement, and the salient terms of the Plan Settlement. *See* Disclosure Statement § IV.C. The Disclosure Statement also describes the enormous benefits of the Plan Settlement, most importantly, that absent the Plan Settlement, the Debtors would not have been able to achieve consensus with the Requisite Lenders on the terms of the Restructuring. *See id.* The legal analysis of the merits of the Plan Settlement is an issue for the Confirmation Hearing. *See In re R.L. Adkins Corp.*, No. 11-10241-RLJ-11, 2013 WL 656090, at *2 (Bankr. N.D. Tex. Feb. 22, 2013) (“The issues raised [by objectors to the disclosure statement] concerning . . . the reasonableness of the compromise . . . are confirmation issues to be addressed at the confirmation hearing”).

13. Noble Settlement. The key terms and background to the Noble Settlement Agreement are clearly set forth in the Disclosure Statement and the extensive record established in these cases. *See* Disclosure Statement § V.B. The Creditors' Committee complains that the Debtors have omitted information concerning the “material changes” that may impact the Noble Settlement. *See* Committee Objection ¶ 21. The Debtors have revised the Disclosure Statement to reflect the Creditors' Committee's concerns regarding these potential changes. Now is not the appropriate time to litigate the merits of the Noble Settlement Agreement. The Debtors continue to believe that the Noble Settlement Agreement satisfies the requirements of Bankruptcy Rule 9019.

14. New Equity Interests. The Creditors' Committee contends that the Disclosure Statement lacks adequate information about the New Equity Interests, particularly

concerning issues relating to minority protections and corporate governance. *See* Committee Objection ¶ 22. To the contrary, the Disclosure Statement is clear that no minority rights are currently contemplated; it is also clear regarding the composition of the New Board and which creditors can designate which board seats. *See* Disclosure Statement § VI.D.8; *see also* Plan at 9. Ultimately, the Creditors’ Committee’s contention is not really an objection to adequacy of disclosure, but rather a statement of dissatisfaction with being in a minority position.

15. Accordingly, based upon the foregoing, and with the additional disclosures in the Disclosure Statement, the Debtors submit that the Court should approve the Disclosure Statement because it satisfies the requirements of Section 1125 of the Bankruptcy Code.

B. The Debtors will Include the Creditors’ Committee’s Letter in the Dissemination of the Disclosure Statement

16. The Debtors agree to distribute a copy of the Official Committee’s Letter in its dissemination of the Disclosure Statement to holders of claims in Classes 4 and 5, provided, however, that it explicitly state that the views expressed therein are solely those of the Creditors’ Committee, and not of the Debtors.

C. The Indenture Trustee’s Objection Should be Overruled

17. The Debtors submit that the majority of the Indenture Trustee’s objections have been resolved by the inclusion of additional language in the Plan and the Disclosure Statement as set forth below:

Objection	Revision to the Plan and DS
The Disclosure Statement fails to describe adequately how the holders of Senior Notes Claims will receive a distribution under the Plan. 1. The Disclosure Statement	<ul style="list-style-type: none"> • <i>“Disbursing Agent</i> means any Entity in its capacity as a disbursing agent under Section 6.6 hereof (including any Debtor, any Reorganized Debtor, the Senior Notes Indenture Trustee <i>(other than with respect to New Equity Interests and solely with respect to holders of Allowed</i>

<p>should make clear that the Indenture Trustee cannot disburse equity.</p> <p>2. The Disclosure Statement should clearly state that the Indenture Trustee will be distributing cash only to the holders of Senior Notes Claims and not to any other claimants.</p> <p>Trustee Objection ¶ 1.</p>	<p><u>Senior Notes Claims</u>), the Revolving Credit Facility Agent (other than with respect to New Equity Interests), or the Term Loan Agent (other than with respect to New Equity Interests), as applicable), that acts in such a capacity.” Plan § 1.1.</p> <ul style="list-style-type: none"> • “The Disbursing Agent will make all Plan Distributions to the appropriate holders of Allowed Claims in accordance with the terms of this Plan; <i>provided</i>, that the Debtors or Reorganized Debtors, as applicable, will disburse the New Equity Interests to the Revolving Lenders, the Term Lenders, <i>and the holders of Allowed Senior Notes Claims.</i>” Disclosure Statement § VI.E.1.; <i>see also</i> Plan § 6.1.
<p>The Disclosure Statement and the Plan should provide that the Cash to be distributed to holders of Allowed Senior Notes Claims under the Plan is subject to the Indenture Trustee’s charging lien.</p> <p>Trustee Objection ¶ 3.</p>	<ul style="list-style-type: none"> • “<i>Distributions received under the Plan by holders of Allowed Senior Notes Claims will be subject to the rights of the Senior Notes Indenture Trustee to payment of fees, expenses, indemnification obligations, and Liens, including any charging lien, securing such right to payment under the Senior Notes Indenture. The Senior Notes Indenture Trustee’s exercise of its charging lien will occur before any distributions are made to holders of Allowed Senior Notes Claims.</i>” Disclosure Statement XIII.C.2.(b)(ii); <i>see also</i> Plan § 4.4(a).
<p>The Disclosure Statement and the Plan should expressly state that the cancellation of the Senior Notes Indenture will discharge the Senior Notes Indenture Trustee of its duties under the Senior Notes Indenture.</p> <p>Trustee Objection ¶ 5.</p>	<ul style="list-style-type: none"> • “<i>The Senior Notes Indenture Trustee will be released from all duties under the Senior Notes Indenture;</i> provided, however, that notwithstanding confirmation of the Plan or the occurrence of the Effective Date, the Senior Notes Indenture, will continue in effect for the purposes of permitting the Senior Notes Indenture Trustee to (a) make distributions under this Plan as provided herein and perform such other necessary functions with respect thereto, (b) seek compensation and/or reimbursement of fees and expenses in accordance with the terms of this Plan, and (c) maintain and assert any rights or exercise any charging liens for reasonable fees, costs, and expenses thereunder, including, without limitation, the right to seek indemnification.” Disclosure Statement VI.D.5.; <i>see also</i> Plan § 5.5.

18. To the extent that the Indenture Trustee's objections have not been resolved by revisions to the Disclosure Statement and the Plan, the Debtors submit that such objections are premature and should be dealt with at the Confirmation Hearing.

19. The Indenture Trustee alleges that (i) the Indenture Trustee's rights to indemnification under the Senior Notes Indenture should be preserved in the Plan and (ii) the definitions of "Released Parties" and "Exculpated Parties" should include the Indenture Trustee. First, the Debtors' obligations under the Senior Notes Indenture, including any obligation of the Debtors to indemnify the Indenture Trustee, are prepetition obligations which the Debtors are not required to assume under the Plan. Section 5.5 of the Plan makes clear that the Debtors intend for all of their obligations under the Senior Notes Indenture to be discharged on the Effective Date. *See* Plan § 5.5 ("Except for the purpose of evidencing a right to a Plan Distribution, the 6.75% Notes, the 7.25% Notes, and the Senior Notes Indenture shall be deemed cancelled on the Effective Date and obligations of the Debtors thereunder shall be discharged."). Given that the Debtors intend to satisfy their obligations under the Senior Notes Indenture pursuant to the Plan, the Debtors should not be required to continue to indemnify the Indenture Trustee after the Effective Date. *See* 11 U.S.C. § 1141(d)(1)(A) ("[C]onfirmation of a plan— (A) discharges the debtor from any debt that arose before the date of such confirmation . . .").

20. The Debtors have added language to the Plan clarifying that the distributions made to holders of Allowed Senior Notes Claims under the Plan will be subject to the rights of the Indenture Trustee to payment of indemnification obligations under the Senior Notes Indenture through its "charging lien." To the extent the Indenture Trustee's objection relates to the disclosure of the parties that are indemnified under the Plan, the Debtors submit

that there is adequate information in the Disclosure Statement for creditors to identify the parties included in section 8.3 of the Plan. *See* Disclosure Statement § VI.G.3.

21. Second, contrary to the Indenture Trustee's insinuations that releases of indenture trustees are routine and included as a matter of right, the Debtors' decision to exclude the Indenture Trustee from the definitions of "Released Parties" and "Exculpated Parties" is properly left to the Debtors' business judgment and should not require additional information in the Disclosure Statement. *See, e.g., In re Spansion, Inc.*, 426 B.R. at 143 ("a debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate"); *In re Aleris Int'l, Inc.*, Case No. 09-10478 (BLS), 2010 WL 3492664, at *20 (Bankr. D. Del. May 13, 2010) (stating that where a debtor release is "an active part of plan negotiation and formulation process, it is a valid exercise of the debtor's business judgment to include a settlement of any claims a debtor might own against third parties as a discretionary provision of a plan."). Currently, neither the holders of Senior Notes Claims nor the Indenture Trustee support the Plan or are providing any other value to the estate in exchange for a release; therefore, the Debtors see no reason at this time to provide the Indenture Trustee with a consensual release.

22. With respect to the Indenture Trustee's exclusion from the definition of "Exculpated Parties," the Debtors have properly limited the parties included in the definition of "Exculpated Parties" to estate fiduciaries and, to the extent that the Indenture Trustee acts as a Disbursing Agent under the Plan, the Indenture Trustee is included in the definition. Contrary to the Indenture Trustee's assertion that this provision deviates from the prior version of the Plan, the Second Amended Plan also included the Indenture Trustee only in its capacity as Disbursing Agent.

23. Finally, the Indenture Trustee's joinder to the Creditors' Committees' Objection should be overruled for the reasons set out above.

Conclusion

24. For the reasons set forth above, the Court should overrule the Objections, approve the Disclosure Statement and grant the Disclosure Statement Motion.

Dated: March 10, 2017
Wilmington, Delaware

/s/ Amanda R. Steele
RICHARDS, LAYTON & FINGER, P.A.
Mark D. Collins (No. 2981)
Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Joseph C. Barsalona II (No. 6102)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

-and-

WEIL, GOTSHAL & MANGES LLP
Gary T. Holtzer (admitted *pro hac vice*)
Stephen A. Youngman (admitted *pro hac vice*)
Alfredo R. Pérez (*pro hac vice* admission pending)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for the Debtors
and Debtors in Possession