

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11  
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CHAPARRAL ENERGY, INC., *et al.*<sup>1</sup> : Case No. 16-11144 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Related Docket No.: 666  
: :  
: **Hearing: January 24, 2017 at 9:30 a.m.**  
: **Objection Deadline: January 19, 2017 (By Agreement)**  
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**LIMITED OBJECTION OF THE CHUBB COMPANIES TO THE DISCLOSURE  
STATEMENT FOR THE JOINT PLAN OF REORGANIZATION FOR CHAPARRAL  
ENERGY, INC. AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11  
OF THE BANKRUPTCY CODE**

ACE American Insurance Company, Federal Insurance Company, Great Northern Insurance Company and Vigilant Insurance Company (together with each of their respective affiliates and successors, the “Chubb Companies”), by and through their undersigned counsel, hereby file this Limited Objection to the Disclosure Statement for the Joint Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code (the “Limited Objection”), and in support of the Limited Objection, respectfully state as follows:<sup>2</sup>

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: CEI Acquisition, L.L.C. (1817); CEI Pipeline, L.L.C. (6877); Chapparral Biofuels, L.L.C. (1066); Chapparral CO2, L.L.C. (1656); Chapparral Energy, Inc. (90941); Chapparral Energy, L.L.C. (20941); Chapparral Exploration, L.L.C. (1968); Chapparral Real Estate, L.L.C. (1655); Chapparral Resources, L.L.C. (1710); Green Country Supply, Inc. (2723); and Roadrunner Drilling, L.L.C. (2399). The Debtors’ address is 701 Cedar Lake Blvd., Oklahoma City, OK 73114.

<sup>2</sup> Capitalized terms used herein and not defined herein shall have the meaning given such terms in the Disclosure Statement.



## **BACKGROUND**

1. On May 9, 2016 (the "Petition Date"), Chaparral Energy, Inc. and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

2. On information and belief, the Debtors have continued in possession of their assets and operation of their businesses pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. On December 19, 2016, the Debtors filed the Disclosure Statement for the Joint Plan of Reorganization for Chaparral Energy, Inc. and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code Disclosure Statement [Docket No. 666] (the "Disclosure Statement") and the Joint Plan of Reorganization for Chaparral Energy, Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 671] (the "Plan").

4. Prior to the Petition Date, the Chubb Companies issued certain insurance policies (as renewed, amended, modified, endorsed or supplemented from time to time, collectively, the "Policies" and together with any agreements, documents or instruments relating thereto, the "Chubb Insurance Program")<sup>3</sup> to one or more of the Debtors or their predecessors, as named insureds.

5. Pursuant to the Chubb Insurance Program, the Chubb Companies provide certain international casualty, property, excess directors' and officers', general liability, fiduciary liability and crime, international commercial, primary protection and indemnity, commercial

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<sup>3</sup> The description of the Chubb Insurance Program set forth herein is not intended to, and shall not be deemed to, amend, modify or waive any of the terms or conditions of the Chubb Insurance Program. Reference is made to the Chubb Insurance Program for a complete description of their terms and conditions.

excess, and other insurance to the Debtors or their predecessors and/or affiliates subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein. In turn, the insureds, including one or more of the Debtors, are required to pay certain amounts including, but not limited to, insurance premiums, audit premiums, fees and other amounts (collectively, the “Insurance Obligations”), all as more particularly described in the Chubb Insurance Program.

### **LIMITED OBJECTION**

6. Section 1125 of the Bankruptcy Code provides that a plan proponent may not solicit acceptance or rejection of a plan unless, before such solicitation, the plan proponent transmits to the parties to be solicited, the plan and a disclosure statement, containing “adequate information,” as defined in section 1125(a) of the Bankruptcy Code, which has been approved by the Bankruptcy Court, after notice and a hearing. *See* 11 U.S.C. § 1125(b).

7. A disclosure statement contains “adequate information” if it provides information concerning the proposed plan of a kind and in sufficient detail that would enable a hypothetical reasonable investor typical of the holders of claims or interests of the relevant class to make an informed judgment about the plan. *See* 11 U.S. C. § 1125(a).

8. Courts in the Third Circuit consistently refuse to approve disclosure statements that lack the information that a “reasonable hypothetical investor” would require to make an informed decision about the proposed plan. *See, e.g., Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417-18 (3d Cir.), *cert. denied*, 488 U.S. 967 (1988); *In re Route 202 Corp.*, 37 B.R. 367, 375 76 (Bankr. E.D. Pa. 1984); *In re Fierman*, 21 B.R. 314 (Bankr. E.D. Pa. 1982); *In*

*re E. Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982); *In re Civitella*, 15 B.R. 206 (Bankr. E.D. Pa. 1981).

**A. The Chubb Companies Cannot Determine How The Debtors Intend To Treat The Chubb Insurance Program**

**1. The Definition of D&O Liability Insurance Policies Should Be Revised To, *Inter Alia*, Clarify That It Includes Policies Issued At Any Time and Any Agreements, Documents, Or Instruments Related Thereto**

9. As drafted, the definition of “D&O Liability Insurance Policies” references only the applicable insurance policies that were issued and “maintained . . . as of the Effective Date.” Plan Art. I. B. This definition ignores that there may be other agreements, documents, and instruments inextricably related to the directors and officers liability policies issued as a part of an insurer’s program, including the Chubb Insurance Program<sup>4</sup>. As a result, it is unclear whether the Debtors intend to treat the insurance policies themselves in one manner, and any related agreements, documents, and instruments that may be related thereto in a different manner.

10. The use of the language “maintained . . . as of the Effective Date” in that definition is also ambiguous. It is unclear whether the Debtors are seeking to limit the treatment in the Plan to those applicable policies that provide coverage as of the Effective Date, which it difficult for the Chubb Companies to determine what applicable policies, if any, under the Chubb Insurance Program are being treated in accordance with Article IV. E. 5. of the Plan.

11. Moreover, the term “D&O Liability Insurance Policies” seem to constitute an “Insurance Contract” but the omission of the latter term from the definition of the former creates

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<sup>4</sup> The Chubb Companies specifically reserve the right to assert that the Chubb Insurance Program must be read, interpreted and enforced in its entirety. *See In re Aneco Elec. Constr.*, 326 B.R. 197, 202 (Bankr. M.D. Fla. 2005); *In re Karfakis*, 162 B.R. 719 (Bankr. E.D. Pa. 1993) (stating “two contracts which are essentially inseparable can be, and should be, viewed as a single, indivisible agreement between the parties”).

an additional ambiguity that is further complicated given the application of those terms within the Disclosure Statement and Plan.

12. For purposes of clarity, the definition of “D&O Liability Insurance Policies” in Article I. B. of the Plan should be revised in accordance with the changes noted in the Defined Terms section of Exhibit A attached hereto.<sup>5</sup>

**2. The Disclosure Statement And Plan Should Clearly Provide That Nothing Modifies, Alters Or Impairs Any Insurance Contract Or the D&O Liability Insurance Policies**

13. Section IV. E. 9. of the Disclosure Statement, and the corresponding section of the Plan, entitled “Treatment of Executory Contracts and Unexpired Leases (Insurance Contracts),” provides generally that each Insurance Contract will be assumed by the Debtors.

14. However, Sections IV.E.5. and IV.E.6. of the Disclosure Statement and the corresponding sections of the Plan, seem to attempt to alter the terms of the Insurance Contracts. For example, Section IV.E.5 of the Disclosure Statement provides that the D&O Liability Insurance Policies will continue in full force and effect for a period of no less than six (6) years following the Effective Date.

15. Further, the Disclosure Statement and Plan contain provisions which provide for, *inter alia*, the certain releases and injunctions. *See, e.g.*, Disclosure Statement §§ IV.I.1.; IV.I.2.; IV.I.4; IV.I.5; and IV.I.7 (and corresponding Articles of the Plan).

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<sup>5</sup> The Chubb Companies also propose (i) an additional defined term to be included in Article I. B. of the Plan entitled “Insurer” to conform with the use of that term in the other language proposed in Exhibit A attached hereto, and (ii) clarifying language in the defined terms “Insurance Contract” and “Indemnification Provisions.” The Chubb Companies specifically reserve the right to challenge the inclusion of certain insurance policies on Plan Schedules 1 and Plan Schedules 2 on the basis that they do not constitute “Indemnification Provisions” and inclusion on those schedules is improper and misleading.

16. It is well-established that a party accepts a contract with its burdens. *See In re University Medical Center*, 973 F.2d 1065, 1075 (3d Cir.), *reh'g en banc denied*, 1992 U.S. App. LEXIS 27506 (Oct. 21, 1992) (stating “(a)ssumption of the executory contract requires the debtor to accept its burdens as well as permitting the debtor to profit from its benefits”); *In re Metro Transp. Co.*, 87 B.R. 338, 342 (Bankr. E.D. Pa. 1982) (stating “assumption or rejection of an executory contrary requires an all-or-nothing commitment going forward, and that hence a debtor cannot assume part of an executory contract in the future while rejecting another part”). *See also In re Frontier Airlines*, 88 B.R. 332, 337 (Bankr. D. Colo. 1988) (courts have “no authority to rewrite contracts and then compel a party to fulfill a duty for which he did not contract”)

17. Accordingly, the Disclosure Statement (and the Plan) need to clarify that nothing in, *inter alia*, the Disclosure Statement, the Plan, the Confirmation Order or related documents, including, but not limited to, those provisions identified above, shall modify, alter or otherwise impair any Insurance Contract - including the D&O Liability Insurance Policies.

18. For purposes of clarity, Sections IV.E.5, IV.E.6 and IV.E.9 of the Disclosure Statement, and the corresponding provisions in the Plan, should be revised in accordance with the changes noted with respect to those sections in Exhibit A attached hereto.

**B. Reservation Of Rights**

19. The Chubb Companies specifically reserve their right to assert additional objections to the Disclosure Statement and the Plan.

WHEREFORE, the Chubb Companies respectfully request that this Court (a) either (i) condition any approval of the Disclosure Statement to inclusion of the modifications requested herein and as set forth in Exhibit A attached hereto (ii) deny the request for approval of the

Disclosure Statement as it does not contain the adequate information required by 11 U.S.C. § 1125 and (b) grant such other relief as the Court deems appropriate.

Dated: January 19, 2017

Respectfully Submitted,

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*Counsel for the Chubb Companies*

# EXHIBIT A



**Article I. B. of the Plan:**

**Defined Terms**

"Insurer" means any company or other entity that issued any Insurance Contract, and any respective predecessors and/or affiliates thereof.

"D&O Liability Insurance Policies" means all insurance policies (including, without limitation, the D&O Tail Policy, any general liability policies, and any errors and omissions policies and any agreements, documents, or instruments related thereto) issued at any time and providing coverage for liability of any Debtor's directors, managers, and officers as listed on Plan Schedule 1 and Plan Schedule 2. For the avoidance of doubt, each of the D&O Liability Insurance Policies shall constitute an Insurance Contract.

"Insurance Contract" means all insurance policies and all surety bonds and related agreements that have been issued at any time to or provide coverage to, any of the Debtors and all agreements, documents, or instruments relating thereto. For the avoidance of doubt, each of the D&O Liability Insurance Policies shall constitute an Insurance Contract.

"Indemnification Provisions" means, collectively, each of the provisions currently in place (whether in bylaws, certificates of incorporation, board resolutions, employment contracts or otherwise, including all those listed on Plan Schedule 1 and Plan Schedule 2) whereby any Debtor agrees to indemnify, reimburse, provide contribution or advance fees and expenses to and for the benefit of, defend, exculpate, or limit the liability of, any Indemnified Party.

**Disclosure Statement §IV E.5. and Plan Article VI. E.**

**5. D&O Liability Insurance Policies**

On the Effective Date, each of the D&O Liability Insurance Policies shall be assumed by the Debtors to sections 105, 365(a) and 1123 of the Bankruptcy Code. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the D&O Liability Insurance Policies. In furtherance of the foregoing, the Reorganized Debtors will maintain and continue in full force and effect such D&O Liability Insurance Policies for the benefit of the insured Persons at levels (including with respect to coverage and amount) no less favorable than those existing as of the date of entry of the Confirmation Order for a period of no less than six (6) years following the Effective Date; provided, however, that nothing alters the terms and conditions of the D&O Liability Insurance Policies. Confirmation and Consummation of the Plan will not impair or otherwise modify any available defenses of the Reorganized Debtors or any Insurer under the D&O Liability Insurance Policies. For the avoidance of doubt, the D&O Liability Insurance Policies will continue to apply with respect to actions, or failure to act, that occurred on or prior to the Effective Date subject to the terms of the D&O Liability Insurance Policies.

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**Disclosure Statement §IV E.6. and Plan Article VI. F.**

**6. Indemnification Provisions**

On the Effective Date, each of the Indemnification Provisions shall be deemed and treated as an Executory Contract that is and will be assumed by the Debtors pursuant to sections 105, 365(a) and 1123 of the Bankruptcy Code as to which no Proof of Claim or cure claim need be Filed. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the Indemnification Provisions. Confirmation and Consummation of the Plan will not impair or otherwise modify any available defenses of the Reorganized Debtors or other parties under the Indemnification Provisions. For the avoidance of doubt, the Indemnification Provisions will continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date subject to the terms of the Indemnification Provisions.

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**Disclosure Statement §IV E.9. and Plan Article VI. I.**

**9. Insurance Contracts**

Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Support Agreement, the Plan Supplement, any Plan Schedule, the Exit Facility Loan Documents, the Restructuring Documents, the Confirmation Order, any other document related to any of the foregoing or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, or grants an injunction or release): (a) on the Effective Date, and without limiting the terms or provisions of Article VI.E of the Plan, each Insurance Contract will be deemed and treated as an Executory Contract that is and will be assumed by the Debtors pursuant to sections 105, 365(a) and 1123 of the Bankruptcy Code without the need or requirement of any Insurer to File or serve any objection to a proposed cure amount or Cure Claim Amount, or a request, application, claim, proof or motion for payment or allowance of any Administrative Claim or Allowed Administrative Claim; and (b) all terms, conditions, rights, claims, liabilities, obligations, defenses, limitations and exclusions set forth in, or arising pursuant to any Insurance Contract shall survive and shall not be amended, modified, waived, released, discharged or impaired in any respect and shall remain in full force and effect and subject to applicable non-bankruptcy law, and the Reorganized Debtors shall remain liable for all obligations thereunder regardless of whether they arise before or after the Effective Date. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' assumption of each of the Insurance Contracts. Confirmation and Consummation of the Plan will not impair or otherwise modify any available defenses of the Reorganized Debtors, or any Insurer under any Insurance Contract.

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