

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

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In re:

MAXUS ENERGY CORPORATION, *et al.*,<sup>1</sup>

Debtors.

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)  
)  
) Chapter 11

)  
) Case No. 16-11501 (CSS)

)  
) Jointly Administered

)  
) **Re: D.I. 1056, 1058**  
)

**REPSOL, S.A.’S LIMITED OBJECTION TO THE AMENDED DISCLOSURE  
STATEMENT FOR THE AMENDED CHAPTER 11 PLAN OF LIQUIDATION  
PROPOSED BY MAXUS ENERGY CORPORATION, ET AL. AND THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS**

Repsol, S.A. (“Repsol”) submits, by and through its undersigned counsel, this objection (the “Objection”) to the approval of the Amended Disclosure Statement (D.I. 1058) (the “Disclosure Statement”) for the Amended Chapter 11 Plan (D.I. 1056) (the “Plan”) of Liquidation Proposed by Maxus Energy Corporation, *et al.* (the “Debtors”) and the Official Committee of Unsecured Creditors.<sup>2</sup> In support of this Objection, Repsol respectfully states as follows:

**LIMITED OBJECTION**

1. Repsol objects to the Disclosure Statement both because it fails to provide “adequate information” concerning the proposed Plan as required by 11 U.S.C. § 1125. The

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<sup>1</sup> The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement and Plan.

Disclosure Statement as currently drafted fails to adequately inform parties in interest and does not enable them to make informed judgments concerning the proposed Plan due to missing information, vague descriptions of causes of action and a complete lack of justification for the included releases, injunctions and exculpations. Thus, this Court should not approve the Disclosure Statement in its current form at this time.

2. First, Repsol objects to the approval of the Disclosure Statement because Section V.M. of the Disclosure Statement, which repeats the “Retention of Jurisdiction” provision found in Article XIV of the Plan, fails to provide any explanation as to why the proposed retention of jurisdiction is appropriate or how it is in keeping with applicable law. More specifically, the Disclosure Statement states that the Plan asserts that this Court “shall retain exclusive jurisdiction over all matters . . . including . . . to hear and determine . . . the Repsol Causes of Action.” Disclosure Statement § V.M.; Plan § XIV(p). However, as this Court is aware, the United States Court of Appeals for the Third Circuit has held that “the jurisdiction of the non-Article III bankruptcy courts is limited after confirmation of a plan.” In re Resorts Int’l, Inc., 372 F.3d 154, 168 (3d Cir. 2004). Here, like in the Resorts International case, not only is it not appropriate for this Court to attempt to retain exclusive jurisdiction over causes of action being placed into a litigation trust, but it is likely that this Court does not have post-confirmation subject matter jurisdiction over these causes of action. See In re Resorts Int’l, 372 F.3d at 169-171. This provision should be altered to abide by applicable precedent in the Third Circuit. To the extent the Debtors and Committee do not alter the provision, language should be added to the Disclosure Statement to explain why such a retention of jurisdiction provision is legal and appropriate.

3. Second, Repsol objects to the Disclosure Statement because it fails to provide adequate information regarding the allegedly-existing Repsol Causes of Action. Unlike the alleged YPF Causes of Action, which receive about three-and-a-half pages worth of descriptions (including a rebuttal apparently authored by YPF), Disclosure Statement § III.K.-L., the alleged Repsol Causes of Action are not described at all. In fact, the term “Repsol Causes of Action” only appears *twice* in the entire Disclosure Statement, with both instances of its use being in sections of the Disclosure Statement that are merely repeating sections of the Plan verbatim. See Disclosure Statement at 69, 101. This is clearly not “information of a kind, and in sufficient detail...that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.” 11 U.S.C. § 1125(a)(1). At the very least, the Disclosure Statement must include the following language suggested by Repsol about the alleged Repsol Causes of Action:

OCC previously raised twelve causes of action against the Debtors, YPF, Repsol, and other entities in New Jersey state court. Most of those causes of action were dismissed with prejudice against Repsol in 2015 because they were time-barred under the applicable statute of limitations. The surviving claims based on an alter ego theory of liability was dismissed as a matter of law on summary judgment thereafter, which was entered by the New Jersey state court in April of 2016. To date, all claims asserted against Repsol have been dismissed months prior to the Debtors’ bankruptcy petition. Notwithstanding these dismissals of all claims against Repsol, this Disclosure Statement briefly references potential causes of action against Repsol, based on the same set of facts and transactions litigated in the New Jersey state court, that will preserved for prosecution in a Liquidating Trust. Various legal doctrines, including but not limited to, the New Jersey Entire Controversy Doctrine, Rooker-Feldman, law of the case, collateral estoppel, and res judicata, would prevent the Debtors from re-litigating any claims already determined in the New Jersey state court, and prevent the Debtors from raising any new claims based on the same set of facts and transactions that were at issue in the New Jersey state court.

4. Finally, Repsol objects to approval of the Disclosure Statement because the Plan provides for releases for the benefit of the Debtors’ officers and directors with no explanation of

the value being given to the estates and because the injunctions and exculpations in the Plan act as impermissible third-party releases. See Disclosure Statement § V.J.; Plan, Art. XI. The Disclosure Statement reports that Debtor releases under the Plan are being granted to José Daniel Rico, Sebastian Sánchez Trolliet, and Roberto Fernando Segovia, as well as others, without the Disclosure Statement describing (a) any investigation by the Debtors into what potential claims might exist against these parties, (b) how the releases are reasonable or within the Debtors' business judgment, (c) any description of the property or other value given in exchange for these releases, or (d) how the third party releases do not violate the test set forth in In re Zenith Electronics Corporation, 241 B.R. 92 (Bankr. D. Del. 1999). Likewise, the exculpation and injunction provisions act as non-consensual third party releases for the benefit of non-estate fiduciaries, such as OCC, contrary to applicable law noted in In re Continental Airlines, 203 F.3d 203 (3d Cir. 2000) and In re Washington Mutual, Inc., 442 B.R. 314 (Bankr. D. Del. 2011), without providing any justification for such third-party releases.

WHEREFORE, for the reasons set forth above, the Disclosure Statement should not be approved unless revised as set forth herein.

Dated: April 12, 2017  
Wilmington, Delaware

/s/ Daniel B. Butz  
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