

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
Maxus Energy Corporation, <i>et al.</i> , <sup>1</sup>	:	Case No. 16-11501(CSS)
	:	
	:	Hearing Date: 5/22/17 at 10 a.m.
Debtors.	:	Obj. Deadline: 5/17/17 at 5 p.m. (for UST)
	:	

**UNITED STATES TRUSTEE’S LIMITED OBJECTION TO CONFIRMATION OF THE  
SECOND AMENDED CHAPTER 11 PLAN OF LIQUIDATION (D.I.1231)**

In support of the United States Trustee’s Limited Objection to Confirmation of the Second Amended Chapter 11 Plan of Liquidation, Andrew R. Vara, the Acting United States Trustee for Region 3 (“U. S. Trustee”), by and through her undersigned counsel, states as follows:

1. This Court has jurisdiction to hear the above-referenced Objection.

2. Pursuant to 28 U.S.C. § 586, the U. S. Trustee is charged with the administrative oversight of cases commenced pursuant to Title 11 of the United States Bankruptcy Code. This duty is part of the U. S. Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U. S. Trustee has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6<sup>th</sup> Cir. 1990) (describing the U. S. Trustee as a “watchdog”).

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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.

3. Pursuant to 11 U.S.C. § 307, the U. S. Trustee has standing to be heard with regard to the above-referenced Limited Objection.

4. The U. S. Trustee does not object to confirmation of the Second Amended Plan, but rather objects solely to one provision in the Liquidating Trust Agreement.

5. Section 3.12 of the Liquidating Trust Agreement provides:

None of the Liquidating Trustee, the Liquidating Trust Oversight Committee, or their respective members, advisors or professionals, shall be liable for any damages arising out of the creation, operation or termination of the Liquidating Trust, including actions taken or omitted in fulfillment of his or her duties with respect to the Liquidating Trust, except in the case of such party's gross negligence, bad faith or willful misconduct; **provided, that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances. . . .** Notwithstanding the foregoing, nothing in this Section 3.12 shall relieve the Liquidating Trustee or the members of the Liquidating Trust Oversight Committee from any liability for any actions or omissions arising out of their gross negligence or willful misconduct; **provided, that in no event will any such Person be liable for punitive, exemplary, consequential, or special damages under any circumstances.**

Emphasis added.

6. The bolded provisions are inappropriate and provide a greater exculpation to the Liquidating Trustee, the Liquidating Trust Committee, and their members, advisors and professionals than is permitted under applicable law. *See In re United Artists Theatre Company*, 315 F.3d 217 (3d Cir. 2003).

WHEREFORE the U. S. Trustee requests that this Court issue an order denying the Application to the extent of this Objection and/or granting such other relief as this Court deems appropriate, fair and just.

Respectfully submitted,

**ANDREW R. VARA**  
**ACTING UNITED STATES TRUSTEE**  
**REGION THREE**

May 17, 2017

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