

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

In re

MAXUS ENERGY CORPORATION., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-11501 (CSS)

(Jointly Administered)

Re: D.I. 698, 890, 844 & 965

Objection Deadline: February 28, 2017, 4:00 p.m. (ET)²
Hearing Date: March 7, 2017, 10:00 a.m. (ET)

**OBJECTION OF OCCIDENTAL CHEMICAL CORPORATION
TO DEBTORS' MOTION FOR AN ORDER (A) APPROVING DISCLOSURE
STATEMENT; (B) ESTABLISHING VOTING RECORD DATE, VOTING DEADLINE,
AND OTHER DATES; (C) APPROVING PROCEDURES FOR SOLICITING,
RECEIVING, AND TABULATING VOTES ON PLAN AND FOR FILING
OBJECTIONS TO PLAN; (D) APPROVING MANNER AND FORMS OF NOTICE AND
OTHER RELATED DOCUMENTS; AND (E) GRANTING RELATED RELIEF**

Occidental Chemical Corporation ("Occidental"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Motion to Approve (A) Disclosure Statement; (B) Establishing Voting Record Date, Voting Deadline, and Other Dates; (C) Approving Procedures for Soliciting, Receiving, and Tabulating Votes on Plan for Filing Objections to Plan; (D) Approving Manner and Forms of Notice and Other Related Documents; and (E) Granting Related Relief* [D.I. 890] (the "Disclosure Statement Motion") filed by the above-

¹ 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) ("Maxus"), 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.

² The Debtors extended the objection deadline for Occidental to March 1, 2017 at 11 a.m. (ET).

captioned debtors and debtors in possession (the “Debtors”).³ In support of this Objection, Occidental respectfully states as follows:

BACKGROUND

1. On June 17, 2016 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases (the “Cases”) are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). On July 7, 2016, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code. On December 16, 2016, the United States Trustee appointed the Retiree Committee. No party has requested the appointment of a trustee or examiner in these Cases.

2. On December 29, 2016, the Debtors filed the *Chapter 11 Plan of Liquidation Proposed by Maxus Energy Corporation, et al.* [D.I. 697] (the “Debtors’ Plan”) and the *Disclosure Statement for the Chapter 11 Plan of Liquidation Proposed by Maxus Energy Corporation, et al.* [D.I. 698] (the “Disclosure Statement”) and on January 12, 2017, the Debtors filed a liquidation analysis in support of the Debtors’ Plan [D.I. 738] (the “Liquidation Analysis”).

3. On February 3, 2017, Occidental filed an objection to the Disclosure Statement [D.I. 844] (the “Disclosure Statement Objection”), and reserved its rights to further supplement the Disclosure Statement Objection at a later date. Several other creditors and parties in interest,

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement Motion.

including the Committee and the Retiree Committee, also filed objections to the Disclosure Statement. [D.I. 810, 811, 812, 813, 814, 816, 818, 845, and 859]

4. In the Disclosure Statement Motion filed on February 14, 2017, the Debtors indicate that they intend to amend the Disclosure Statement in advance of the March 7, 2017 hearing on the Disclosure Statement, to address the various objections to the Disclosure Statement filed by parties in interest.⁴ (Disclosure Statement Motion, footnote 3)

5. With this Objection, Occidental objects to the relief requested in the Disclosure Statement Motion with respect to certain solicitation and voting procedures.

OBJECTION

6. Occidental hereby joins in and independently adopts the Committee's objection to the Disclosure Statement Motion [D.I. 965] (the "Committee's Objection"). For all the reasons set forth in the Committee's Objection, the Court should reject the solicitation and voting procedures set out in the Disclosure Statement Motion and refuse any solicitation of the Debtors' Plan on that basis. Occidental is particularly concerned by the confusion surrounding the Debtors' proposed notice and tabulation procedures, which could be constructed as depriving creditors holding disputed claims of any right to vote on the Debtors' Plan, and grants the Debtors and YPF undue influence on the voting process under section 1126(c) of the Bankruptcy Code.

7. More precisely, Exhibit 3 to the proposed Disclosure Statement Order (Notice of Non-Voting Status to Holders of Claims or Equity Interests For Which An Objection Has Been Filed By The Debtors) states in relevant part:

⁴ At the date hereof, the Debtors have not filed such amended Disclosure Statement. Occidental therefore hereby reserves all its rights to supplement this Objection and the Disclosure Statement Objection once an amended Disclosure Statement has been filed by the Debtors.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice because you are the Holder of an Equity Interest or a Claim in a Voting Class that has timely filed a Proof of Claim (or an untimely Proof of Claim that has been allowed as timely by the Bankruptcy Court under applicable law on or before the Voting Record Date), which is subject, *in whole or in part*, to an objection filed by the Debtors. As a result, you are not entitled to vote on the Plan for any purpose and you have not been sent a Solicitation Package or Ballot. (emphasis added)

Taken at face value, if the Debtors decide to object to even the smallest portion of a creditors' claim – which the Debtors have the broadest right to do under the Bankruptcy Code and the proposed Disclosure Statement Order – such creditor would be deprived of the right to vote on the Debtors' Plan for any part of its claim. The text of the notice is furthermore in direct contradiction with the tabulation procedures set out in the Disclosure Statement Motion and the proposed Disclosure Statement Order, which state that “[i]f the Debtors file an objection to a portion of a Claim, the undisputed portion of such Claim shall be temporarily allowed for voting purposes only and not for the purposes of allowance or distribution [].” (Proposed Disclosure Statement Order at 32(f)) Occidental therefore posits that the proposed Disclosure Statement Order should prevail and that the notice of non-voting status should be amended accordingly.

8. The proposed tabulation procedures also unduly restrict the vote for contingent and/or unliquidated claims, in what appears to constitute a thinly-veiled attempt to give the Debtors' parent, YPF Holdings, Inc., an unwarranted blocking position over Class 4 (General Unsecured Claims). The tabulation procedures provide that, if a claim for which a proof of claim has been filed is contingent or unliquidated or does not otherwise specify a liquidated amount, such claim shall be allowed to vote for a value of \$1.00 only. If a claim is liquidated and non-contingent in part, it shall be allowed for voting purposes for the liquidated and non-contingent part only. The same provisions also grant the Debtors the power to allege that a claim is, in their

view, contingent or unliquidated and treat it accordingly. (Proposed Disclosure Statement Order at 32 (b-c))

9. In the specific context of these Cases, those tailor-made provisions have far-reaching consequences. Due to the potentially enormous environmental liabilities of the Debtors, approximately 95% of the total claims pool in these Cases is contingent or unliquidated.⁵ In addition, contingent or unliquidated claims that have been scheduled by the Debtors are not subject to the voting limitation described above (and, unsurprisingly, the Debtors listed mainly zero-value claims and intercompany claims in their schedules, with by far the most important scheduled claim being a \$193 million claim by YPF Holdings, Inc. (Claim No. 295)). Taken together, those two elements put the Debtors in a position to disregard, in their sole discretion, more than 95% of the claims pool when calculating whether the amount requirement of section 1126(c) of the Bankruptcy Code is met (2/3 of the claims in amount must vote in favor of the plan) and, consequently, to give YPF Holdings, Inc. a blocking position over the class of general unsecured creditors. This is totally unwarranted in light of the \$13 billion of asserted general unsecured claims in these Cases and the insider status of YPF Holdings, Inc.

10. Finally, Occidental objects to the form of ballots for Holders of Class 4 General Unsecured Claims, inasmuch they lack the possibility for such Holders to indicate their preference regarding the YPF Settlement Agreement. Occidental hereby reiterates and incorporates all the facts and arguments laid out in its previous filings, including the Disclosure Statement Objection, regarding the inappropriateness of depriving creditors' suffrage on the decision to dispose of the Debtors' most valuable asset. Should the Court approve the 9019 First/Plan Structure and authorize the Debtors to solicit votes on the Debtors' Plan, creditors

⁵ For instance, only \$44 million of the EPA's \$ 11.941 billion claim is liquidated in amount, see Proofs of Claim No. 473, 474, 476.

should at the very least be given the opportunity to voice their opinion on the YPF Settlement Agreement. Indeed, the paramount interest of creditors is one of the four *Martin* factors⁶ that the Court will have to consider when reviewing the YPF Settlement Agreement, and nobody is better placed than creditors themselves to assess whether the YPF Settlement Agreement is indeed in their paramount interest. The creditors' opinion should be heard, and the ballots provide the most efficient and most cost-effective way of collecting their views prior to the hearing on the YPF Settlement Agreement.

CONCLUSION

WHEREFORE Occidental respectfully requests that the Court deny approval of the Disclosure Statement Motion, and grant such further relief as the Court deems just and proper.

⁶ “In determining whether the Settlement is above the lowest point in the range of reasonableness, this Court must consider the following four factors: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d at 393; *accord In re Nutraquest, Inc.*, 434 F.3d at 644-45.

Dated: March 1, 2017
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

By: /s/ Mark D. Collins

Mark D. Collins (No. 2981)
Michael J. Merchant (No. 3854)
Brendan J. Schlauch (No. 6115)
One Rodney Square
920 North King St., Suite 200
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
collins@RLF.com
merchant@RLF.com
schlauch@RLF.com

and

WHITE & CASE LLP
J. Christopher Shore (admitted *pro hac vice*)
Harrison L. Denman (admitted *pro hac vice*)
1155 Avenue of the Americas
New York, NY 10036
Telephone: (212) 819-8200
Facsimile: (212) 354-8113
cshore@whitecase.com
hdenman@whitecase.com

and

Thomas E Lauria (admitted *pro hac vice*)
Southeast Financial Center, Suite 4900
200 South Biscayne Blvd
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744
tlauria@whitecase.com

Counsel to Occidental

CERTIFICATE OF SERVICE

I, Mark D. Collins, hereby certify that on March 1, 2017, I caused copies of the foregoing to be served upon the following parties in the manner indicated:

VIA HAND DELIVERY

Landis Rath & Cobb LLP
Attn: Adam G. Landis, Matthew B. McGuire,
Joseph D. Wright
919 Market Street, Suite 1800
Wilmington DE 19801

Cole Schotz P.C.
Attn: Norman L. Pernick, J. Kate Stickles
500 Delaware Avenue
Suite 1410
Wilmington DE 19801

Office of the United States Trustee
Attn: David Buchbinder
Linda J. Casey
844 King St., Ste. 2207
Wilmington DE 19801

Young Conaway Stargatt & Taylor, LLP
Attn: M. Blake Cleary, Joseph M. Barry,
Justin P. Duda, Travis G. Buchanan
Rodney Square
1000 North King Street
Wilmington DE 19801

William Bowden
Ashby & Geddes, P.A.
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899

VIA FIRST CLASS MAIL

Morrison & Foerster LLP
Attn: Jordan A. Wishnew, Benjamin Butterfield
J. Alexander Lawrence, Jennifer Marines &
James Michael Peck
250 West 55th Street
New York NY 10019-9601

Adam C. Harris
Lucy F. Kweskin
Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022

Chadbourne & Parke LLP
Attn: Howard Seife, Francisco Vazquez, Samuel
S. Kohn, Benjamin D. Bleiberg
1301 Avenue of the Americas
New York NY 10019-6022

Charles Gibbs
Eric Seitz
Eric Haitz
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue, Suite 4100
Dallas, TX 75201

/s/ Mark D. Collins
Mark D. Collins (No. 2981)