

**IN THE UNITED STATES BANKRUPTCY COURT
FOR WESTERN DISTRICT OF OKLAHOMA**

In re:)	
)	
GMX RESOURCES INC., <i>et al.</i> ¹)	Case No. 5:13-bk-11456 (SAH)
)	Chapter 11
Debtors.)	Jointly Administered
)	
)	

OBJECTION TO DISCLOSURE STATEMENT
(Related to Docket 828 and 839)

Certain holders of preferred and common stock² (“Shareholders”) of GMX Resources, Inc. (“GMX”) object to the “Disclosure Statement to Accompany Joint Plan of Reorganization Of GMX Resources Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code” [Docket 828] (the “Disclosure Statement”) and the “Motion to (I) Approve Disclosure Statement and the Form and Manner of Service Related Thereto; (II) Set Dates for the Objection Deadline and Hearing Relating to Confirmation of the Plan; and (III) Authorize Related Relief” [Docket 839] (the “Motion”). The Disclosure Statement purports to provide information adequate to solicit votes from creditors and other parties in interest with respect to the “Joint Plan of Reorganization of GMX Resources Inc. and Its Debtor Subsidiaries under Chapter 11 of the Bankruptcy Code” [Docket 830] (the “Plan”). While votes of the Shareholders are not being solicited by the Disclosure Statement, the proposed Plan purports to adversely affect substantive

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, include: GMX Resources Inc. (4474), Diamond Blue Drilling Co. (7463), and Endeavor Pipeline, Inc. (3948).

² The equity owners that bring this objection include Brian Burr, Taylor Burr, Michael Burr, Brad Keiller, DCB Capital, LLC and Technical Management Group, Inc. (collectively the “Shareholders”). The Shareholders represent approximately 593,000 shares of preferred stock and 75,000 shares of common stock. GMX has outstanding 3,176,734 shares of preferred stock and 7,405,859 shares of common stock. Upon information and belief, the preferred shares were sold by GMX for prices ranging from \$20 to \$25 per share with total consideration paid to GMX by purchasers of preferred stock in excess of \$70 million. The preferred shares have a liquidation preference of \$25 per share, which totals collectively the amount of \$79,418,000.

rights of Shareholders.³ Further, the Debtors are going to “cram-down” the Plan on the Equity Interests and limit their rights and remedies against certain insiders and participants in these Bankruptcy Cases. The Disclosure Statement fails to provide adequate information as detailed below.⁴

1. The Disclosure Statement is replete with descriptions of the Plan as “consensual” [Page 28], as a “global settlement among the parties” [Page 1], and as a “negotiated global resolution” [Page 2]. Those descriptions are incorrect. At no time were Shareholders or Holders of Equity Interests as a class or classes ever invited to participate in any discussions or negotiations regarding the Plan.⁵

2. The Disclosure Statement fails to provide estimates of the value of the Debtors’ assets. The fair market value of the assets of a reorganizing debtor is an essential disclosure of any disclosure statement. Apparently, the Debtors want to rely on the results of a failed auction process to prove that the value of the Debtors’ assets is equal to or less than the amount of the allowed Class 1 Claims. [Page 106, consisting of 4 lines of text in a document spanning 129 pages (single spaced)]. As the Court is well-aware, the Debtors have obtained reserve reports of its oil and gas properties and the Debtors’ estates are being asked to pay for a separate reserve report commissioned by the Committee of Unsecured Creditors (the “Committee”) in these

³ The Plan grants a release to certain insiders and Exculpated Parties from and by the Holders of Equity Interests including the Shareholders [Page 70] and enjoins Holders of Equity Interests from pursuing claims against insiders and Exculpated Parties [Page 72]. The Debtors propose to grant these releases and injunctions under the Plan apparently without Holders of Equity Interests receiving advance notice of such provisions. While the releases and injunctions are “confirmation objections”, the failure to provide notice of such provisions is a proper disclosure statement objection.

⁴ Words capitalized herein but not defined herein shall have the meanings ascribed in the Disclosure Statement or the Plan.

⁵ Ironically, elsewhere in the Disclosure Statement the Debtors recognize that the Plan is not consensual. On page 65, the Debtors acknowledge that they will have to invoke the “cram down” provisions of the Bankruptcy Code on a “non-consensual basis”.

cases.⁶ Not even a summary of these reserve reports is included in the Disclosure Statement. Further, the Debtors do not attempt to value their assets that were not included in the failed auction such as Avoidance Actions, Cause of Action, other claims against directors, officers and other insiders, and the tax attributes being retained by the Reorganized GMX.

3. The Disclosure Statement fails to articulate any rationale business judgment or reason for the release from liability granted to the Protected Persons or the Released Parties. The Disclosure Statement further fails to disclose what effect the releases of the Protected Persons and the Released Parties will have on claims of third parties such as the Shareholders. Further, the Debtors fail to disclose the value, scope or theories of any of the released claims against the Protected Persons or the Released Parties.

4. The Disclosure Statement indicates that the Debtors filed “lists of Equity Security Holders” on May 3, 2013 [page 25]. Shareholders have been unable to find such lists on the Court’s docket sheet and have requested confirmation from the Debtors that such lists were actually filed. See Exhibit B attached hereto. To date Debtors have not identified such lists for the Shareholders. Bankruptcy Rule 1007(a)(3) requires the filing of lists of equity holders within 14 days after the commencement of a voluntary Chapter 11 case.

5. The Disclosure Statement fails to explain how any “General Settlement” as described on page 47 of the Disclosure Statement could possibly be enforceable against the Holders of Equity Interests.

6. The Disclosure Statement fails to adequately describe the D&O Policies and the sharing of any proceeds from such policies. In particular, on page 55 the Debtors seem to imply

⁶ Shareholders have requested a copy of the reserve report commissioned by the Committee and such request has been denied by the Committee. See Exhibit A attached hereto.

that the proceeds of the D&O Policies will be available solely for the benefit of “Trust beneficiaries”.

7. On October 29, 2013 [Docket 853], this Court entered an order limiting the transfer of claims and equity interests in GMX. The Disclosure Statement fails to disclose the extent to which the relief granted in such order continues after Confirmation.

8. All references to a “settlement” with Equity Interests [Page 69] should be stricken from the Disclosure Statement.

9. Upon information and belief, no notice of the Motion was given to the Holders of Equity Interests. Nevertheless, the Motion adversely affects substantive rights of Holders of Equity Interests and they should have received notice of the Motion and should receive a copy of the Plan and the Disclosure Statement.

10. The Disclosure Statement should not be considered by the Court until all parties in interest have had a reasonable opportunity to review and consider the Exhibits to the Disclosure Statement.

11. Shareholders reserve the right to amend and supplement this Objection prior to the hearing on the Disclosure Statement and the Motion.

WHEREFORE, the Shareholders pray that the Court deny approval of the Disclosure Statement and the Motion and for such other and further relief as this Court deems appropriate.

Respectfully submitted,

/s/ Neal Tomlins

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Michael Burr, Brad Keiller, DCB
Capital, LLC and Technical Management
Group, Inc.

EXHIBIT A

neal@tplawtulsa.com

From: Jason S. Brookner <jbrookner@lrmlaw.com>
Sent: Wednesday, November 20, 2013 9:13 AM
To: neal@tplawtulsa.com; Larry G. Ball - Hall Estill (lball@hallestill.com)
Subject: RE: 13-11456 Motion/Application for Administrative Expenses Ch 11 GMX Resources, Inc.

Neal, thanks for your email, and apologies for the delay in responding.

We respectfully decline to make the report available. Mr. Lonquist was, at most, a consulting expert, whose work was used by the Committee in its own internal deliberative process. He was never designated as a testifying expert nor was his report ever disclosed to a testifying expert. The report constitutes work product and is, therefore, not subject to discovery.

Also, for what it's worth, and as you probably know from the PSA Term Sheet, the First Lien Lenders and the Debtors have already agreed to the payment of these fees (see pages 9-10 of the Term Sheet). Further, and as you also probably already know, the money for these fees (and the estates' other professional fees, including my fees and Andrews Kurth's fees) is in reality being paid by the First Lien Lenders, as all of the cash belongs to them.

From: neal@tplawtulsa.com [mailto:neal@tplawtulsa.com]
Sent: Tuesday, November 19, 2013 1:15 PM
To: Jason S. Brookner; Lball@HallEstill.com
Subject: RE: 13-11456 Motion/Application for Administrative Expenses Ch 11 GMX Resources, Inc.

Fair question. My clients have several millions of dollars invested in the equity of GMX and our now being told that the equity is worth nothing. They are trying to confirm values of the oil and gas properties so that they can determine how best to proceed. My guess is that the report confirms the high bid at the auction and that is what they are trying to confirm by review of the report. Also, since the estate is being asked to pay for the report, we think that it should be available to all parties in interest. Thanks for the consideration.

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Phone: 918.949.4411

Email: Neal@tplawtulsa.com

From: Jason S. Brookner [mailto:jbrookner@lrmlaw.com]
Sent: Tuesday, November 19, 2013 1:10 PM
To: neal@tplawtulsa.com; Lball@HallEstill.com
Subject: RE: 13-11456 Motion/Application for Administrative Expenses Ch 11 GMX Resources, Inc.

What is the reason for the request? We will take the matter under advisement.

Jason S. Brookner
Member

Looper Reed & McGraw, P.C.

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From: neal@tplawtulsa.com [<mailto:neal@tplawtulsa.com>]
Sent: Tuesday, November 19, 2013 12:34 PM
To: Jason S. Brookner; lball@HallEstill.com
Subject: FW: 13-11456 Motion/Application for Administrative Expenses Ch 11 GMX Resources, Inc.

Jason and Larry—My clients would like to obtain a copy of the reserve report that was prepared by Lonquist. Could you furnish me a copy for my clients? If there is a confidentiality agreement, we would glad to review and consider. Thanks.

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From: cmecfhelpdesk@okwb.uscourts.gov [<mailto:cmecfhelpdesk@okwb.uscourts.gov>]
Sent: Tuesday, November 12, 2013 8:16 PM
To: Courtmail@okwb.uscourts.gov
Subject: 13-11456 Motion/Application for Administrative Expenses Ch 11 GMX Resources, Inc.

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to**

EXHIBIT B

neal@tplawtulsa.com

From: neal@tplawtulsa.com
Sent: Tuesday, November 19, 2013 2:26 PM
To: 'dzdunkewicz@andrewskurth.com'
Subject: FW: List of equity owners

David—Could you help me with this? See below. I have not heard back from Will or Andre. Thanks.

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Phone: 918.949.4411

Email: Neal@tplawtulsa.com

From: neal@tplawtulsa.com
Sent: Monday, November 18, 2013 5:24 PM
To: William H. Hoch; Andre Caldwell (andre.caldwell@crowedunlevy.com)
Subject: List of equity owners

Will and Andre—Did GMX file a schedule of equity owners? If so, please provide the docket number. I checked the docket sheet and did not find one but I probably missed it. Thanks.

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