

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

In Re: §
ANIMAS WELL SERVICES, LLC, § CASE NO. 15-70162-RBK-11
§
§
§
DEBTOR. § HEARING DATE:
§ July 12, 2016 @ 1:45 p.m.

**OBJECTION OF THE UNITED STATES TRUSTEE TO
DEBTOR'S DISCLOSURE STATEMENT**

TO THE HONORABLE RONALD B. KING
UNITED STATES CHIEF BANKRUPTCY JUDGE:

COMES NOW Judy A. Robbins, United States Trustee for Region 7 ("UST"), by and through the undersigned, pursuant to Fed. R. Bankr. P. 3017(a) and files this Objection to the Debtor's Disclosure Statement (the "Disclosure Statement"). The UST respectfully shows the Court the following:

1. The Court has jurisdiction over this matter as a contested matter pursuant to 28 U.S.C. § 1334. The adequacy of a Disclosure Statement is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L) and (O).

2. On November 24, 2015, Animas Well Services, LLC (the "Debtor") filed a voluntary petition under Chapter 11 of the Bankruptcy Code. Since the filing of the case, the Debtor has operated as a Debtor in Possession.

3. On May 23, 2016, the Debtor filed its Chapter 11 Plan. On June 6, 2016, the Debtor filed its Disclosure Statement.

4. To solicit votes for a plan of reorganization the Debtor must obtain court approval of a Disclosure Statement containing "adequate information". 11 U.S.C. § 1125(b). "Adequate information" is defined to include information of a kind and in sufficient detail insofar as is reasonably practicable in light of the nature and history of the Debtor, to enable a hypothetically reasonable investor, typical of the holders of claims to make an informed judgment about a proposed Chapter 11 Plan of Reorganization. **In re Texas Extrusion Corp.**, 844 F.2d 1142 (5th Cir.), *cert. denied*, 488 U.S. 926 (1988).

5. The UST objects to the Disclosure Statements for the following reasons:

A. The Debtor's Plan is a liquidating plan. As such, the Debtor needs to demonstrate why its liquidating plan would be superior to a Chapter 7 liquidation. The Debtor's Disclosure Statement and Plan do not provide creditors with sufficient information to make this determination. Rather, the information provided appears to demonstrate that a Chapter 7 liquidation would be preferable. The Debtor's Plan, in Article XI (p. 40-43), appears to provide for non-consensual releases and exculpation of non-debtors in violation of 11 U.S.C. §524(e). The Fifth Circuit Court of Appeals has held that non-consensual non-debtor releases are prohibited under 11 U.S.C. §

524(e). *In re Pacific Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). To the extent the Plan attempts to effectuate a non-consensual release or exculpation of non-debtors, it is not confirmable and should not be sent out to creditors for voting. Moreover, there would be no such releases if the Debtor's assets were liquidated in a Chapter 7 proceeding.

- A. In Article V (p. 8-9), the Disclosure Statement generally describes a proposed sale of certain of the Debtor's assets to another entity as a Stalking Horse. However, there is not sufficient information concerning the terms of any such sale as there is no asset purchase agreement ("APA") attached. The Debtor should be required to describe the terms of the proposed sale and attach the proposed APA to the Disclosure Statement so that creditors (and potential bidders) can review the terms.
- B. Pursuant to 11 U.S.C. § 1141(d)(3), it does not appear the Debtor is entitled to a discharge. However, it appears the Plan provides for a permanent injunction against creditors. The UST asserts that a permanent injunction binding creditors effectuates a discharge to which the Debtor is not entitled.
- C. The Debtor's Plan proposes a liquidating trust and that the Debtor's management will appoint the liquidating trustee. The Debtor does not attach a form liquidating trust agreement, the identity of the liquidating trustee, or the estimated costs associated with the liquidating trust. Without such information, the creditors cannot determine whether a Chapter 7 liquidation would be preferable.
- D. In Article 11.7 of the Plan (p. 42), it appears the Debtor is releasing

professionals and insiders of the Debtor for no consideration. The Debtor needs to explain in the Disclosure Statement why such releases are in the best interests of creditors as such releases would not be required in a Chapter 7 liquidation.

WHEREFORE, Upon the premises considered the UST requests that the Court deny approval of the Disclosure Statement. Alternatively the UST requests that the Debtors be required to amend the Disclosure Statement and the Plan to address the objections. The UST requests such other and further relief to which it may be entitled.

Respectfully submitted,

JUDY A. ROBBINS
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REGION 7

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served on the parties on the attached service list by United States Mail, first class, postage prepaid and/or by electronic means for all Pacer system participants on this the 6th day of July, 2016.

/s/ James W. Rose, Jr.
James W. Rose, Jr.

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