IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
ATP OIL & GAS CORPORATION,	)	Case No. 12-36187
Debtor.	)	Hon. Marvin Isgur

OBJECTION OF AD HOC SECOND LIEN COMMITTEE TO (I) EXPEDITED MOTION OF STRATEGIC TURNAROUND EQUITY PARTNERS, LP (CAYMAN) FOR THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS PURSUANT TO BANKRUPTCY CODE § 1102 AND (II) OTHER REQUESTS FOR APPOINTMENT OF AN EQUITY COMMITTEE [Related to Docket No. 570]

The ad hoc committee (the "Ad Hoc Second Lien Committee") of holders of 11.875% Senior Second Lien Notes due 2015 (the "Prepetition Second Lien Notes") issued by ATP Oil & Gas Corporation (the "Debtor"), hereby submits this objection to the *Expedited Motion of Strategic Turnaround Equity Partners, LP (Cayman) for the Appointment of an Official Committee of Equity Security Holders Pursuant to Bankruptcy Code § 1102* [Docket No. 570], as well as the various joinders thereto and the letters and statements requesting similar relief (collectively, the "Equity Committee Motion").

1. The Ad Hoc Second Lien Committee strongly opposes the appointment of an equity committee. The position of the Ad Hoc Second Lien Committee is fully set forth in the letter dated October 15, 2012, from counsel to the Ad Hoc Second Lien Committee to the United States Trustee, attached hereto as **Exhibit A**. In summary, the Movants have failed to meet their heavy burden in seeking to have an equity committee appointed. First, every reliable indicator of value — including the market prices of the Debtor's second-lien debt and equity — undermines any claim that the Debtor is currently solvent. At the present time, the trading price of the

Second Lien Notes is approximately *20 cents* on the dollar — meaning that, from the standpoint of the market, holders of the Second Lien Notes are "under water" by approximately *$1.2 billion* of principal (in addition to approximately $80 million of accrued and unpaid interest, on top of the Debtor's substantial unsecured debt). Likewise, as of October 16, the Debtor's public stock is trading at 14 cents per share, showing that the market is ascribing only the most minimal option value to the shares.

2. In addition, the Movants have failed to demonstrate that their interests are not adequately represented. There is no basis to conclude that the Debtor's management has done anything besides operate the Debtor's business, including the Clipper Wells project, for the benefit of all stakeholders. Indeed, here, the argument for an equity committee is especially weak, because the debtor's CEO, T. Paul Bulmahn, owns approximately 12.04% of the Debtor's equity, and other executives and directors of the debtor own approximately 2.93% of the Debtor's equity. The Court is respectfully referred to **Exhibit A** hereto for further discussion, including of the *Pilgrim's Pride* case and other relevant decisions.

3. Accordingly, for the reasons stated above, and in **Exhibit A** hereto, the Ad Hoc Second Lien Committee submits that the Court should deny the Equity Committee Motion, without prejudice to renewal should circumstances change later in the case. Moreover, in the event that the Court is inclined to consider appointment of an equity committee at this stage, the Ad Hoc Second Lien Committee respectfully requests the opportunity to submit further briefing and take appropriate discovery, including of the Debtors, Strategic Turnaround Equity Partners, and any ad hoc shareholder groups.

Dated: October 17, 2012

Respectfully submitted,

VINSON & ELKINS LLP

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ATTORNEYS FOR THE AD HOC SECOND LIEN COMMITTEE

Exhibit A

Letter to United States Trustee

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October 15, 2012

VIA EMAIL AND REGULAR MAIL

Nancy Lynne Holley
Trial Attorney, Office of the United States Trustee
515 Rusk Street
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Re: *In re ATP Oil & Gas Corporation*, Case No. 12-36187 (Bankr. S.D. Tex.)

Dear Ms. Holley:

On behalf of the ad hoc committee (the "Ad Hoc Second Lien Committee") of holders of the 11.875% Senior Second Lien Notes due 2015 (the "Second Lien Notes") issued by ATP Oil & Gas Corporation (the "Debtor"), we are writing in response to: (a) the *Expedited Motion of Strategic Turnaround Equity Partners LP (Cayman) for the Appointment of an Official Committee of Equity Security Holders Pursuant to Bankruptcy Code § 1102*; and (b) the letter sent to you by Richard H. London, counsel for Strategic Turnaround Equity Partners LP (Cayman) ("Strategic Turnaround"), dated September 25, 2012. The Ad Hoc Second Lien Committee is composed of holders of more than 50% of the Second Lien Notes, which have an aggregate face amount of $1.5 billion.

The Ad Hoc Second Lien Committee strongly opposes the appointment of an official committee of equity security holders. As discussed below, every reliable indicator of

EXHIBIT A

value supports the conclusion that the Debtor is not solvent, meaning that the Debtor's real economic stakeholders — the holders of the Second Lien Notes — would be forced to finance the activities of an equity committee. Moreover, the interests of shareholders are already being adequately represented, including by the Debtor itself.

A. Shareholders face a heavy burden in seeking appointment of an equity committee.

Section 1102 of the Bankruptcy Code requires the U.S. Trustee to appoint a committee of unsecured creditors "as soon as practicable" after the order of relief is entered. 11 U.S.C. § 1102(a)(1). By contrast, the U.S. Trustee enjoys the discretion to appoint any additional committees, including a committee of equity security holders, as the Trustee "deems appropriate." *Id*. The appointment of an equity committee "is considered 'extraordinary relief' and should be 'the rare exception.'" *In re Spansion, Inc.*, 421 B.R. 151, 156 (Bankr. D. Del. 2009) (citing cases).

The courts, accordingly, have imposed a heavy burden on shareholders seeking appointment of an equity committee. In an influential decision, one court held that shareholders must demonstrate that: "(i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official committee." *In re Williams Commc'ns Grp., Inc.*, 281 B.R. 216, 223 (Bankr. S.D.N.Y. 2002). Similarly, a court in this Circuit has considered: "(i) whether Debtors are likely to prove solvent; (ii) whether equity is adequately represented by stakeholders already at the table; (iii) the complexity of the Debtors' cases; and (iv) the likely cost to Debtors' estates of an equity committee." *In re Pilgrim's Pride Corp.*, 407 B.R. 211, 216 (Bankr. N.D. Tex. 2009). Whichever factors are considered, this case is not a close call: no equity committee should be appointed at this time.

B. The Debtor is not likely to prove solvent.

"The principal issue on any motion for the appointment of an equity security holders' committee is whether the debtor is solvent or it appears likely that there will be a substantial return for equity." *In re Nat'l R.V. Holdings, Inc.*, 390 B.R. 690, 696 (Bankr. C.D. Cal. 2008); *accord In re Williams Commc'ns*, 281 B.R. at 223. It is inappropriate to appoint an official equity committee when the debtor is insolvent, because "neither the debtor nor the creditors should have to bear the expense of negotiating over the terms of what is in essence a gift." *In re Emons Indus., Inc.*, 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985).[1]

[1] Strategic Turnaround claims that it only has to show that the debtor is not "hopelessly insolvent." Motion ¶ 16. Although the result is the same regardless, recent case law imposes a higher standard, requiring an equity holder to prove at least a likelihood of solvency. *See, e.g.*, *In re Nat'l R.V. Holdings*, 390 B.R. at 696; *In re Nw. Corp.*, 2004 WL 1077913, *2 (Bankr. D. Del. May 13, 2004); *In re Leap Wireless Int'l, Inc*., 295 B.R. 135, 140 (Bankr. S.D. Cal. 2003); *In re Williams Commc'ns*, 281 B.R. at 223; *In re Pilgrim's Pride*, 407 B.R. at 217.

Here, all probative evidence demonstrates that the Debtor is not currently solvent. *First*, the available market evidence weighs decisively against any finding of solvency. At the present time, the trading price of the Second Lien Notes is approximately *20 cents* on the dollar — meaning that, from the standpoint of the market, holders of the Second Lien Notes are under water by approximately *$1.2 billion* of principal (in addition to approximately $80 million of accrued and unpaid interest, not to mention the Debtor's substantial unsecured debt). Meanwhile, as of October 12, the Debtor's public stock was trading at 14 cents per share, showing that the market is hardly even ascribing any option value to the shares.

"[A]bsent a showing that there has been a clear market failure, the behavior in the marketplace is the best indicator of enterprise value." *In re Boston Generating, LLC*, 440 B.R. 302, 325 (Bankr. S.D.N.Y. 2010); *accord, e.g., VFB LLC* v. *Campbell Soup Co.*, 482 F.3d 624, 633 (3d Cir. 2007); *U.S. Bank Nat. Ass'n* v. *Verizon Commc'ns. Inc.*, 2012 WL 4512493, at *2 (N.D. Tex. Oct. 2, 2012). Accordingly, courts evaluating motions for appointment of an equity committee have correctly considered the market price of debt securities in analyzing solvency. *See, e.g., In re Leap Wireless Int'l, Inc.*, 295 B.R. at 139; *Williams Commc'ns*, 281 B.R. at 221. Consideration of such market evidence is especially appropriate here, where the Debtor is a publicly-traded company that has regularly disclosed its performance, financial information, and material events.

Second, the Debtor's reported balance sheet indicates that the Debtor is not solvent. The Debtor's most recent Consolidated Balance Sheet, for the period ending March 31, 2012, shows a shareholder deficit of $34,444,000. Such balance sheets have been treated as "a useful, though not exclusive, indicator[s] of insolvency." *Williams Commc'ns*, 281 B.R. at 220; *accord Pilgrim's Pride*, 407 B.R. at 217.

Third, the Debtor's severe liquidity issues, which resulted in large-scale defaults on its pre-petition debt, also counsel strongly against any finding of solvency. As explained in the first-day affidavit of Albert L. Reese, the moratoria on drilling in the Gulf of Mexico, as well as subsequent events, put the Debtor in a position where it had essentially no cash and could no longer service its debt. Although Strategic Turnaround points to general statements by Mr. Reese and others that the Debtor's Clipper Wells project is "promising," no evidence has been presented to show that the project will lead to repayment in full of all Second Lien Notes and unsecured debt. Not only does the market evidence belie any such claim, but recent developments have raised questions about the value of the Clipper Wells project. As stated by the Debtor at a recent hearing, a report prepared at the behest of the debtor-in-possession lenders showed lower proven reserves with respect to the Clipper Wells project than had been shown in an earlier report. *See* Transcript of Hearing, *In re ATP Oil & Gas Corp.*, No. 12-36187 (Sept. 6, 2012), at 120. Strategic Turnaround's uninformed speculation about the potential future results of an ongoing project is plainly not sufficient to justify appointment of an equity committee.

In the face of this overwhelming evidence of insolvency, Strategic Turnaround points to the Debtor's Schedules of Assets and Liabilities (the "Schedules"), on which recorded

assets exceed recorded liabilities. But reliance on the Schedules is misguided. As the Debtor acknowledges, the asset values reflected in the Schedules are *book* values, not current market values. *See* Schedules at 2. This leads to severe distortions. For example, the Schedules ascribe a value of more than $663 million to an intercompany obligation owed to the Debtor by its subsidiary ATP Oil & Gas (UK) Limited. *See* Schedule B16. Yet there is no basis to conclude that the assets of that subsidiary are sufficient to meet that obligation. As demonstrated by the market evidence above, actual investors in the Debtor do not remotely believe that the Debtor's assets exceed its liabilities.

As far as solvency is concerned, this case is thus quite different from *Pilgrim's Pride*, on which Strategic Turnaround has placed heavy reliance. In *Pilgrim's Pride*, SEC filings made after the petition date indicated that there was approximately $120 million in shareholders' equity; moreover, the debtor's chief restructuring officer testified that the debtors were not close to being hopelessly insolvent. 407 B.R. at 214 & n.4, 217. Here, in contrast, the information available to the U.S. Trustee, including market evidence, thoroughly undermines any claim of solvency. Should that change in the future, nothing prevents Strategic Turnaround from coming back to the U.S. Trustee at that time.

C. Shareholders are adequately represented.

The Bankruptcy Code provides for the appointment of an official committee of equity holders when necessary to "assure adequate representation." 11 U.S.C. § 1102(a)(2) (emphasis added). "[T]he statutory focus of § 1102(a)(2) is not whether shareholders are 'exclusively' represented, but whether they are 'adequately' represented." *In re Edison Bros. Stores, Inc.*, 1996 WL 534853, at *4 (D. Del. Sep. 17, 1996).

There is no basis here to conclude that shareholders' interests are not being adequately represented. In particular, there is no basis to conclude that the Debtor's management has done anything besides operating the Debtor's business, including the Clipper Wells project, for the benefit of all stakeholders. Indeed, here, the argument for an equity committee is particularly facile, because, as set forth in the Notice of Annual Meeting of Shareholders and Proxy Statement filed by the Debtor on April 27, 2012, the debtor's CEO, T. Paul Bulmahn, owns approximately 12.04% of the Debtor's equity, and other executives and directors of the debtor own an additional approximately 2.93% of the Debtor's equity. The Debtor's management, accordingly, has strong incentives to protect the interests of shareholders. *See In re Nat'l R.V. Holdings*, 390 B.R. at 699 (equity holders adequately represented where management held just 3% of the common stock). Likewise, the official creditors' committee has every incentive here to try to show that there is value beyond the secured debt, thus protecting the interests of equity holders in addition to those of unsecured creditors. *See In re Williams Commc'ns*, 281 B.R. at 222-23 ("[T]he Creditors' Committee has sufficiently aligned or parallel interests with the Shareholders to preclude the need for an additional committee.").

Once again, *Pilgrim's Pride* is instructive for the contrast that it provides. In *Pilgrim's Pride*, the debtors' controlling shareholder, Lonnie Pilgrim, had guaranteed much of the companies' bank debt and was a counterparty to their supply contracts. Pilgrim, accordingly, wore "too many hats" and could not adequately represent shareholders, as he himself admitted. 407 B.R. at 214-15, 217-21. None of these circumstances is present here: The Debtor is a public company and there has been no claim of self-dealing or conflicts of interest.

D. Additional factors also counsel against appointment of an equity committee.

Courts evaluating motions to appoint an equity committee may also look at other factors, such as the complexity of the case as well as the cost to the debtors' estates that the appointment would entail. *See Pilgrim's Pride*, 407 B.R. at 216. Strategic Turnaround argues that this case is "complex" mainly because the Debtor is a big company. But, as reflected in the first-day affidavit, the Debtor's capital structure is relatively straightforward, and there is only one debtor. Reese Decl. at 5-6. While this case may turn out to be complex in certain ways, that is not nearly sufficient for appointment of an equity committee — if it were, there would be an equity committee in every large chapter 11 proceeding, which is obviously not the rule.

In any event, where equity is "out of the money," as here, consideration of cost "weighs heavily against the appointment of an official committee of equity security holders." *In re Nat'l R.V. Holdings*, 390 B.R. at 693, 699. In this case, appointment of an equity committee would significantly increase the administrative expenses to be borne by the estate. Those extra expenses should be measured not only in terms of the fees and expenses of the committee's professionals, which would be substantial, but also in light of the broader indirect cost of having another official committee involved. *See In re Delphi Corp.*, No. 05-44481 (Bankr. S.D.N.Y. Apr. 23, 2009), Transcript of Hearing at 31 (in deciding that the equity committee should be disbanded, noting that "there's an indirect but very meaningful cost of continuing to have the committee in existence, which is the necessity of the other parties-in-interest, to incur costs in dealing with the equity committee and its professionals").

Finally, it is important to note that Strategic Turnaround and other shareholders have the means to participate in this case without an official committee. Under the Bankruptcy Code, equity holders have the right to be heard. 11 U.S.C. § 1109(b). Moreover, if the bankruptcy court ultimately concludes that certain equity holders have made a substantial contribution to the Debtor's estate, those holders may be reimbursed pursuant to section 503(b)(3)(D) of the Bankruptcy Code. *See Spansion*, 421 B.R. at 164 (denying motion for equity committee but observing that section 503(b)(3)(D) relief could be sought if the equity holders made a substantial contribution); *Williams Commc'ns* 281 B.R. at 223 ("[I]n most cases, even those equity holders who do expect a distribution in the case can adequately represent their interest without an official committee and can seek compensation if they make a substantial contribution in the case.").

* * *

For the foregoing reasons, the Ad Hoc Second Lien Committee submits that appointment of an official equity committee would be inappropriate and wasteful and that the requests for such a committee should be denied. We appreciate your consideration of this letter. The undersigned counsel, as well as Harry Perrin and Duston McFaul at Vinson & Elkins LLP, are available should you wish to discuss this matter further.

Respectfully,

Scott K. Charles

Emil A. Kleinhaus

Counsel to Ad Hoc Committee of Second Lien Lenders

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