

IN THE HIGH COURT OF JUSTICE

CR-2017-003729

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF PARAGON OFFSHORE PLC

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

FIRST WITNESS STATEMENT OF DAVID SODEN

I, **DAVID SODEN** of Deloitte LLP, 2 New Street Square, London, EC4A 3BZ **WILL SAY AS FOLLOWS:**

A INTRODUCTION

- 1** I am a partner of Deloitte LLP ("**Deloitte**") and one of the Proposed Administrators referred to in the witness statement of Neville Kahn (the other Proposed Administrator) who provided an earlier witness statement in connection with these proceedings dated 17 May 2017 ("**Kahn 1**").
- 2** I make this witness statement in support of the administration application made by the Board and so that the Court has the views of the Proposed Administrators prior to determining that application. It is intended that this witness statement will supplement Kahn 1 and the first witness statement of Todd Strickler dated 16 May 2017 ("**Strickler 1**"), secretary of the Company, which I have had the benefit of



reading. I have also had the benefit of reading the second witness statement of Todd Strickler (“**Strickler 2**”), in draft form. Unless otherwise defined, capitalised terms used herein shall have the meanings ascribed to them in Kahn 1, Strickler 1 (and thus I also use in this witness statement definitions used in the Fifth Chapter 11 Plan, as referred to in paragraph 10 of Strickler 1) and Strickler 2.

- 3** The purpose of this witness statement is to provide the Court with: (i) a copy of Deloitte’s draft SIP 16 statement (as anticipated in paragraph 12 of Kahn 1); (ii) additional information as to why the Proposed Administrators consider that it is not possible to achieve the first objective of administration in paragraph 3(1), Schedule B1 of the Insolvency Act 1986, which is “*rescuing the company as a going concern*” (which is addressed in outline at paragraph 60 of Kahn 1); and (iii) an update on correspondence received by the Proposed Administrators from one of the Opposing Individuals. Any reference to “we” hereafter refers to the Proposed Administrators or our staff.
- 4** The facts and matters set out in this witness statement are either within my own knowledge or are based on information provided to me or my staff. Where the content of this witness statement is within my own knowledge, I believe that it is true. Where I refer to information provided to me by others, I identify the source. As regards information that has been provided to me, it is true to the best of my knowledge and belief.
- 5** One source of the information contained in this witness statement is the advice that I have received from advisers to the Company. These advisers include Weil as counsel, and Lazard and AlixPartners as financial advisers. The Proposed Administrators have been advised in relation to this administration application by Weil. In referring to any legal advice that the Company or the Proposed Administrators have received, neither the Company nor the Proposed Administrators intend to, and do not, waive any privilege by such reference or otherwise.
- 6** I refer in this witness statement to a paginated bundle of true copy documents marked “DS1”, which is the exhibit to this witness statement. References to page numbers in this statement are references to the pages of the bundle marked “DS1” unless they are

specified to be references to pages of the exhibit to Strickler 1 (“TS1”) or the exhibit to Kahn 1 (“NK1”).

B SIP 16 STATEMENT

- 7 The SIP 16 statement prepared by Deloitte referred to in paragraph 12 of Kahn 1 is included at [DS1/pp. 1-16] in draft form. The Proposed Administrator’s draft SIP 16 statement has been included to demonstrate that the Proposed Administrators have considered the exercises and matters set out in SIP 16 [DS1/pp. 17-23] in preparation for the administration (if granted) and the proposed UK Sale Transaction contemplated by the Fifth Chapter 11 Plan. It is intended that the Proposed Administrators’ draft SIP 16 statement will be finalized and sent to creditors as soon as practicable after the US Bankruptcy Court has confirmed the Fifth Chapter 11 Plan.

C THE PURPOSE OF THE ADMINISTRATION

- 8 I understand from paragraph 5 of the Appendix to Strickler 1 that, on 15 November 2016, the US Bankruptcy Court denied confirmation of the Modified Second Chapter 11 Plan. Accordingly, the Chapter 11 Debtors and certain key creditors commenced negotiations regarding a new restructuring proposal (the “**Revised Restructuring**”).
- 9 I understand further from discussions between the staff of the Proposed Administrators, Weil and/or members of the Group’s senior management team, that:
- (a) in order to address the concerns raised by the US Bankruptcy Court as to the feasibility of the Modified Second Chapter 11 Plan (described at paragraph 5 of the Appendix to Strickler 1), the Revised Restructuring was approached on the basis that the Term Loan (which was to be reinstated under the Modified Second Chapter 11 Plan) would be impaired; and
 - (b) during the course of discussions between certain of the Secured Lenders, certain of the Senior Noteholders, the Chapter 11 Debtors and each of their respective advisers, it became clear that the Company’s three key creditor groups (being the RCF Lenders, the Term Loan Lenders and the Senior Noteholders) would only support a Revised Restructuring that provided for

them to receive all of the equity in Reorganized Paragon, on the basis that the existing equity interests in the Company are of no economic value (by reason of the Company's insolvency, as described at paragraph 11 of Strickler 1). The issue of all the equity in Reorganized Paragon to the RCF Lenders, the Term Loan Lenders and the Senior Noteholders, as part of the Revised Restructuring, is contemplated in the Fifth Chapter 11 Plan.

- 10 As described at paragraph 11 of Strickler 1, it is not permitted under English law to cancel the Company's existing equity and issue new equity in the Company to creditors without the consent of its existing shareholders (the "**Shareholder Consent**"), which would be necessary in order to implement the Revised Restructuring whilst rescuing the Company as a going concern.
- 11 I understand from Section F (*Actions by the Purported Shareholders*) of Strickler 1 that the Opposing Individuals (who would, if they are in fact indirect beneficial owners of shares in the Company, have the right to vote on any resolutions in connection with the cancellation and/or issuance of shares by the Company) have raised objections to the proposed treatment of equity interests reflected in the Third Chapter 11 Plan, the Fourth Chapter 11 Plan and the Fifth Chapter 11 Plan, on the basis that they do not provide for any return to the Company's shareholders. Other shareholders (or indirect beneficial shareholders) would similarly have no reason to vote in support of a cancellation of their own shares. I therefore believe that it is extremely unlikely that the Shareholder Consent would be provided, and it follows that a restructuring cannot be implemented that would facilitate the rescue of the Company as a going concern so as to achieve the first objective of administration in paragraph 3(1), Schedule B1 of the Insolvency Act 1986.
- 12 Accordingly, as explained in paragraphs 61 and 62 of Kahn 1, the Proposed Administrators believe the second objective of administration is the most likely of the objectives applicable in this case.

D CORRESPONDENCE FROM OPPOSING INDIVIDUAL

- 13 On 16 May 2017, a Mr Michael Hammersley (who is an Opposing Individual) sent an email to me [DS1/p.24] (the "**Hammersley Email**"). The reply filed in the US

Bankruptcy Court by certain Opposing Individuals in support of the Shareholder Claim (the "Shareholder Response") [TS1/tab 35/pp. 1242-1263] was attached to the Hammersley Email. The Hammersley Email also sets out an objection to the implementation of the UK Sale Transaction, by reference (without elaboration) to the Companies Act 2006 and the Insolvency Act 1986. The Hammersley Email does not expand on the arguments set out in either the Shareholder Response or any other submissions made by the Opposing Individuals to the US Bankruptcy Court in the Chapter 11 Proceedings. I understand from paragraph 22 of Strickler 2 that, on Wednesday 17 May 2017, Mr. Hammersley was made aware of: (i) the fact that the application has been filed; (ii) the date and location of the hearing; and (iii) how to access copies of the documents filed in support. Accordingly, if Mr. Hammersley wishes to oppose the application, he may apply to the Court for permission to do so and any objections he may have to the appointment of the Proposed Administrators as administrators of the Company can be resolved by the Court, one way or the other.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed 

David Soden

Dated 19 May 2017

On behalf of the Applicants
David Soden
First
19 May 2017
DS1

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