

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Case No. 16-bk-10386
)	Chapter 11
PARAGON OFFSHORE PLC, et al.,)	Judge Christopher S. Sontchi
)	
Debtors.)	Objection deadline: 5/31/17 @ 12 PM
_____)	Hearing date: 6/7/17 @ 10 AM

UNITED STATES OF AMERICA'S OBJECTION TO CONFIRMATION

The debtors’ plan should not be confirmed in its present form. Most importantly, it is unclear whether the debtors will be able to pay the Internal Revenue Service’s recently-filed administrative claim. The plan also contains provisions that violate the rights of the Internal Revenue Service and impermissibly expand this Court’s jurisdiction over controversies related to federal taxes. Confirmation therefore should be denied unless the debtors demonstrate their ability to pay the IRS’s administrative claim and amend or eliminate the improper provisions.

FEASIBILITY

Confirmation should be denied unless the debtors demonstrate that they will be able to pay the allowed amount of the IRS’s recently-filed administrative claim. In order to be confirmed, a plan must provide that claims entitled to administrative priority be paid the allowed amount of the claims in cash on the effective date of the plan. 11 U.S.C. § 1129(a)(9)(A). The debtor must also prove that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan....” 11 U.S.C. § 1129(a)(11). That would likely occur if the debtor were unable to pay all of its administrative claims as required by the Bankruptcy Code. It is therefore



a prerequisite for confirmation that the debtor show it will be able to pay all of its administrative expenses on the plan's effective date.

The IRS recently filed a request for payment of postpetition taxes based on its ongoing review of its prior tentative allowance of a refund claim made by debtor Paragon Offshore Holdings US Inc. The claim seeks \$17,691,487.00 plus statutory interest and penalties, and this claim is entitled to administrative priority status under § 507(a)(2). 11 U.S.C. § 503(b)(1)(ii). No objection has been filed to the claim, and so it is deemed allowed. 11 U.S.C. § 502(a). This is a substantial claim, even in the context of this large bankruptcy case, and it will have to be paid in cash in full on the effective date. If the debtors are unable to do so, they will default under the plan and may have to further reorganize or liquidate. Confirmation thus should be denied unless the debtors can prove that they will be able to pay the IRS's administrative claim on the effective date.

COMPLIANCE WITH FUTURE TAX OBLIGATIONS

Confirmation should be denied unless the plan is amended to require the debtors to comply with the requirements under applicable nonbankruptcy law for the filing of federal tax returns and the payment of federal taxes. A trustee of a corporation in a case under Title 11 must pay all taxes by the deadlines provided for by applicable nonbankruptcy law, 28 U.S.C. § 960(b), and must file income tax returns in the same manner and form as otherwise required for corporations. 26 U.S.C. § 6012(b)(3). Sections 2.1 and 2.3 of the plan permit the debtors to pay administrative expense claims and priority tax claims "in the ordinary course of business, consistent with past practice." If the debtors have a past practice of late payment of taxes or filing of returns, this provision would allow them to be similarly delinquent in the future in

violation of the statutes requiring timely compliance. These provisions thus must be amended for the plan to be confirmed.

POSTPETITION INTEREST

Confirmation should be denied because the plan impermissibly deprives the IRS of interest on its administrative claims. The IRS is entitled to postpetition interest on its administrative claims at the rate provided by 26 U.S.C. § 6621. *In re Injection Molding Co.*, 95 B.R. 313, 315-316 (Bankr. M.D. Pa. 1989). Section 6.3 provides that “postpetition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.” This section violates the IRS’s right to interest on its administrative tax claims. The plan thus should not be confirmed unless it is amended to preserve the IRS’s right to interest on administrative claims.

SETOFF AND RECOUPMENT

Confirmation should be denied because the plan fails to preserve the setoff and recoupment rights of the United States. Confirmation of a plan does not extinguish setoff claims when they are timely asserted. *United States v. Continental Airlines (In re Continental Airlines)*, 134 F.3d 536, 542 (3d Cir. 1998), *cert. denied*, 525 U.S. 929 (1998). Like other creditors, the United States has the common law right to setoff mutual debts. “The government has the same right which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.” *United States v. Munsey Trust Co. of Washington, D.C.*, 332 U.S. 234, 239 (1947). The IRS has additional statutory setoff rights pursuant to 26 U.S.C. § 6402. *See In re Chateaugay Corp.*, 94 F.3d 772, 781 (2d Cir. 1996). Hence, the United States may setoff mutual prepetition debts and claims pursuant to § 553, and generally it also has the right to setoff mutual postpetition debts and claims. *See In re Mohawk*

Indus., Inc., 82 B.R. 174, 178-179 (Bankr. D. Mass. 1987). Confirmation thus should be denied unless the plan is amended to expressly preserve the United States' setoff and recoupment rights.

RETENTION OF JURISDICTION

Finally, confirmation should be denied because the plan provides of an impermissibly broad expansion of this Court's postpetition jurisdiction over tax matters. It purports to grant the court exclusive jurisdiction "to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code." (Plan § 11.1(n)). To the extent other federal courts have concurrent jurisdiction over federal tax disputes, there is no basis to deprive them of that jurisdiction. Moreover, to the extent this provision would allow the Court to adjudicate disputes over tax liabilities and refunds that are not the subject of claims filed by the IRS or refund requests properly made by the debtors prior to confirmation, it would permit the Court to exceed the very limited subject matter jurisdiction bankruptcy courts retain after confirmation of a Chapter 11 plan. The plan thus should not be confirmed unless this provision is amended to restrict the Court's jurisdiction over federal tax issues to: (1) enforcing the discharge provisions of the plan in regard to federal taxes; (2) adjudicating objections to claims filed by the IRS; and (3) adjudicating requests for refunds that were properly made prior to confirmation of the plan.

WHEREFORE THE UNITED STATES OF AMERICA respectfully requests that confirmation be denied.

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DATE: May 31, 2017

Respectfully submitted,

DAVID HUBBERT
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/s/ Ward W. Benson
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CERTIFICATE OF SERVICE

I certify that the foregoing OBJECTION was filed with the clerk of the court on May 31, 2017, using the CM/ECF system, which will send notification of such filing to all parties appearing in said system.

/s/ Ward W. Benson
WARD W. BENSON