Docket #1585 Date Filed: 6/5/2017

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PARAGON OFFSHORE PLC, *et al.*,	Case No. 16-10386 (CSS)
Debtors.[1]	Jointly Administered
	Hearing Date: June 7, 2017 at 10:00 a.m. (ET)
	Ref. Docket Nos. 1582 & 1560

STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN (I) SUPPORT OF CONFIRMATION OF THE FIFTH JOINT CHAPTER 11 PLAN OF PARAGON OFFSHORE PLC AND ITS AFFILIATED DEBTORS AND (II) REPLY TO THE OBJECTION OF THE UNITED STATES TRUSTEE TO CONFIRMATION OF THE FIFTH JOINT CHAPTER 11 PLAN OF PARAGON OFFSHORE PLC AND ITS AFFILIATED DEBTORS

The Official Committee of Unsecured Creditors (the "Official Committee") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this statement (this "Statement") in (i) support of confirmation of the *Fifth Joint Chapter 11 Plan of Paragon Offshore PLC and its Affiliated Debtors* [D.I. 1582] (the "Plan")[2] and (ii) reply to the *Objection of the United States Trustee to*

[1] The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Paragon Offshore plc (in administration) (6017); Paragon Offshore Finance Company (6632); Paragon International Finance Company (8126); Paragon Offshore Holdings US Inc. (1960); Paragon Offshore Drilling LLC (4541); Paragon FDR Holdings Ltd. (4731); Paragon Duchess Ltd.; Paragon Offshore (Luxembourg) S.à r.l. (5897); PGN Offshore Drilling (Malaysia) Sdn. Bhd. (9238); Paragon Offshore (Labuan) Pte. Ltd. (3505); Paragon Holding SCS 2 Ltd. (4108); Paragon Asset Company Ltd. (2832); Paragon Holding SCS 1 Ltd. (4004); Paragon Offshore Leasing (Luxembourg) S.à r.l. (5936); Paragon Drilling Services 7 LLC (7882); Paragon Offshore Leasing (Switzerland) GmbH (0669); Paragon Offshore do Brasil Ltda.; Paragon Asset (ME) Ltd. (8362); Paragon Asset (UK) Ltd.; Paragon Offshore International Ltd. (6103); Paragon Offshore (North Sea) Ltd.; Paragon (Middle East) Limited (0667); Paragon Holding NCS 2 S.à r.l. (5447); Paragon Leonard Jones LLC (8826); Paragon Offshore (Nederland) B.V.; and Paragon Offshore Contracting GmbH (2832). The Debtors' mailing address is 3151 Briarpark Drive, Suite 700, Houston, Texas 77042. Neville Barry Kahn and David Philip Soden, each of Deloitte LLP, are the joint administrators of Paragon Offshore Plc (in administration) (the "Joint Administrators"). The affairs, business and property of Paragon Offshore Plc (in administration) are managed by the Joint Administrators.

[2] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed them in the Plan.

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Confirmation of the Fifth Joint Chapter 11 Plan of Paragon Offshore PLC and its Affiliated Debtors [D.I. 1560] (the "Objection"). In support of this Statement, the Official Committee respectfully states as follows:

PRELIMINARY STATEMENT

The Official Committee supports confirmation of the Plan because it maximizes unsecured creditor recoveries, particularly as compared to the Debtors' Third Amended Plan (defined below), which the Official Committee opposed.

The Senior Noteholders are the most significant unsecured creditor constituency in these Chapter 11 Cases. Part of the Senior Noteholders' recovery takes the form of reimbursement of the Noteholders' Professional Fees, which would otherwise be paid by the Senior Noteholders that incurred the Noteholders' Professional Fees, thereby depressing their recovery.

The United States Trustee (the "U.S. Trustee") is mistaken in its Objection that in order for the Noteholders' Professional Fees to be paid pursuant to the Plan there must be a showing of substantial contribution under section 503(b)(3) of the Bankruptcy Code. The payment of the Noteholders' Professional Fees is an element of the Plan—and the Senior Noteholders' recovery—that was negotiated as part of the mediation before Judge Carey (the "Mediation") and agreed to among ***all*** parties with an economic stake in these Chapter 11 Cases. Additionally, no party that could theoretically be harmed by payment of the Noteholders' Professional Fees has objected and creditors have voted overwhelmingly to accept the Plan.[3]

[3] It is noteworthy that the U.S. Trustee did not object to the payment of the Noteholders' Professional Fees in the Modified Plan (as defined below), when a party with an economic interest—the Term Loan Agent—did so, yet does so now, when all parties with an economic interest have consented to such payment as part of the Mediation and a consensual Plan.

If, however, the Court were to hold that a showing of substantial contribution is required for the Noteholders' Professional Fees to be paid, such a finding (a) is supported by the Court's statements in its *Findings of Fact and Conclusions of Law Denying Confirmation of the Amended Joint Chapter 11 Plan of Paragon Offshore PLC and its Affiliated Debtors* [D.I. 890] (the "Nov. 15th Opinion") denying confirmation of the *Modified Second Amended Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors* [D.I. 644] (the "Modified Plan") and (b) has been further demonstrated by the current facts and consensual nature of the Plan. As the Court found, the pre- and post-petition negotiations with the ad hoc group of Senior Noteholders (the "Ad Hoc Noteholder Group") allowed the Debtors to develop a plan.[4]

STATEMENT IN SUPPORT OF THE DEBTORS' PLAN AND REPLYING TO THE OBJECTION

I. A Showing of Substantial Contribution Is Not Required for Payment of the Noteholders' Professional Fees

1. To begin with, the Noteholders' Professional Fees are not being allowed under the Plan as an administrative expense subject to section 503(b)(3) of the Bankruptcy Code, but instead are part of the treatment of the Senior Notes Claims under the Plan, as agreed to by all parties with an economic stake as part of the Mediation.

2. Significantly, as in *In re Adelphia Commc'ns Corp.*, 441 B.R. 6 (Bankr. S.D.N.Y. 2010), the "the payment of the Ad Hoc Group of Noteholders' professional fees was negotiated during the settlement discussions and is an integral part of the Plan Settlement."[5] As such, the Noteholders' Professional Fees "may be paid, where . . . the provision for fees is an element of the chapter 11 reorganization plan." *Id.* at 9. The Objection ignores the fact that

[4] (*See* Nov. 15th Opinion ¶ 78 ("Throughout the entire process, the Ad Hoc Group continued to work with Paragon in developing a plan and negotiating with the Revolver Lenders.").)

[5] (*Declaration of Lee M. Ahlstrom in Support of Confirmation of Fifth Joint Chapter 11 Plan of Paragon Offshore plc (in Administration) and Its Affiliated Debtors* [D.I. ___] (the "Ahlstrom Declaration") at ¶ 41.)

section 503(b)(3) is not the only way in which the Noteholders' Professional Fees may be paid. *Id.* at 12 ("But importantly, section 503(b) does not provide, in words or substance, that it is the ***only*** way by which fees of this character may be absorbed by an estate.") (emphasis supplied). Indeed, pursuant to section 1123(b)(6) of the Bankruptcy Code, a plan may contain "any other appropriate provision not inconsistent with the applicable provisions of this title." *See* 11 U.S.C. § 1123(b)(6). This is a "broad grant of authority" and "reorganization plans, after they get the requisite assent, may allocate and distribute the value of the debtors' estates by a broad variety of means." *Adelphia*, 441 B.R. at 18. Here, the Plan has not only received overwhelming creditor support,[6] but also no creditor or other party with an economic stake in these Chapter 11 Cases has objected to payment of the Noteholders' Professional Fees. *See also In re AMR Corp.*, 497 B.R. 690, 695-96 (Bankr. S.D.N.Y. 2013) (citing *Adelphia* and finding that professional fees contemplated under a consensual plan were permissible under sections 1129(a)(4) and 1123(b)(6) and "approved given the overwhelming support of the [p]lan by creditors."). *But see In re Lehman Bros. Holdings Inc.*, 508 B.R. 283 (S.D.N.Y. 2014) (vacating and remanding Bankruptcy Court's decision authorizing payment of professional fees under section 1129(a)(4) where such payments were characterized as allowed "Administrative Expense Claims" under the plan).[7]

II. If Substantial Contribution Is Required, Such a Showing Has Been Made

3. If the Court were to find that a showing of substantial contribution is required, then such a burden has been met from information already in the record. The Ad Hoc

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[6] (*See Certification of James Lee With Respect to the Tabulation of Votes on the Fifth Joint Chapter 11 Plan of Paragon PLC and its Affiliated Debtors* [D.I. ___].) Notably, creditors holding over $2 billion of Paragon's debt voted in favor of the Plan, while creditors holding claims totaling approximately $21.5 million voted to reject the Plan (representing roughly 1%, in amount, of all voting claims).

[7] Unlike in *Lehman*, the Plan here does not characterize the Noteholders' Professional Fees as administrative expenses; rather, they are part of the treatment of the Senior Notes Claims.

Noteholder Group made substantial contributions to the Chapter 11 Cases prior to the formation of the Official Committee, which contributions continued to benefit the Official Committee and the Debtors' estates throughout the Mediation and the negotiation of the current consensual Plan. Those contributions are highlighted by the Nov. 15th Opinion and actions taken prior to, and directly following, the Petition Date. The Official Committee and the Debtors' estates received continuing benefit from those contributions through, among other things, the knowledge gained by the advisors to, and two of the members of, the Official Committee,[8] which contributed to the consensual and timely nature of the current Plan and the related savings for the Debtors and all creditors.

4. *First*, in the Nov. 15th Opinion, the Court expressly referenced the Ad Hoc Noteholder Group's contributions in response to the 503(b) objection asserted by the Term Loan Agent with respect to the proposed payment of the Ad Hoc Noteholder Group's advisors' post-petition fees and expenses under the Modified Plan.[9] While not ruling on the issue, the Court noted that the Ad Hoc Noteholder Group had contributed by negotiating with the Debtors and Revolving Lenders on the terms of the then-proposed plan, forgoing payments otherwise due to them and assisting with negotiating the Noble Settlement Agreement.[10] Though the Modified Plan was not approved, there is no question that the Ad Hoc Noteholder Group's actions, as noted by the Court, helped foster and enhance the progress of the Chapter 11 Cases. *See Lebron* v. *Mechem Fin. Inc.*, 27 F.3d 937, 944 (3d Cir. 1994) ("Services which substantially contribute

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[8] All of the advisors to the Ad Hoc Noteholder Group are advisors to the Official Committee and two of the three members of the Official Committee were members of the Ad Hoc Noteholder Group.

[9] (*See Objection of the Secured Term Loan Agent, on Behalf of the Secured Term Loan Lenders, to Confirmation of the Modified Second Amended Joint Chapter 11 Plan of Paragon Offshore PLC and its Affiliated Debtors* [D.I. 719].)

[10] (*See* Nov. 15th Opinion ¶ 78.)

to a case are those which foster and enhance the progress of reorganization."); *see also In re Philadelphia Newspapers, LLC*, 445 B.R. 450, 465 (Bankr. E.D. Pa. 2010) (finding creditor conferred a "substantial benefit" on the debtors' estates by "getting the ball rolling" to enable the debtors to ultimately obtain a DIP loan that would be approved by the court, even though there was "never a realistic chance" that such creditors' initial DIP proposal "would be the loan that would carry the [d]ebtors through their reorganization.").

5. *Second*, the members of the Ad Hoc Noteholder Group were parties to a pre-petition plan support agreement that (a) allowed the Debtors to file these Chapter 11 Cases with a proposed plan and terms of a restructuring in place and (b) permitted the Debtors to pay Trade Creditors (as defined in the Trade Claims Motion (defined below)) in full in cash. Without the plan support agreement, the Debtors may have been forced to file these Chapter 11 Cases without the support of their creditors or a proposed restructuring. Furthermore, the plan support agreement and proposed plan negotiated with the Ad Hoc Noteholder Group permitted the Debtors to pay Trade Creditors in full in cash. As the Debtors stated, it was "imperative that the Debtors maintain positive relationships with the suppliers of the goods and services essential to their business operations throughout the course of these chapter 11 cases."[11] The Ad Hoc Noteholder Group made a substantial contribution to the Debtors' estates, and all creditors, by allowing payment of approximately $34.6 million to Trade Creditors while the Senior Noteholders, who are *pari passu*, were to receive between 52% and 66.6% under the Modified Plan (and are to receive an estimated recovery of 35% under the Plan).[12] Indeed, "[t]he Trade

[11] (*See Motion of Debtors for Interim and Final Orders Authorizing Debtors to Pay Prepetition Claims of General Unsecured Creditors in the Ordinary Course of Business Pursuant to Sections 105(a), 362(d), 363(b), and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004* (the "Trade Claims Motion") ¶ 14.

[12] (*See Disclosure Statement for Second Amended Joint Chapter 11 Plan of Paragon Offshore PLC and its Affiliated Debtors* [D.I. 319] and *Disclosure Statement for Fifth Joint Chapter 11 Plan of Paragon Offshore*

Creditors would not have received payment in full without the contribution by, and consent of, the Ad Hoc Noteholder Group."[13] *See In re CVEO Corp.*, 320 B.R. 258, 262 (Bankr. D. Del. 2005) (citing *Lebron* and providing that "the Third Circuit has recognized that services rendered before the filing of the bankruptcy petition may be entitled to administrative claim status so long as the services provided a substantial contribution to the reorganization efforts during the pendency of the chapter 11 case."); *see also In re 9085 E. Mineral Office Bldg. Ltd.*, 119 B.R. 246 (D. Del. 1993) (finding a substantial contribution was made where an unsecured creditor proposed a plan that included a compromise of its own claim and provided for, among other things, a full 100% payment of the junior secured claims and other unsecured claims).

6. *Third*, without the work the Ad Hoc Noteholder Group did, the current consensual Plan would never have been achieved in the current timeframe.[14] Less than two weeks after the U.S. Trustee formed the Official Committee, the Debtors filed the *Third Joint Chapter 11 Plan of Paragon Offshore PLC and its Affiliated Debtors* [D.I. 1092] (the "Third Amended Plan") and the *Motion of Debtors for Entry of Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing and (IV) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan Pursuant to Section 105, 502, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy*

PLC and its Affiliated Debtors [D.I. 1460].) The current Plan has an estimated $14 million in General Unsecured Claims, almost all of which are litigation related claims, not trade claims, so would not have been covered by the Trade Claims Motion.

[13] (Ahlstrom Declaration at ¶ 40.)

[14] For instance, though the Noble Settlement Agreement has been jettisoned, the Official Committee would have been unable to comprehend the numerous issues relating to the Noble Settlement Agreement and push for its removal and creation of the Litigation Trust as part of the Mediation leading to a consensual Plan, without the benefit of the work done by the Ad Hoc Noteholder Group.

Rules 2002,3003, 3017, 3018, 3020, and 9006 and Local Rules 2002-1, 3017-1, and 9006-1 [D.I. 1094], which the Court granted setting June 5, 2017, as the date for the Confirmation Hearing. During this time period, the Official Committee, the Ad Hoc Committee of Term Lenders, the Steering Committee of Revolving Lenders, and the Debtors were also in Mediation. Because the Mediation and the confirmation schedule for the Third Amended Plan were on extremely compressed timeframes, it would have been veritably impossible without the knowledge that the members of, and advisors to, the Official Committee gained from their time as the Ad Hoc Noteholder Group for the Official Committee to fully participate in the Mediation.[15] The Ad Hoc Noteholder Group's prior knowledge enabled the Official Committee to "streamline and channel the negotiations [in Mediation] towards a viable settlement."[16] If the current Plan had not been agreed to, then there would likely have been very substantial costs, and uncertainty, relating to a highly contested confirmation hearing on the Third Amended Plan, including complex litigation over adequate protection.[17] Clearly, the efforts and contributions of the Ad Hoc Noteholder Group enabled the Official Committee to push for the abandonment of the Noble Settlement Agreement, the establishment of the Litigation Trust,[18] and otherwise negotiate the settlements embodied in the consensual Plan,[19] which benefits all creditors as well as the Debtors.

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15 (*See* Ahlstrom Declaration at ¶ 39.)

16 (*Id.*)

17 (*See id.* at ¶¶ 42–44.)

18 (*Id.* at ¶ 39.)

19 (*See* Ahlstrom Declaration at ¶ 39.)

7. Additionally, as the Court has stated, the "history [of these Chapter 11 Cases] really has to be put at the feet of the current committee and its current membership."[20] If so, then the Official Committee has ***gained*** from the history and knowledge of its "fully informed" members and advisors, who were active as part of the Ad Hoc Noteholder Group.[21] If the Ad Hoc Noteholder Group had not invested the time and funds in these Chapter 11 Cases, then the Official Committee would have had to do so, and the Debtors would have been liable for those fees. There is a lot of history in these Chapter 11 Cases, and the U.S. Trustee asks the Court to ignore it. But the Court has already said that it "can't ignore" the history in these cases,[22] and here, the Official Committee's and its advisors' "intimate knowledge of the Debtors' business and assets" enabled the Official Committee to drive the negotiations in Mediation towards the global settlement embodied in the Plan.[23] That history, and the role played by the Ad Hoc Noteholder Group in it, has been a substantial contribution to the timely, consensual resolution of these Chapter 11 Cases. *See In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 468 (Bankr. S.D.N.Y. 2014) ("[A] key goal of a bankruptcy . . . is for creditors to negotiate to reach a consensus . . . ."); *In re Dana Corp.*, 2007 WL 4589331, at *7 (Bankr. S.D.N.Y. Dec. 26, 2007) (noting that "the goal of consensual reorganization [is] embodied [in] the Bankruptcy Code"); *see also In re Lehigh Valley Prof'l Sports Club, Inc.*, 2000 WL 290187, at *3 (Bankr. E.D. Penn. Mar. 14, 2000) (observing that "bankruptcy's overarching goal [is] consensual reorganization"); *In re Am. Solar King Corp.*, 90 B.R. 808, 825 (Bankr. W.D. Tex. 1988) ("The goal after all is consensual plans.").

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[20] (*See* Hr'g Tr. 32:19-21, Feb. 21, 2017 (the "Feb. 21st Tr.").

[21] (*See* Feb. 21st Tr. 33:6-7.)

[22] (Feb. 21st Tr. 32:25-33:1.)

[23] (Ahlstrom Declaration at at ¶ 39.)

8. In sum, without the knowledge gained as the Ad Hoc Noteholder Group, the Official Committee would have had to learn that information both at the Debtors' expenses and at the cost of additional time to these Chapter 11 Cases in order to carry out its statutory duties. Instead, the Official Committee was able to leverage its knowledge, hit the ground running when appointed, and come to a consensual resolution of all issues separating the unsecured and secured creditors in a very compressed timeframe. Such actions, which culminated with the Plan and were only possible because of the services performed by the Ad Hoc Noteholder Group, clearly saved the estate time and money and constitute a substantial contribution.

RESERVATION OF RIGHTS

9. The Official Committee reserves the right to amend or supplement this Statement based upon any facts or arguments that come to light prior to the hearing on these issues.

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WHEREFORE, for all of the foregoing reasons, the Official Committee respectfully requests that this Court overrule the Objection and confirm the Plan.

Dated: June 5, 2017
Wilmington, Delaware

/s/ *Pauline K. Morgan*

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