

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| In re | : | Chapter 11 |
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| PARAGON OFFSHORE PLC | : | Case No. 16-10386 (CSS) |
| (in liquidation), | : | |
| | : | |
| Debtor. ¹ | : | Re: D.I. 2231 |
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**RESPONSE OF PARAGON TO U.S. TRUSTEE’S MOTION TO COMPEL
FILING OF POST-CONFIRMATION QUARTERLY REPORTS
AND PAYMENT OF STATUTORY FEES**

Paragon Offshore plc (in liquidation) (“**Paragon**”) hereby files this response (the “**Response**”) to the *Motion of the U.S. Trustee to Compel Filing of Post-Confirmation Quarterly Reports and Payment of Statutory Fees* [D.I. 2231] (the “**Motion**”). In support of this Response, Paragon respectfully represents as follows:

BACKGROUND

1. On February 14, 2016 (the “**Petition Date**”), Paragon and certain of its affiliates (collectively, the “**Debtors**”) each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors’ chapter 11 cases were consolidated for procedural purposes only and were being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

¹ The Debtor in this case, along with the last four digits of the debtor’s federal tax identification number is Paragon Offshore plc (in liquidation) (6017). Paragon’s mailing address is 60 St. Martin’s Lane, London WC2N 4JS, United Kingdom. Nick Edwards and David Philip Soden, each of Teneo, are the joint liquidators of Paragon Offshore plc (in liquidation) (the “**Joint Liquidators**”). The affairs, business and property of Paragon Offshore plc (in liquidation) are managed by the Joint Liquidators.



2. On June 7, 2017, the Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the Fifth Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors* [D.I. 1614] confirming the *Fifth Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors*, dated June 7, 2017 (the “**Plan**”).² The Effective Date of the Plan occurred on July 18, 2017. *See* D.I. 1792.

3. As part of the Plan, “the Debtors and the Estates” transferred “to the [Paragon] Litigation Trust the Noble Claims, with good, clean title to such property, free and clear of all liens, charges, Claims, encumbrances and interests.” D.I. 1614, Ex. A § 5.7(b); accord D.I. 1593, Ex. E-1 § 2.4. The Paragon Litigation Trust (the “**Trust**”) was established to pursue these claims “for the benefit of the holders of the Litigation Trust Interests.” [D.I. 1614, Ex. A § 5.7(b); accord D.I. 1593, Ex. E-1 §§ 2.1, 2.4.] After the transfer, “the Debtors, the Estates, and the Paragon Entities” agreed that they “will have no further interest in or with respect to the Trust Assets or the Litigation Trust.” [D.I. 1593, Ex. E-1 § 2.4.]

4. Also as part of the Plan, the Debtors transferred the interests in the Trust, among other consideration, to creditors “in full and final satisfaction, compromise, settlement, release, and discharge” of claims against the Debtors. D.I. 1614, Ex. A §§ 4.3 and 4.4.

5. On October 31, 2017, the Debtors filed their first post-confirmation report for the three-month period from July 1, 2017 through September 30, 2017 (the “**First PCR**”) [D.I. 1980]. The First PCR reflected Paragon’s disbursements pursuant to the Plan. The Debtors paid approximately \$140,175 in fees to the U.S. Trustee and, of that amount, Paragon paid the maximum fee of \$30,000 for disbursements made during that quarter.

² Capitalized terms used but not otherwise defined herein, shall have the meaning ascribed to such terms in the Plan.

6. On December 15, 2017, the Trust filed its first complaint against several Noble entities and certain directors of Noble and Paragon (collectively, the “**Noble Defendants**”).

7. On December 21, 2017, the Debtors filed a motion to close the chapter 11 cases for all Debtors except Paragon. *See* D.I. 2023. In the motion to close, the Debtors noted that the First PCR had been filed, that the fee of approximately \$140,175 had been paid and that no other payments were due. *See id.* at 4. The Court entered an order closing all but the Paragon case on January 10, 2018. *See* D.I. 2041.

8. Based on information contained in the Trust’s Response (defined below), the Trust settled its actions against the Noble Defendants and received \$90,375,000. *See* D.I. 2239 at 4-5. Paragon has not received, and does not anticipate receiving, any proceeds from the settlement between the Trust and the Noble Defendants. Indeed, pursuant to the Plan and the Litigation Trust Agreement, Paragon has no right to, or interest in, the proceeds of the settlement.

9. On May 26, 2021, Paragon filed post-confirmation reports for the four quarters of 2020 and the first quarter of 2021. *See* D.I. 2234, 2235, 2236, 2237 and 2238.

10. On May 27, 2021, the Trust filed its *Response to Motion of the U.S. Trustee to Compel Filing of Post-Confirmation Quarterly Reports and Payment of Statutory Fees* (the “**Trust’s Response**”) [D.I. 2239].

RESPONSE

11. As an initial matter, with the filing of the most recent post-confirmation reports, the Motion is moot as to the request to compel filing. In addition, Paragon intends to pay fees to the U.S. Trustee in respect of the most recent disbursements in advance of the hearing scheduled on the Motion on June 10, 2021.

12. Turning to the portion of the Motion regarding the payment of fees for the distribution of the proceeds of the Noble settlement, the Motion should be denied. The U.S. Trustee does not, and cannot, argue that the anticipated distribution of the Noble settlement proceeds is a disbursement by Paragon. The proceeds of the settlement with the Noble Defendants sit with the Trust, not Paragon. Instead, the U.S. Trustee stretches to argue that the anticipated distribution by the Trust to its interest holders is a disbursement on behalf of Paragon triggering the payment of a fee under 28 U.S.C. § 1930. The U.S. Trustee's analysis fails.

13. On July 18, 2017, the effective date of Paragon's Plan, Paragon transferred the Noble Claims (as defined in the Plan) to the Trust. In "full and final satisfaction, compromise, settlement, release, and discharge" of claims against it, Paragon distributed the interests in the Trust, among other disbursements, to creditors holding those claims. For the quarterly period in which the Plan went effective, Paragon paid the maximum amount of \$30,000 in fees to the U.S. Trustee in respect of such disbursements.

14. Following the transactions implemented pursuant to the Plan, Paragon did not have an interest in the Noble Claims and does not have an interest in the cash being distributed by the Trust following the liquidation of the Noble Claims. Similarly, following the implementation of the Plan, Paragon does not have an obligation that is being satisfied, or an expense that is being paid, by the Trust's distribution. Paragon's obligations to creditors ended (and were discharged) with the transfer of the Noble Claims and the transfer of the interests in the Trust. In the absence of an obligation or expense of Paragon that is being satisfied by the distribution of the Noble settlement proceeds, such distribution is not a disbursement for the benefit of Paragon that requires payment of a fee to the U.S. Trustee. *See In re Charter*

Behavioral Health Sys., LLC, 292 B.R. 36, 48 (Bankr. D. Del. 2003) (holding “the proper interpretation of the term ‘disbursements’ is whose expense is being paid”). Accordingly, the Motion should be denied.

15. Paragon is generally aligned with the Trust in its response to the Motion. Paragon, however, does not agree that, should the Court find that the Trust’s distribution triggers a payment under 28 U.S.C. § 1930, the fee payment is the obligation of Paragon. Instead, any fee due to the U.S. Trustee is a Litigation Trust Expense under section 4.3 of the Litigation Trust Agreement. *See* D.I. 1593, Ex. E-1 § 4.3 (“‘Litigation Trust Expenses’ shall mean all reasonable and documented costs, expenses and obligations incurred in connection with ... distributing the Trust Assets.”). Litigation Trust Management is required to apply Trust assets, such as the Noble settlement proceeds, first to pay Litigation Trust Expenses. *See id.* § 6.6. In fact, management of the Trust has no authority or power to “create any obligations or liabilities of the Debtors or Reorganized Debtors, as applicable, in respect of the prosecution, compromise, settlement or defense of such Noble Claims.” The logical obligor for the U.S. Trustee fee, if any, is the source of the disbursement – the Trust.

WHEREFORE Paragon respectfully requests that the Court (i) deny the U.S. Trustee's Motion, (ii) if the Court grants the Motion, find the Trust liable for the resulting U.S. Trustee fee payment, and (iii) grant such other and further relief to Paragon as it deems just and proper.

Dated: June 2, 2021
Wilmington, Delaware

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