

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re	§	
SEADRILL LIMITED, <i>et al.</i> , ¹	§	Chapter 11
Debtors.	§	Case No. 21-30427-DRJ
	§	(Jointly administered)

**THE SVP PARTIES' RESPONSE AND CONDITIONAL OBJECTION TO THE
DEBTORS' FIRST REQUEST TO EXTEND THE EXCLUSIVE PERIODS TO FILE A
CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

The SVP Parties² respectfully submit this response and conditional objection (the “**Response**”) in response to the *Debtors’ First Request to Extend the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof* [ECF No. 706] (the “**Exclusivity Motion**”). As discussed below, the SVP Parties are not opposed to the extension of the NADL Debtors’³ exclusive right to file a plan of reorganization and solicit acceptances thereof, but request that any order granting the Exclusivity Motion make clear that nothing precludes or excuses the NADL Debtors from considering their own sale process or their own plan and that the NADL independent

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://cases.primeclerk.com/SeadrillLimited>. The location of Debtor Seadrill Americas, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 11025 Equity Drive, Suite 150, Houston, Texas 77041.

² The “**SVP Parties**” include (i) Strategic Value Dislocation Master Fund, L.P.; (ii) Strategic Value Special Situations Master Fund IV, L.P.; (iii) Strategic Value Opportunities Fund, L.P.; (iv) Strategic Value Master Fund, Ltd.; (v) Emerald Meadow Designated Activity Company; and (vi) Emerald Health Designated Activity Company.

³ The “**NADL Debtors**” include (i) North Atlantic Alpha Ltd.; (ii) North Atlantic Norway Ltd.; (iii) Norwegian Branch; North Atlantic Elara Ltd.; (iv) North Atlantic Epsilon Ltd.; (v) North Atlantic Navigator Ltd.; (vi) North Atlantic Venture Ltd; (vii) North Atlantic Phoenix Ltd.; (viii) North Atlantic Drilling UK Ltd.; and (ix) Seadrill North Atlantic Holdings Ltd.

directors acknowledge that they can and should consider and engage in a dual-track process. To the extent that the NADL Debtors or the independent directors do not intend to consider any restructuring option other than the Plan (as defined in the Exclusivity Motion), then the SVP Parties must, and do, oppose the extension of exclusivity.

RESPONSE AND CONDITIONAL OBJECTION

1. Throughout these cases, the Debtors have insisted that all of the Debtors have similar interests. The Debtors' prepetition enterprise stretches across twelve different silos of debt. Hr'g Tr. at 57:2 (Feb. 12, 2021) involving drilling units that are located in different environments and have little relationship to one another. Several of the units have been idled for years. Recently, the Debtors have filed notices of selling for scrap five of the idled units, three of which belong to the NADL Debtors. *See* ECF Nos. 737-41.

2. The NADL Debtors constitute one such silo, but it is a silo quite different from most of the rest of the Debtors and has very different interests. One, the operating rigs owned by the NADL Debtors are harsh environment rigs and well positioned to be used in Norwegian territorial waters⁴. Two, even though several of the NADL rigs were idle for years (and are now being sold for scrap), the two operating rigs have very valuable long-term contracts, generating substantial cash flow with a high degree of predictability and lower relative volatility. This is one of the primary reasons why an investor would underwrite an investment specifically in the NADL silo and, given the lack of similar long-term profitable contracts, has made NADL a crown jewel.⁵

⁴ Among the other rigs within the Seadrill Debtor enterprise that have operated in Norwegian waters is the *West Mira*, owned by Northern Ocean. Yet that rig has been the subject of numerous regulatory concerns and the contract counterparty recently delivered a termination notice.

⁵ Even though the NADL Debtors are a crown jewel of the Debtors' overall enterprise, the NADL Debtors were insolvent long before the commencement of these cases and remain

3. The Debtors have argued that reorganizing as one overarching entity under their Plan will benefit all of the Debtors and their parties in interest. Indeed, they have publicly filed a “single silo” restructuring proposal and have delivered to lenders a draft of the Plan, which includes hundreds of millions of dollars in “new money” super-senior loans that have nothing to do with the silos and their respective values. Further, the proposed “new money” loans, which are likely needed to fund the carrying costs of poorly performing units of Debtors other than the NADL Debtors, would prime existing secured creditors of the NADL Debtors, ultimately resulting in NADL the Debtors effectively subsidizing other silos with future cash flows.

4. The Debtors have only pursued a single silo restructuring approach embodied in their Plan and have taken this position notwithstanding the fact that there are *multiple, unsolicited offers for assets of the Debtors* that firmly demonstrate the value of consideration allocated to the NADL Debtors under the Debtors’ restructuring proposal is materially less than these offers, provide for *pro forma* structures that substantially reduce credit risk and further demonstrate that a robust marketing and auction process will no doubt generate even more value. Indeed, the SVP Parties are unaware of any effort by the Debtors, including the NADL Debtors, to permit third parties who have submitted proposals to conduct due diligence in order to attract the highest and best bid(s), or any discussion with these bidders to try to make the best possible bids.

5. The SVP Parties have consistently taken the position that the obviously valuable assets of the NADL Debtors must be marketed in an open, transparent, and robust process so that value is maximized. Both the Bankruptcy Code and Bermuda fiduciary duty law mandate that the

insolvent by hundreds of millions of dollars. The SVP Parties submit there is virtually no possibility that the shareholders of the NADL Debtors, which themselves are Debtors, will ever recover on account of their equity interests.

fiduciaries of the NADL Debtors cannot simply turn a blind eye to better offers, or even the prospect of better offers.⁶

6. Thus far, the Debtors have flatly refused to undertake even a dual-track process to solicit interest in any alternative plan and a sale of assets, notwithstanding multiple third parties providing unsolicited bids for some and all of the Debtor assets, including assets of the NADL Debtors. This is inexplicable at least in the case of the NADL Debtors, which are insolvent and yet could easily pursue a sale process that even in a liquidation context would provide more value than the Plan. A failure to explore the market, and then using exclusivity to ensure no one else can propose a plan (including a sale process within a plan), is tantamount to “delay that makes the creditors the hostages of the Chapter 11 debtor.” *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Inc.)*, 808 F.2d 363, 372 (5th Cir. 1987), *aff’d* 484 U.S. 365 (1988); *see also id.* (“[C]reditors, whose money is invested in the enterprise no less than the debtor’s, have a right to a say in the future of that enterprise.”).

7. Since the NADL independent directors were appointed, the SVP Parties have sought audiences with them. When they finally were able to have a discussion with the independent directors on May 24, the SVP Parties encouraged the NADL independent directors to engage independent financial advisors and Bermuda counsel and provided the independent directors a detailed written presentation comparing the existing proposals.

8. Now that the Debtors have appointed independent directors to the NADL Debtors, those independent directors must have independent authority to begin a dual-track process. The NADL Debtors, in turn, must be free to consider restructuring options other than the Plan that the

⁶ Indeed, this point can be made for any of the Debtors, and the SVP Parties certainly welcome *any* marketing testing for any of the Debtors.

other Debtors and their creditors are trying to foist on the NADL Debtors. If the NADL Debtors cannot (or will not) consider anything contrary to their controlling shareholder, then the SVP Parties must object to plan exclusivity.

9. The independence of the NADL Debtors preserves the important division of oversight between the NADL Debtors and the other Debtors. The Debtors seemingly identified the need for this division in their recent request for relief, the *Debtors' Emergency Motion for Entry of an Order Authorizing the Appointment of Independent Directors to the Board of Debtor Seadrill North Atlantic Holdings Limited* [ECF No. 569] (the “**Independent Director Motion**”). The Debtors viewed this relief as so essential to the estates that they filed the Independent Director Motion on an emergency basis, noting that “[t]he appointment of the Independent Directors *is critical to the Debtors' ability to evaluate strategic alternatives* in a manner that bolsters corporate governance and the disinterestedness of the NADL board.” Independent Director Motion at ¶ 23 (emphasis added). Grant Creed, the Debtors Chief Restructuring Officer agreed, adding that he “believe[d] that the appointments [of the independent directors were] in the best interest of the Debtors' estates” and “consistent with principles of prudent corporate governance.” *Declaration of Grant Creed, Chief Restructuring Officer of Seadrill Limited, in Support of Debtors' Emergency Motion for Entry of an Order Authorizing the Appointment of Independent Directors to the Board of Debtor Seadrill North Atlantic Holdings Limited* [ECF No. 570], at ¶ 11.⁷

10. The SVP Parties agree: the NADL Debtors must have independent oversight. Independence of day-to-day corporate governance is, as the Debtors stated, “***critical***,” “***imperative***,” and “***advisable***.” Independent Director Motion at ¶¶ 14 and 23. Nowhere is

⁷ Of course, the SVP Parties had been arguing for the need for independent fiduciaries at NADL long before the commencement of these chapter 11 cases and well before the Debtors finally filed their Independence Motion.

independence more essential than in the context of the incredibly consequential process of considering whether to propose a plan or pursue a pre-plan sale process.

11. But the appointment of the NADL directors has thus far been a non-event. Following the NADL Directors' appointment, as far as the SVP Parties are aware the Debtors have not changed their approach to provide any greater benefit to the NADL Debtors. The NADL independent directors have not retained a financial advisor or Bermuda counsel, notwithstanding the SVP Parties' requests that they do so. The NADL independent directors have not fostered value-maximizing competition, again despite the SVP Parties' request, instead they have risked letting the interests of several strategic parties die on the vine.⁸ As far as the SVP Parties are aware, the NADL independent directors have not, to date, disagreed or taken issue with the Debtors' pre-existing corporate governors on any material issue.⁹ Indeed, with respect to the Exclusivity Motion, the SVP Parties do not know whether the NADL independent directors are on board with it.

12. As legally and financially distinct debtors in possession, the NADL Debtors' ultimate corporate action over the following months either will be conducting a sale process or the implementation of a plan of reorganization – whichever generates more value for their estates and their creditors. Equally important, whether via a sale process or a plan process, the SVP Parties

⁸ See *In re Allard*, No. 18-14092 (MG), 2019 WL 4593854, at *5 (Bankr. S.D.N.Y. Sept. 20, 2019) (“The results of competitive bidding at the auction provide the best evidence of the value of these Properties.”); *In re FPMC Austin Realty Partners, LP*, 573 B.R. 679, 688 (Bankr. W.D. Tex. 2017) (“...an auction is usually the best way to encourage [] bidders to increase the ultimate purchase price”, noting examples of where auction “more than doubled” value).

⁹ Earlier this week the SVP Parties' counsel delivered a letter to the NADL independent directors' counsel outlining their concerns. Yesterday, counsel for the NADL independent directors provided a short response, inviting further dialogue and stating the independent directors were considering retaining an independent financial advisor.

desire to see the NADL Debtors continue on as a going concern, protecting the livelihoods and careers of the debtor's employees, and avoiding a third trip to an insolvency court.

13. Bankruptcy Code section 1121(b) gives a debtor the exclusive right to file a plan of reorganization for the first 120 days after the commencement of the cases. Bankruptcy Code section 1121(d) permits the extension of plan exclusivity for cause. A court, of course, has the discretion to impose limitations and conditions on an extension under section 1121(d). This Court should do here by having any order approving the Exclusivity Motion include two things: one, that nothing in the order precludes or excuses the NADL Debtors from considering their own sale process or their own plan if the value of the assets of the NADL Debtors would be maximized, and two, that the NADL independent directors will cause the NADL Debtors to consider and engage a dual-track process, including responding to any bids and permitting bidders to engage in any reasonable due diligence.

14. Without independence from the other Debtors, the NADL Debtors cannot negotiate to preserve their operations from the interference of the other Debtors. Subjected to a plan process managed exclusively by the other Debtors,¹⁰ the NADL Debtors may find themselves trapped in an ailing enterprise with no way to ensure proper corporate governance or value maximization.

15. To preserve their bargaining power against the other Debtors and to encourage as many bidders as possible to put their best bids on the table, the NADL Debtors must maintain a separate marketing process and have the ability to consider alternatives, including a sale process (prior to or in connection with a plan), without being beholden to the other Debtors. The NADL Debtors must also enter into the plan process educated on their value. For this education, there is

¹⁰ Alarming, the Exclusivity Motion fails to mention the separate needs of the NADL Debtors. In fact, the pleading does not reference the NADL Debtors at all.

no substitute for the actual market. Indeed, the NADL Debtors' should use their independence to pursue a dual track that either confirms or refutes the other Debtors' assertion that a joint reorganization best serves all Debtors and their estates.

CONCLUSION

16. For the reasons stated above, the SVP Parties support the Exclusivity Motion on the condition that any order granting the Exclusivity Motion contain the provisions identified in paragraph 13 hereof.

Respectfully submitted this June 4, 2021.

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**ATTORNEYS FOR
SVP PARTIES**

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, a copy of the foregoing document was served through the Court's CM/ECF notification system to all parties who have appeared in this case through counsel or who have submitted a request for service by CM/ECF.

/s/ Devin van der Hahn
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