Docket #1025 Date Filed: 10/07/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

In re: VANDERBILT MINERALS, LLC,[1] Debtor.	Chapter 11 Case No. 26-60110 (WAK)

VM BUYER'S JOINDER TO R.T. VANDERBILT'S OBJECTION AND RESERVATION RIGHTS WITH RESPECT TO, AND LIMITED OBJECTION TO, APPROVAL OF THE AMENDED DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF LIQUIDATION OF VANDERBILT MINERALS, LLC

VM Buyer LLC (the "Buyer"), the buyer under the Asset Purchase Agreement[2] approved by the Bankruptcy Court pursuant to the Sale Order, by and through its undersigned counsel, hereby submits this joinder to *R.T. Vanderbilt's Objection and Reservation of Rights to the Motion of Debtor for Entry of an Order (I) Approving Proposed Disclosure Statement and the Form and Manner of Notice of Hearing Thereof, (II) Establishing Solicitation and Voting Procedures with Respect to Debtor's Proposed Chapter 11 Plan, (III) Scheduling Confirmation Hearing, (IV) Establishing Solicitation and Voting Procedures with Respect to Debtor's Proposed Chapter 11 Plan, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Debtor's Proposed Chapter 11 Plan, and (V) Granting Related Relief* [Docket No. 1016] (the "Holdings Objection") and limited objection to the *Motion of Debtor for Entry of an Order (I) Approving Proposed Disclosure Statement and the Form and Manner of*

[1] The Debtor is Vanderbilt Minerals, LLC (EIN 13-1432885). The Debtor's noticing address in the Chapter 11 Case is 33 Winfield Street, Norwalk, Connecticut 06855.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the *Chapter 11 Plan of Liquidation of Vanderbilt Minerals, LLC* [Docket No. 962] (the " Proposed Plan") or the *Order (I) Authorizing and Approving the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 576] (the "Sale Order"), as applicable.

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Notice of Hearing Thereof, (II) Establishing Solicitation and Voting Procedures with Respect to Debtor's Proposed Chapter 11 Plan, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Debtor's Proposed Chapter 11 Plan, and (V) Granting Related Relief [Docket No. 859] (the "Motion") for approval of the *Amended Disclosure Statement for Chapter 11 Plan of Liquidation of Vanderbilt Minerals, LLC* [Docket No. 963] (the "Proposed Disclosure Statement"), and respectfully states as follows:

JOINDER AND LIMITED OBJECTION

1. The Proposed Disclosure Statement should be denied because the Proposed Plan is patently unconfirmable and the Proposed Disclosure Statement does not include adequate information.[3]

2. The Buyer is the purchaser of substantially all of the Debtor's assets pursuant to the Asset Purchase Agreement and Sale Order. As the Court is aware, the Debtor carefully calibrated the Sale to ensure that certain assets of Holdings critical to the operation of the Debtor's business (the "Settlement Assets") would be available to the Buyer as part of the Sale. Indeed, the Sale was dependent on the approval of the Global Settlement, pursuant to which Holdings transferred the Settlement Assets to the Debtor, and the Debtor released certain alter ego, veil piercing, and successor liability claims against Holdings and its affiliates (the "Released Claims"), among other things. The Creditors' Committee objected to the Global Settlement and appealed the Global

[3] Section 1125 of the Bankruptcy Code states that a disclosure statement must contain "adequate information," which includes "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . ." Courts have held that "a disclosure statement must contain all pertinent information bearing on the success or failure of the proposals in the plan of reorganization. A disclosure statement should likewise contain all material information relating to the risks posed to creditors and equity interest holders under the proposed plan of reorganization." *In re Avianca Holdings S.A.*, 632 B.R. 124, 130 (Bankr. S.D.N.Y. 2021) (quoting *In re Cardinal Congregate I*, 121 B.R. 760, 765–66 (Bankr. S.D. Ohio 1990)).

Settlement Order, asserting, among other things, that the Released Claims are not property of the Debtor's estate that the Debtor has authority to settle, and subsequently also appealed the Sale Order. With multiple stay pending appeal requests having been denied in both this Court and the District Court, the Debtor and Holdings proceeded to consummate the Global Settlement by transferring the Settlement Assets to the Debtor in accordance with the terms of the Global Settlement and then consummating the Sale, which included a transfer of the Settlement Assets by the Debtor to the Buyer.[4]

3. Under the Asset Purchase Agreement: "If the Sale Order . . . [is] appealed . . . [the Debtor] agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal . . ." *See* Asset Purchase Agreement, Section 7.2 (the "Appeal Covenant").[5] Notwithstanding the Appeal Covenant, the Proposed Plan being jointly proposed by the Debtor and the Creditors' Committee would abdicate the Debtor's responsibility to defend the Sale Appeal entirely: "[T]he Debtor and the Independent Manager will not continue to defend and shall not be required to continue to defend the Appeals on behalf of the Debtor or the Estate subsequent to the Effective Date." Proposed Plan, Section 12.15. In plain terms, the Debtor intends to take the proceeds of the Sale, pay the fees of the Debtor's and Creditors' Committee's advisors, transfer the remaining proceeds to the Liquidating Trust as a litigation slush fund (subject to a meager distribution to holders of General Unsecured Claims), and walk away from the Settlement Appeal in contravention of its obligations under the Global Settlement and May Letter Agreement (as defined in the Holdings Objection) and the Sale Appeal in contravention of its obligations under

[4] The Sale was consummated on June 11, 2026. *See Notice of Sale Closing and Assignment of Contracts and Leases in Connection with Sale* [Docket No. 732].

[5] The Sale Order states that "the APA shall be binding in all respects upon . . . the Debtor and its respective Affiliates." Sale Order, ¶ 4.

the Asset Purchase Agreement and Sale Order, leaving, in the case of the Sale Order, the Buyer solely responsible for both the cost and the legal defense of the Sale and the Sale Appeal.

4. Having benefitted from the provisions of the Bankruptcy Code to accomplish the Global Settlement and the Sale, the Debtor now seeks to abandon the very (albeit worthy) fight it started in favor of a Proposed Plan, the sole purpose of which is seemingly to capitulate in the fight. In fact, while the Proposed Plan is clear that the Creditors' Committee will remain constituted post-Effective Date for the purpose of prosecuting, and will have standing and capacity to prosecute, the Appeals, there is zero disclosure in the Disclosure Statement regarding who will defend and prosecute the Appeals on behalf of the Debtor, which is the entity responsible for making the "business decision" to enter into the Global Settlement and to sell the Settlement Assets.

5. Even assuming, *arguendo*, that the Debtor's intention pursuant to the Proposed Plan is for the Liquidating Trustee, as successor to the Debtor, to defend the Appeals (about which there is no disclosure), the Liquidating Trust and the Liquidating Trustee are and will be hopelessly conflicted.

6. *First*, the Liquidating Trustee is selected by the Creditors' Committee, which is the party prosecuting the Appeals.

7. *Second*, the Liquidating Trust directly benefits from the success of the Settlement Appeal and overturning the Settlement Order. At the heart of the Settlement Appeal is whether the Debtor had authority to release the Released Claims. If the releases contained in the Global Settlement are unwound, it would be the Liquidating Trustee or its constituents that would have the authority to prosecute the now-unreleased claims. Moreover, if the Settlement Order is overturned, the Liquidating Trustee has no incentive to continue to defend the Sale Order that the

Creditors' Committee argues should be unwound notwithstanding section 363(m) of the Bankruptcy Code.

8. *Third*, the Liquidating Trustee would be defending the Sale Appeal using the same funds the Creditors' Committee is entitled to use to prosecute the Sale Appeal. Under Section 12.14 of the Proposed Plan: "After the Effective Date, the Creditors' Committee shall also have standing and capacity to continue to prosecute [the Sale Appeal] . . . The fees and expenses incurred by the Creditors' Committee relating to any post-Effective Date . . . [prosecution of the Appeals] shall be payable from the VLT Operating Reserve." Proposed Plan, Section 12.14. One of the Authorized Acts of the Liquidating Trustee is to "maintain, administer, and make distributions from the VLT Operating Reserve to satisfy VLT Operating Expenses." *Id.* at Section 1.1. Again, there is no requirement in the Proposed Plan for the Liquidating Trustee to defend the Sale Appeal. However, even if the Liquidating Trustee determines to do so, the bizarre consequence would be that it and the Creditors' Committee would be drawing on the same source to fund their litigation against each other, and control thereof rests in the hands of decision makers who believe their beneficiaries benefit the most, not from the $11 million[6] remaining from the Sale, as the Debtor believed, but from undoing the Global Settlement underpinning that Sale.

9. If the Debtor intended to vigorously defend its actions during this Chapter 11 Case, as it should be required to do, the Debtor would have proposed a plan that created a clear separation between the Liquidating Trust and the Debtor, which could have remained in place as a winddown debtor, with its own budget, for the purpose of defending and prosecuting the Appeals. It did not. Instead, it struck a deal with the Creditors' Committee (where the Creditors' Committee now effectively controls both sides of the Appeals), abdicates responsibility for the actions it took and

[6] *See* Proposed Plan, Section 9.1(ix).

the transactions it consummated during this Chapter 11 Case, and shifts the costs of defense of those actions to its counterparties, even though it received the cash benefits of and agreed to defend those transactions, all in exchange for releases. The Debtor should be required to go back to the drawing board to propose a plan that cures this fatal flaw or the Creditors' Committee should agree that it will not seek to unwind the Sale.

10. The Proposed Plan is patently unconfirmable because it does not purport to pay Administrative Expense Claims in full. Any claims arising from the Debtor's failure to perform the Appeal Covenant gives rise to an Administrative Expense Claim. *See In re Enron Corp.*, 279 B.R. 79, 86 (Bankr. S.D.N.Y. 2002) ("A debtor must derive a benefit under a contract in order for its claim to be accorded administrative expense priority . . . The benefit must run to the debtor-in-possession."). The benefit to the Debtor under the Asset Purchase Agreement is obvious: $64 million to fund the administration of the Chapter 11 Case. The $11 million in cash available to the Liquidating Trustee and the Creditors' Committee on the Effective Date is insufficient to fund all Administrative Expense Claims when taking into consideration the cost to litigate potential claims related to the Debtor's failure to perform the Appeal Covenant, payment of the claims related to such litigation, and a contested Confirmation Hearing as a result of an unconfirmable plan (in the event the Proposed Disclosure Statement is approved).

11. The Proposed Disclosure Statement does not contain adequate information because it does not include disclosures that (i) the Proposed Plan violates the Appeal Covenant; (ii) this violation results in significant litigation risk;[7] (iii) the Creditors' Committee has been supplied

[7] Under the Asset Purchase Agreement, the Buyer is entitled to specific performance of the Appeal Covenant in addition to other remedies available to it:

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to

with access to millions of dollars in the VLT Operating Reserve that could instead be distributed to creditors to prosecute a Sale Appeal that has little to no chance of success; or (iv) the Proposed Plan does not appoint a fiduciary to defend the Sale Appeal and the $64 million the Sale brought into the Estate to the detriment of the Estate's stakeholders.

12. Further, the Proposed Plan states that neither Confirmation nor the occurrence of the Effective Date shall "(i) have the effect of mooting, ***or support efforts to moot*** . . . [the Appeals]; [or] (ii) provide a basis for the Debtor or the Independent Manager to argue that the Appeals are moot." Proposed Plan, Section 12.15 (emphasis added). This language prejudices the ability of Buyer, the Debtor, the Independent Manager, the Liquidating Trustee, and other parties in interest to defend the Sale Appeal, provides no benefit to the Debtor or its Estate, and should be removed.

13. The Buyer joins the arguments set forth by Holdings in the Holdings Objection.

RESERVATION OF RIGHTS

14. Nothing in this Objection shall be deemed a waiver, release, or relinquishment of (i) any rights, remedies, claims, or defenses of the Buyer or its affiliates under the Asset Purchase Agreement, the Sale Order, or applicable law, or (ii) any objections to the Proposed Disclosure

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prevent any such breach, and to specifically enforce the terms and provisions of this Agreement, including specific performance of such covenants, promises or agreements or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 11.3 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Seller, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Seller, as applicable, under this Agreement all in accordance with the terms of this Section 11.3.

Asset Purchase Agreement, Section 11.3.

Statement, the Proposed Plan,[8] or otherwise, all of which are expressly preserved and reserved in their entirety.

CONCLUSION

15. For the foregoing reasons, the Buyer respectfully requests that the Court deny the Motion in its entirety and grant such other and further relief as the Court deems just and proper.

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[8] The Buyer and the Debtor are also in discussions regarding a protocol to protect the Buyer's interests in connection with the Data Transfer to the Liquidating Trust. Pending resolution of an agreed protocol, the Debtor has agreed to make the following revision to the Proposed Disclosure Statement and the Proposed Plan:

> In connection with the Confirmation of the Plan and prior to the Effective Date, the Debtor shall cooperate **with the Buyer and Liquidating Trust** in good faith in connection with the Data Transfer, including to determine a mutually agreeable process for effectuating the Data Transfer to the Liquidation Trust on or before the Effective Date.

The Buyer hereby expressly reserves all rights in connection with any potential objections to the Proposed Plan, including with respect to the Data Transfer and protection of the Buyer's interests related thereto.

Dated: October 7, 2026
Syracuse, New York

MILBANK LLP

/s/ Evan Fleck

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed on this 7th day of October 2026, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

/s/ *Evan Fleck*
Evan Fleck