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COUNSEL FOR THE DUFRESNE FAMILY TRUST,
THE SCHULEIN FAMILY TRUST, THE MICHAEL A. GAFFEY
AND JOANNE M. GAFFEY LIVING TRUST, MARCH 2000, AND
THE GLICKMAN FAMILY TRUST DATED AUGUST 29, 1994
THE WILLIAM J. AND JUDITH A. MCDONALD LIVING
TRUST DATED APRIL 16, 1991

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: ROCKIES REGION 2006 LIMITED PARTNERSHIP and ROCKIES REGION 2007 LIMITED PARTNERSHIP DEBTORS	CASE NO. 18-33513 CHAPTER 11 Jointly Administered

MOTION FOR DISMISSAL OF CHAPTER 11 CASE

Robert R. Dufresne, as Trustee of the Dufresne Family Trust; Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991 (collectively, "Movants"), hereby file this Motion for Dismissal of Chapter 11 Case ("Motion") seeking the dismissal of these cases pursuant to 11 U.S.C. § 1112(b) on the grounds that this proceeding was filed in bad faith or, alternatively, that the bankruptcy petitions filed on behalf of the debtor limited partnerships were not authorized and the person who signed those petitions was not authorized to do so under applicable state law. In support of the relief requested herein, Movants respectfully state and represent to this Court as follows.

INTRODUCTION

1. Movants bring this Motion to protect their interests as Investor Partners in debtors Rockies Region 2006 and Rockies Region 2007 Limited Partnerships (together, the "Partnerships") and to protect the interests of the Partnerships themselves. Under well-established Fifth Circuit authority, a bankruptcy proceeding should be dismissed when it was filed in bad faith and when it is filed to obtain a litigation advantage in a separate proceeding. *See Little Creek Development Co.*, 779 F.2d 1068, 1073 (5th Cir. 1986); *Investors Group, LLC v. Pottorff*, 518 B.R. 380, 383–84 (N.D. Tex. 2014). These Chapter 11 cases were filed in bad faith to obtain such an advantage, for the sole purpose of enabling the Managing General Partner of the Partnerships—PDC Energy, Inc. ("PDC")—to take control of all derivative claims against PDC that have been brought on the Partnerships' behalf.

2. Movants are plaintiffs in a civil action against PDC in the United States District Court of the District of Colorado (Case No. 17-cv-03079-RBJ) (the "Civil Action"). There, Movants allege that PDC has engaged in conduct that is harmful to the Partnerships and that constitutes breaches of fiduciary duty, abuse of control, gross mismanagement, waste of the Partnerships' assets, unjust enrichment, and breaches of the Limited Partnership Agreements on which the Partnerships were formed. (**Exhibit A** [SAC].) Importantly, the Civil Action contains *both* derivative claims on behalf of the Partnerships and separately plead direct class claims brought on behalf of both Movants and all Investor Partners in the Partnerships. Through these bankruptcy filings, PDC seeks to prevent the litigation of Movants' derivative claims against PDC

and, at the same time, to prevent or significantly impair Movants from pursuing the separately pleaded direct class claims on behalf of the Investor Partners as well. In addition to seeking dismissal of theses Chapter 11 cases, Movants also believe that their separate *class* claims on behalf of the individual Investor Partners, not on behalf of the Partnerships, are not part of the Partnerships' "estate" and are being improperly made a part of this bankruptcy case for separate reasons.

3. The conclusion that PDC's decision to file bankruptcy on behalf of the Partnerships is an attempt to wrest control of Movants' derivative and direct claims is bolstered by the fact that the decision was unilaterally made by PDC, as the sole managing general partner, without any pressure from an external creditor and without consulting the Investor Partners. *See Investors Group*, 518 B.R. at 383–84. First, PDC is both the *sole* creditor of the Partnerships (*See* Doc. 10 at 3) and the Managing General Partner of the Partnerships, which presents an obvious conflict of interest that further casts doubt on the propriety of these cases. There is no evidence that the Partnerships received pressure from any *external* creditor that could support the filing of bankruptcy. And second, PDC did not consult with Movants before filing this case and Movants believe that PDC did not consult with *any* of the Investor Partners before doing so. Thus, the factors applied by the Fifth Circuit to determine whether an action is filed in bad faith strongly support the dismissal of this Chapter 11 case.

4. Dismissal of these cases is further warranted since PDC did not have the authority to file the petitions under applicable West Virginia law. Under the Partnerships' Limited Partnership Agreements (the "Partnership Agreements"), PDC was required to obtain the consent of the majority of Investor Partners prior to taking acts outside the ordinary course of the Partnerships' business. The filing of bankruptcy petitions clearly falls outside the scope of their

businesses. The petitions are further flawed as PDC was not authorized under the Limited Partnership Agreements or applicable state law, to delegate to Karen Nicolaou authority to sign the petitions on behalf of the Partnerships. Nor was Ms. Nicolaou properly authorized to do so. Consequently, the petitions are invalid and the Court lacks subject matter jurisdiction of these cases.

PROCEDURAL AND FACTUAL BACKGROUND

A. The Formation of the Partnerships

5. PDC, a publicly traded company headquartered in Denver, is a domestic independent natural gas and crude oil company that owns, operates, and manages natural gas and crude oil properties located predominantly in Colorado (the Denver-Julesburg (D-J)), and West Virginia (the Appalachian Basin). The Partnerships were formed in West Virginia and have their headquarters in PDC's office in Denver.

6. Beginning since at least 1996, PDC funded much of its drilling operations by entering into limited partnerships (or drilling partnerships) with investors. In 2006 and 2007, PDC formed the specific Partnerships at issue here to raise funds to finance the acquisition and development of oil and gas properties in the Wattenberg Field of Colorado's D-J Basin and attracted thousands of investors who paid tens of millions of dollars for their limited partner interests in the Partnerships. It should be noted that the Partnerships were not intended as mere funding mechanisms for PDC's own drilling operations. Instead, the Partnerships were to be full-fledged participants in the oil and gas industry; "engag[ing] in any and [all] phases of the oil and gas business." (*See* Doc. 61, Declaration of Michael Gaffey in Support of Objection to Debtors' Application for Order (I) Authorizing the Retention of Harney Management Partners, exhibit A 2006 Rockies Region Limited Partnership Agreement and exhibit B 2007 Rockies Region Limited

Partnership Agreement (herein after "Doc. 61", Ex. A at 22, Ex. B at 111 (Article I, § 1.03).) Thus, the interests the Partnerships owned in oil and gas properties developed with their funds are very valuable. According to PDC's public pronouncements, the Wattenberg Field, which includes the Niobrara and Codell formations, is PDC's "chief growth driver" in the Rocky Mountain Region and is one of PDC's "most prized assets."

7. In order for the Partnerships to engage in the oil and gas business, PDC represented to the Investor Partners that it would identify "Prospects" on which the Partnerships would conduct their drilling operations. (**Exhibit B** at 21, **Exhibit C** at 35.) The term "Prospect" is defined in the Partnership Agreements as "… the drilling or spacing unit on which the well will be drilled by the Partnership which is the minimum area permitted by state law or local practice on which one well may be drilled." (*See* Doc. 61, Ex. A at 17 (Article I, § 1.08(vv).) In the Partnership Agreements it states that the minimum area on which one well could be drilled in the Wattenberg Field was 32 acres. Thus, a Prospect in the Wattenberg Field in Colorado is synonymous with the 32-acre drilling or spacing unit mandated by Colorado law at the time the Partnerships were formed.

8. PDC also entered into Drilling & Operating Agreements ("D&O Agreements") with the Partnerships, acting as both the Managing General Partner of the Partnerships and as the "Operator." Importantly, the D&O Agreements provide that the Partnerships were formed "to explore and develop certain Prospects for the production of oil and gas as hereinafter provided …" (**Exhibit D** at 1) and provide a materially identical definition of "Prospect" as a 32-acre spacing unit as the definition contained in the Partnership Agreements.

9. By reason of its position of Managing General Partner of the Partnerships, and because of its ability to control the business and financial affairs of the Partnerships, under West Virginia law PDC owed the Partnerships and the Investor Partners (1) the duty to exercise due care

and diligence in the management and administration of the affairs of the Partnerships and in the use and preservation of their property and assets; (2) the duty of loyalty, to put the interests of the Partnerships and the Investor Partners above its own financial interests; and (3) the duty of candor, including full and candid disclosure of all material facts related to the Partnerships. The Partnership Agreements themselves acknowledged this relationship, providing the PDC had "a fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership[s]" and that PDC was not permitted to "employ or permit another to employ such funds or assets in any manner except for the exclusive benefit of the Partnership." *(See* Doc. 61, Ex. A at 39 (Article V, § 5.02(n)).)

10. Under the terms of the Partnership Agreements, PDC is not permitted to "acquire, retain, or drill for their own account any oil and gas interest in any Prospect in which the Partnership possesses an interest." (*See* Doc. 61, Ex. A at 45 (Article V, § 5.07(c).) Thus, PDC was forbidden from obtaining any oil and gas interest on any Prospect assigned to one of the Partnerships, for the entire duration of the Partnerships. And, any purchase or sale of the Partnerships' assets must be part of a "transaction[] that [is] fair and reasonable to the Investor Partners of the Partnership …" (*See* Doc. 61, Ex. A at 47 (Article V, § 5.07(i).)

B. <u>PDC's "Shift in Corporate Strategy" away from Drilling Partnerships</u>

11. At some point prior to 2010, PDC determined that it no longer wanted to operate through the use of drilling partnerships and devised a common plan or scheme by which it would ultimately obtain the partnerships' assets for its own benefit. In carrying out this plan, PDC sought to divest the limited partners of *all* the partnerships of their interests in the assets so that PDC would be able to solely benefit from the production of oil and gas that occurs on the acreage in the Wattenberg Field. PDC's past actions to obtain, for itself, the assets owned by its drilling

partnerships provides needed context for PDC's filing of these bankruptcy cases.

12. To accomplish its goal of obtaining the partnerships assets for itself PDC initially conceived of and implemented a plan to purchase (through cash-out merger transactions) certain of PDC's partnerships by the end of 2012. Through September 2010 and September 2011, PDC issued nearly identical proxy statements to the limited partners of the 2002, 2003, 2004, and 2005 partnerships announcing its intention to merge 11 drilling partnerships that had interests in mineral leases in the Wattenberg Field into a wholly owned subsidiary. PDC sought the investor's approval for the merger without disclosing in the proxy statements that, among other things, the partnerships PDC intended to purchase had assets including "Prospects" consisting of 32-acre spacing units ("Spacing Units") in the Wattenberg Field on which multiple horizontal wells could be drilled.

13. Importantly, the proxy statements issued to the Investor Partners of the 2002-2005 partnerships expressly stated that one of the reasons for the proposed merger was a "Shift in Corporate Strategy" defined as a "… fundamental shift in its business strategy away from the partnership model to a more traditional exploration and production company model." (**Exhibit E** at 43.) PDC informed the Investor Partners that the mergers would allow PDC to "position itself as a growth company" and would provide the company with "production and reserves from assets" that were currently in the partnerships' possession. (*Id.*)

14. Subsequent to the completion of the mergers of the 2002-2005 partnerships, a class action complaint against PDC was filed with the U.S. District Court for the Central District of California by several limited partners of the 2002-2005 partnerships, alleging violations of section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n (a), 17 C.F.R. §240.14a-9 (*Schulein v. Petroleum Dev. Co.*, Case No. SAVV11-1891 AG (ANx) ("*Schulein*").) That class action was resolved when PDC entered into a court-approved $37 million class action settlement with the

investors in the 2002-2005 partnerships. (*Schulein* Doc. No. 265.)[1] Movants believe that, as a result of the filing of the *Schulein* action, PDC halted its overarching plan to purchase the 2006-2007 Partnerships but, at the same time, refused to take any steps to profitably operate the Partnerships.

15. Undeterred by the filing of the *Schulein* action, PDC took other steps to obtain the drilling partnerships' assets for itself. For example, in 2013 PDC filed Chapter 11 bankruptcy petitions for 11 drilling partnerships[2] in a jointly administered bankruptcy proceeding in this Court. *See, e.g., In re Eastern 1996D Limited Partnership*, No. 13-34773 (N.D. Tex. Bankr. Dec. 13, 2013). In that Chapter 11 case, PDC filed a motion seeking the court's authority to sell all the Bankrupt Partnerships' assets free and clear of all liens. (*Id.* at Doc. 46.) Ultimately the bankruptcy court conducted an auction sale, at which PDC was the only bidder, and the mineral leases of the 11 Bankrupt Partnerships were sold to PDC. (*Id.* at Doc. 158 ["Supplemental Order Granting Amended Motion to Sell Property"].) Because any successful bidder for the Bankrupt Partnerships' oil and gas leases had to take title to the Bankrupt Partnerships' assets subject to an existing Drilling & Operating Agreement ("D&O Agreement") that gave PDC sole control of the operation of wells on the Bankrupt Partnerships' leaseholds, there were no third-party bidders at the bankruptcy sale. PDC was the only bidder at the bankruptcy court auction, and the mineral leases of the Bankrupt Partnerships were sold to PDC as the only bidder.

16. After the conclusion of the 2013 bankruptcy action, and after the settlement of the

[1] The limited partnerships involved in the *Schulein* Action include the: (1) PDC 2002-D LP; (2) PDC 2003-A LP; (3) PDC 2003-B LP; (4) PDC 2003-C LP; (5) PDC 2003-D LP; (6) PDC 2004-A LP; (7) PDC 2004-B LP; (8) PDC 2004-C LP; (9) PDC 2004-D LP; (10) PDC 2005-A LP; (11) PDC 2005-B LP; (12) and Rockies Region Private LP.

[2] The limited partnerships included in the 2013 bankruptcy sale include the: (1) Eastern 1996D LP; (2) Eastern 1997D LP; (3) Eastern 1998D LP; (4) Colorado 2000B LP; (5) Colorado 2000C LP; (6) Colorado 2000D LP; (7) Colorado 2001A LP; (8) Colorado 2001B LP; (9) Colorado 2001C LP; (10) Colorado 2001D LP; (11) Colorado 2002A LP; and (12) CO and PA 1999D LP, herein after collectively referred to as the "Bankrupt Partnerships."

Schulein Action, the Rockies Region 2006 and 2007 Partnerships were the only remaining and operational drilling partnerships. Thus, the continued existence of the Partnerships was the only obstacle to PDC's realization of its corporate strategy to assume complete control of all the drilling partnerships' assets.

C. <u>Movant's file the Civil Action against PDC</u>

17. Prior to the filing of this case, Movants brought the Civil Action against PDC, alleging that its "Corporate Strategy" is to rid itself of the partnerships and the Investor Partners so that PDC can take advantage of the Partnerships' properties in the Wattenberg Field. This is why PDC has refused to take any meaningful steps to develop the 32-acre Spacing Units rightfully owned by the Partnerships and why PDC has filed these Chapter 11 cases.

18. *First*, Movants allege that PDC failed its fiduciary obligations to the Partnerships and the Investor Partners by: (1) failing to take reasonable steps to recomplete or refracture ("refrac") the Partnerships' existing verticals wells that had been drilled on the Partnerships' Spacing Units (*See* Doc. 61, Ex. A at 41 (Article V, § 5.02(a)(3)); (2) failing to drill infill wells on the Partnerships' Spacing Units when the State of Colorado in 2009 reduced the minimum spacing unit for a vertical well in the Wattenberg Field from 32 acres to 20 acres; and (3) failing to utilize alternative means of developing the Partnerships' Spacing Units by drilling horizontal wells that are standard in the oil and gas industry that include, but are not limited to, farmouts, pooling, and term assignments (*See* Doc. 61, Ex. A at 52 (Article VI, § 6.02(b).)

19. *Second*, Movants have also alleged in the Civil Action that PDC breached its fiduciary duties to both the Partnerships (the derivative claims) and the Investor Partners (the class action claims) by using its position as Managing General Partner to misappropriate the assets of the Partnerships for its own benefit. In particular, Movants have alleged that PDC has breached its

fiduciary duties by (1) profiting, to the exclusion of the Partnerships and/or the Investor Partners, from the drilling of horizontal wells that pass through the Partnerships' Spacing Units in the Wattenberg Field; and (2) contracting with third parties to trade a portion of the Partnerships' Spacing Units for other acreage that is more contiguous with PDC's own acreage in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the expense of the Partnerships' own working interests in their Prospects.

20. *Finally*, Movants alleged that PDC breached its contractual obligations to both the Partnerships and the Investor Partners to the extent it failed to assign 32-acre Prospects to the Partnerships, as promised under the terms of the Partnership Agreements and the solicitations provided to the Investor Partners to solicit their investment. These documents expressly provide that PDC was obligated to transfer 32-acre spacing units, i.e. "Prospects", to the Partnerships, yet PDC now claims that it assigned the Partnerships only a "wellbore," which is only the shaft of a vertical well and is significantly less than the 32-acre spacing unit mandated by the Partnership Agreements.

D. These Chapter 11 Cases Are Part of PDC's "Corporate Strategy"

21. While PDC did not consult with any of the Investor Partners before filing this case, its filing was not a surprise. As stated earlier, PDC previously filed bankruptcy on behalf of the Bankrupt Partnerships in 2013. And, during a Scheduling Conference in the Civil Action in Denver that was held on March 15, 2018, PDC's counsel informed the Colorado District Court and counsel for Movants that it intended to file bankruptcy proceedings for the 2006-2007 Partnerships. (**Exhibit F** at 7.)

22. In addition, PDC's wrongful conduct to date (which is complained of in Movants' Civil Action) has been undertaken to lay the foundation for PDC's bankruptcy filing on the

Partnerships' behalf. PDC has consistently taken steps to make the interests of the Investor Partners unattractive to maintain and to support PDC's ultimate argument that there are no "economically feasible" options to develop the Partnerships' assets, making it easier for PDC to take possession of the Partnerships' assets through bankruptcy.

23. In particular, PDC has gone beyond refusing to recomplete the Partnerships' vertical wells by plugging and abandoning them. In a recent communication to the Investor Partners of the Partnerships, PDC stated that, as of September 2017, it has plugged 31 of the Partnerships' vertical wells (14 for Rockies Region 2006 and 17 for Rockies Region 2007). (**Exhibit** J at 2, 4.) PDC also stated that it intended to plug and abandon between 35 and 45 additional vertical wells before the end of 2017. (**Exhibit** J at 2, 4.) The work to plug these wells will cost the Partnerships between $1,750,000 and $2,200,000. This is clearly an example of PDC's ongoing efforts to present the Partnerships as financially unattractive to encourage the Investor Partners to abandon their interests when PDC ultimately seeks to purchase those interests so it can more easily exploit the Partnerships' acreage for its own benefit by purchasing the Partnerships assets at a bankruptcy auction at which it likely will be the only bidder as PDC will remain as the "Operator" of the mineral rights on the Partnerships' Prospects, or through the Partnerships' proposed reorganization plans at less than fair market value.

24. The true goal of PDC's strategy is made even more apparent when one considers the different representations that PDC made to the Investor Partners and its own shareholders concerning the "need" to plug and abandon wells. One of the reasons PDC gave to the Investor Partners for the need to plug and abandon existing vertical wells was that:

> The Managing General Partner has determined that due to the current production rate of the Partnership wells, the normal production decline in a well's production life cycle, the continued high line pressures, which has shut-in many of the Partnership's

> wells, and current EPA and COGCC air regulation requirements which will require expenditures to operate in compliance, the Partnership will plug and abandon between 10-15 of its 53 wells during 2018.

(**Exhibit G** at 2.) However, nearly two months earlier, PDC stated in a press release disclosing its financial results for the second quarter of 2018, that: "With the recent start-up of additional processing capacity in the field, the Company anticipates production in the second half of 2018 to materially benefit from an expected filed-wide reduction in line pressures." (**Exhibit H** at 1.) Thus, PDC represents to the Investor Partners and this Court that *high* line pressures in the Wattenberg Field is one of the reasons for the need to plug and abandon the Partnerships' wells when, *at the same time*, PDC tells its shareholders that the anticipated *reduction* in line pressure in the Wattenberg Field is a reason to be optimistic about PDC's future financial prospects.

25. PDC's conduct is even more egregious when one considers that PDC itself has utilized strategies to fund its own horizonal drilling operations on the Partnerships Spacing Units in the Wattenberg Field that are equally available to the Partnerships. In 2013, PDC sold its own interest and the Partnerships' acreage in the Piceance Basin in Colorado in order to further fund its operations of drilling horizontal wells in the Wattenberg Field. (Exhibit K at 11.) However, PDC did not use the proceeds from the sale of the Partnerships' interests of the remaining, unmerged partnerships in the Piceance Basin to permit the Partnerships to drill horizontal wells on the Partnerships Spacing Units in the Wattenberg Field. Instead, PDC simply returned millions of dollars from the proceeds of the sale of the Partnerships' assets in the Piceance Basin to the limited partners and thereafter claimed that the development of horizontal wells on the Partnerships' Wattenberg Spacing Units cannot move forward based on a lack of funds.

26. PDC's recent agreement to "swap" acreage owned by the Partnerships in the Wattenberg Field is an additional example of PDC's ongoing efforts to starve the Partnerships of

revenue to enable it to push the Partnerships into bankruptcy. On June 16, 2016, PDC announced that it had entered into an agreement with Noble Energy, Inc. ("Noble") to strategically trade or "swap" acreage held by the two companies in the Core Wattenberg area in Colorado. In its Form 10-K filing for fiscal year 2016, PDC disclosed this "swap" transaction, providing that:

> Pursuant to the transaction, we exchanged leasehold acreage and, to a lesser extent, interests in certain development wells. Upon closing, we received approximately 13,500 net acres in exchange for approximately 11,700 net acres, with no cash exchanged between the parties. The difference in net acres was primarily due to variances in leasehold net revenue interests and third-party mid-stream contracts. This acreage trade has resulted in opportunities for longer length horizontal laterals with increased working interests, while minimizing potential surface impact.

(Attached as **Exhibit I** is PDC's Form 10-K for fiscal year ending Dec. 31, 2016, United States Securities and Exchange Commission, Commission File No. 001-37419.) And, in a June 2016 press release, PDC stated that: "Pursuant to the terms of the Agreements, this strategic trade includes leasehold acreage only, and does not include production or wellbores." Attached as **Exhibit J** is a true and correct copy of PDC's June 2016 press release. The swap with Noble allowed PDC to consolidate its and the Partnerships' holding in the Wattenberg Field, providing it with more contiguous acreage, which in turn will allow PDC to drill longer and more profitable horizontal wells on Partnership Spacing Units.

27. On October 10, 2016, PDC recorded the Memorandum of Agreement between itself and Noble, which contained the terms of the swap agreement between the two companies. In that filing, PDC identified the specific leases that were included in the swap. These are leases that were in PDC's control as Managing General Partner of the Partnerships but were transferred or assigned by PDC to Noble in exchange for other acreage in the Wattenberg Field.

28. A review of the leases that PDC transferred or assigned to Noble as part of the swap

agreement reveals that several of the leases that were assigned or transferred by PDC to Noble were leases that were or should have been assigned as Prospects or Spacing Units to the Rockies Region 2006 or Rockies Region 2007 Limited Partnerships. Thus, PDC traded a portion of the Partnerships' Spacing Units/acreage for acreage that is more contiguous with **PDC's own acreage** in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the expense of the Partnerships' own working interests in their Spacing Units. In the end, PDC traded acreage (Spacing Units) that was owned (or should have been owned) by the Partnerships in order to obtain acreage in the Wattenberg Field, for itself, that enabled PDC to drill longer and more profitable horizontal wells. PDC did so without the permission of the Investor Partners and without the Partnerships receiving any compensation for those assets transferred to Noble in the swap.

29. In the end, PDC's motivation to rid itself of its relationship to the Partnerships is clear; having used the Partnerships to develop the Partnerships' Prospects, it no longer wants to share the income with the Investor Partners from any future production of horizontal wells that PDC has drilled or will drill in the future on those Partnership Prospects. PDC embarked on a campaign to wrest, from all the limited partnerships it formed, the right to future production in the Wattenberg Field for subsequently drilled horizontal wells. This Chapter 11 action is another part of PDC's ongoing strategy and was filed as a means for PDC to obtain the Partnerships' assets for its own benefit.

E. Consent of the Insider Partners Was Required to Authorize the Filing of these Cases

30. The Investor Partners of the Partnerships agreed to form and continue the Partnerships pursuant to the provisions of the Act[3] and upon the terms and conditions of the

[3] The Act being the Uniform Limited Partnership Act of the State of West Virginia, as set forth in §§ 47-9-1 through 47-9-63 thereof, as amended from time to time (or any corresponding provisions of succeeding law). (*See* Doc. 61, Ex. A at ¶ 1.08(a).)

Partnership Agreements.

31. The stated business purposes of the Partnerships are "the acquisition and development of oil and gas properties, and the drilling for oil, gas, hydrocarbons and other minerals located in, on or under such properties." (*See* Doc. 61, Ex. A at ¶ 1.03.) As the Managing General Partner, PDC has "the sole and exclusive right and power to manage and control the affairs of the Partnership[s] and to operate [them] and to do all things necessary to carry on" the Partnership businesses for these purposes. (*Id.* at ¶ 6.01.)

32. Yet, PDC's authority is limited to taking only those actions in pursuance of those purposes. (*See* Doc. 61, Ex. A at ¶ 6.02.) PDC is specifically precluded, absent the prior consent of the majority of Investor Partners, from selling substantially all of the Partnerships' assets and from taking "any other act which would make it impossible to carry on the ordinary business of the Partnership." (*Id.* at ¶ 6.03(b).) PDC is further precluded from "[b]inding or obligat[ing] the Partnership with respect to any matter outside the scope of the Partnership business." (*Id.* at ¶ 6.03(d).)

33. The Partnership Agreements for both Partnerships state in 9.03, entitled "Winding-up" that "The winding up of the affairs of the Partnership and the distribution of its assets **shall be conducted exclusively by the Managing General Partner or the Liquidator**, who is authorized to do any and all acts and things authorized by law for these purposes." (Emphasis added.) (*See* Doc. 61, Ex. A at ¶ 9.02.) Section 9.02 of both Partnership Agreements provide that upon a dissolution and final termination of the Partnership only the Managing General Partner, and if there is no Managing General Partner a "Liquidator" selected by the Investor Partners is authorized to liquidate the Partnerships. (*See* Doc. 61, Ex. A at ¶9.02.) The Investor Partners did not select

Harney Management Partners to be the Liquidator. (*See* Doc. 61, Ex. A at 15-17, 159-161, 250-252.)

F. <u>The Petitions Were Not Properly Filed as PDC Could Not Delegate Its Authority to Karen Nicolaou, and She Was Not an Authorized Person</u>

34. The petitions filed on behalf of the Partnerships were not authorized since under the Partnership Agreements PDC could not delegate its authority or otherwise empower Karen Nicolaou ("Nicolaou") to execute and file them. (*See* Doc. 61, Ex. A at ¶¶ 9.02, 9.03.) Moreover, Nicolaou was not an authorized person under state law.

35. Petitions for each Partnership were filed on October 30, 2018. The petitions were signed by Nicolaou as the purported "Responsible Party" for the Partnership. The petitions are supported by a certified Certificate of Resolution of Nicolaou in that capacity. The source of Nicolaou's authority and the delegation of that authority identified in the certificate is an "engagement letter dated April 25, 2018" (the "Engagement Letter"). The Engagement Letter, however, is between PDC and Bridgepoint Consulting, LLC ("Bridgepoint") under which Bridgepoint agreed to "provide [ ] Nicolaou … to serve as the Responsible Party." The letter incorporates Bridgepoint's "Standard Terms and Conditions" as Exhibit A, which includes a termination provision.

36. Nicolaou left Bridgepoint on or before August 31, 2018 and became associated with Red Owl Interests d/b/a Harney Management Partners ("HMP"). As consequence, presumably, the Engagement Letter was terminated by Bridgepoint and/or PDC following Nicolaou's departure. Thus, at the time the petitions, signed by Nicolaou, were filed, she did not have authority to act on behalf of the Partnership.

37. Furthermore, PDC could not delegate its fiduciary duties or authority to Nicolaou. Section 5.02(n) of both Partnership Agreements confirms that PDC, as managing general partner,

has fiduciary duties to both Partnerships:

> Conduct of Operations. The Managing General Partner shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership whether or not in the Managing General Partner's possession or control **and shall not employ or permit another to employ such funds or assets in a manner except for the exclusive benefit of the Partnership.**

(Emphasis added.)

38. Section 6.02(c) of both Partnership Agreements specifically affords PDC the power, unless otherwise precluded by those agreements or West Virginia law, to retain personnel, including, employees, consultants and attorneys, but only for purposes of conducting the Partnerships' activities.

39. Section 6.03(b) of both Partnership Agreements provides that PDC, as managing partner, cannot take certain actions, and cannot permit a third person to take certain actions, without first having received the prior consent of the holders of a majority of the then outstanding partnership units entitled to vote. Included in the actions that PDC and any authorized third person are prohibited from taking without first having received the consent of a majority of limited partners are: (1) disposal of the goodwill of the Partnership; (2) any act which would make it impossible to carry out the ordinary business of the Partnership; and, (3) any action with respect to the assets or property of the Partnership which does not benefit the Partnership. *See* Form of Limited Partnership Agreement of Rockies Region 2006 Limited Partnership § 6.03(b), (f), & (i); Form of Limited Partnership Agreement of Rockies Region 2007 Limited Partnership § 6.03(b), (f), & (i).

G. These Cases Involve Two-Party Disputes

40. These cases simply involve a two-party dispute: one between PDC and the Partnerships' respective Investor Partners. The Partnerships have no creditors other than PDC, no employees and no operations. Moreover, PDC has ceased disbursing funds to the Investor Partners.

The Partnerships' sole assets are the Prospects and any derivative claims asserted in the Civil Action. There are no other interested parties.

41. The day after these cases were commenced, the Partnerships filed a Suggestion of Bankruptcy in the Civil Action. (*See* Civil Action, Doc 45.) Through this filing the Partnerships contend that all the claims in the action are derivative in nature and constitute estate property under Section 541(a)(1) of the Bankruptcy Code and are automatically stayed by Section 362(a)(3) of the Bankruptcy Code. These asserted class claims, however, are direct claims of the Investor Partners, not derivative.

H. <u>Improper Venue</u>

42. The Partnerships are limited partnerships registered under the laws of West Virginia. PDC, their managing general partner is a Nevada corporation having its principal place of business in Denver, Colorado. All of the Partnerships' principal assets – mineral rights – are located in Colorado. A question of the scope of these assets, as raised in the Civil Action, is determined under Colorado law. They have no assets, employees or operations in Texas, other than bank accounts having de minimis deposits opened shortly before the filing of these cases.

I. <u>Lack of Reasonable Notice to Investor Partners</u>

43. While these cases were filed on October 30, 2018, the Investor Partners have not received notice of what has occurred.

44. On November 5, 2018, the Court entered its order approving the Partnerships' request to establish notice procedures. Pursuant to this order notice of commencement of the case and the Section 341 meeting were to be served in accordance with Bankruptcy Rule 2002(a)(1).

45. Notice of Commencement of Case (the "Commencement Notice") and the scheduling of the Section 341 meeting for December 6, 2018, was issued on November 7, 2018,

by the Office of the United States Trustee.

46. The Partnerships did not serve the Commencement Notice to the Investor Partners until November 16, 2018; thus, providing only twenty (20) days-notice of the 341 meeting not the twenty-one (21) day notice required by Bankruptcy Rule 2002(a)(1).

47. Also, on November 16, 2018, the Partnerships filed their application to retain Oil & Gas Asset Clearinghouse, LLC for the purposes of auctioning of the Partnerships' assets and sought an emergency hearing on same. This request was heard on November 20, 2018.

RELIEF REQUESTED

48. These cases must be dismissed pursuant to 11 U.S.C. § 1112(b) as they were filed in bad faith or, alternatively, on the basis that they were not authorized in accordance with the Partnerships Agreements and applicable West Virginia law. The cases were filed in bad faith solely to control the pending claims asserted in the Civil Action and for PDC to acquire the future benefits of the Partnerships' Prospects. Moreover, PDC did not have the authority required under the Partnership Agreements and applicable West Virginia law to file bankruptcy petitions on behalf of the Partnerships, and Nicolaou was not authorized to file the petitions since PDC did not have the power to delegate that authority and any such authority was not granted.

A. These Cases Were Filed in Bad Faith and, Thus, Dismissal is Required

49. Pursuant to Section 1112 of the Bankruptcy Code[4] a court is authorized to dismiss

[4] Section 1112(b) (1) provides:

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

a chapter 11 case for "cause."

50. "Cause" includes a lack of good faith in the filing, prosecution, and confirmation of bankruptcy proceedings. *Little Creek Development Co. v. Commonwealth Mortgage Corp.*, 779 F.2d 1068, 1071-73 (5th Cir. 1986); *Humble Place Joint Venture v. Fory (In re Humble Place Joint Venture)*, 936 F.2d 814 (5th Cir. 1991). The "requirement of good faith prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way or to achieve reprehensible purposes." *Little Creek*, 779 F.2d at 1072; *In re Elmwood Dev. Co.*, 964 F.2d 508, 510 (5th Cir. 1992).

51. The Court may consider the debtor's financial condition, motives, and local financial realities. *See Little Creek.*, 779 F.2d at 1071–72. The considerations are "based on a conglomerate of factors, rather than on any single datum." *Id.* Under these circumstances, "[n]either the bankruptcy courts, nor the creditors should be subjected to the costs and delays of a bankruptcy proceeding" and the Court should dismiss the bankruptcy case as having been filed in bad faith. *Id.* at 436.

52. Filing a bankruptcy petition in bad faith is an adequate basis to dismiss a bankruptcy petition. *See In re Antelope Technologies, Inc.*, 431 Fed. Appx. 272, 275 (5th Cir. 2011). "[W]hen a bankruptcy court finds a party pursues bankruptcy for the purpose of securing litigation advantage in another forum, such intent is dispositive: it establishes bad faith and necessitates dismissal." *Investors Group*, 518 B.R. at 384.

53. Courts within the Fifth Circuit have considered the following factors in determining the existence of a debtor's bad faith in commencing a chapter 11 case: (a) Whether the bankruptcy petition was filed without any pressure from the "insider" creditors; (b) Whether the purpose of the bankruptcy filing "was to gain control of the … claims that [the plaintiffs] are prosecuting

derivatively on [the debtor's] behalf;" and (c) Whether the debtor "consult[ed] any of the shareholders before filing for bankruptcy." *Investors Group*, at 383–84; *see also, In re Brazos Emergency Physicians Ass'n, P.A.*, 471 Fed. Appx. 393 (5th Cir. 2012). While these factors are sufficient to establish bad faith, a debtor's actual solvency is further evidence of that bad faith. *See Investors Group*, 518 B.R. at 384–85. Each of these factors are present in the filing of these cases and the facts clearly demonstrate that the filings were made in bad faith.

B. <u>The Circumstances Surrounding These Filing Clearly Demonstrate these Cases Were Filed in Bad Faith</u>

54. The circumstances surrounding the filing of the petitions on behalf of the Partnerships clearly demonstrate that they were filed in bad faith.

55. *First*, PDC is undeniably an insider of the Partnerships as the Managing General Partner. In its role as insider, PDC was the only one creditor that can be said to have "pressured" the Partnerships to file bankruptcy. The documents filed in this case to date serve to support this conclusion. (*See, e.g.,* Doc. 10 at 3 ["Debtors have no operations, no employees, and no creditors (other than PDC, to whom the Debtors owe, in any given month, reimbursement for expenses incurred in connection with drilling and operating activities)."].)

56. *Second*, given the complete lack of pressure from *external* creditors for the filing of bankruptcy, the Court should conclude that the *true* purpose of these Chapter 11 cases is to gain control of the derivative and direct class claims filed by Movants against PDC in the Denver Civil Case. In fact, the sole purpose of these cases is to ram through a resolution of these claims beneficial to PDC resulting in PDC's ownership of all the Partnerships' assets.

57. *Third*, none of the Movants (and to their best knowledge no other Investor Partners) were consulted before PDC decided to place the Partnerships in bankruptcy. (*See* Doc. 61 at 15-17, 159-161, 250-252.) Nor in the filings in these cases to date has the Partnerships, PDC or

Nicolaou, suggested that any Investor Partners were consulted prior to filing the bankruptcy petitions. If PDC did in fact consult partners, it likely involved a *de minimis* number. More importantly, PDC never attempted to obtain the necessary authorization to file the petitions through the consent of the requisite number of Investor Partners as required by the Partnership Agreements and applicable West Virginia law.

58. *Fourth*, the Partnerships are solvent entities given the value of PDC's assets. See, 11 U.S.C. § 101(32).[5] PDC's third quarter 2018 financial statements are a matter of public record in that there are filed with the Securities & Exchange Commission ("SEC") set forth a value of over $2 Billion dollars.[6] PDC's consolidated balance sheet for September 30, 2018 shows assets of $4,601,224,000; liabilities of $2,258,980,000; for a net value of $2,342,244,000.

59. The Partnerships 32-acre Prospects themselves have a combined current value of $160 million dollars. (*See* Declaration of Edwin C. Moritz dated November 20, 2018 In Support of Motion for Dismissal of Chapter 11 Case, Exhibit B at 5, concurrently filed herewith.)

60. *Fifth*, these cases involve a two-party dispute between PDC and the Investor Partners surrounding the merits of the derivative and direct class claims the subject of the Civil Action which can be resolved by the District Court in Denver, Colorado.

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[5] Section 101(32) defines "insolvent" as:

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts

[6] See https://www.sec.gov/Archives/edgar/data/77877/000007787718000042/pdce2018093010q.htm

61. *Sixth*, the filing of these cases in this District was forum shopping with the goal for PDC to gain a tactical advantage in the Civil Action. These Partnerships have no contacts with the State of Texas, let alone the Northern District of Texas. Further, the proposed "plan of reorganization" demonstrates that these cases are not intended as reorganizations but rather as takeovers by PDC.

62. These same circumstances have previously been found to warrant the bad faith dismissal of chapter 11 cases in this Circuit. For example, in *In re Brazos Emergency Physicians Ass'n, P.A.*, 471 Fed. Appx. 393 (5th Cir. 2012), the Fifth Circuit affirmed a bankruptcy court's dismissal due to the debtor's bad faith where the debtor's creditors "were mainly insiders and affiliates" and, because "the bankruptcy petition was filed without any pressure from those creditors, the only purpose of . . . [the debtor's] filing was to gain control of the state-court claims that" were being prosecuted derivatively on the debtor's behalf. *Brazos*, 471 Fed. Appx. at 394. In its decision, the Fifth Circuit summarily agreed with the bankruptcy court's analysis and ultimate decision.

63. Similarly, in *Investors Group*, the District Court affirmed this Court's dismissal of a chapter 11 case where it found the filing in bad faith, the debtor solvent and the case merely involved a two-party dispute that involved derivative claims which could be resolved in state court. *Investors Group*, 518 B.R. 380; see also, *Antelope Techs., Inc. v. Lowe (In re Antelope Techs., Inc.)*, 2010 U.S. Dist. LEXIS 73456 (S.D. Tex., July 21, 2010), *aff'd*, 431 Fed. Appx. 272; 2011 U.S. App. LEXIS 12972 (5th Cir., June 24, 2011) (affirming dismissal based on bad faith where court concluded filing was primarily to gain an unfair advantage in derivative shareholder litigation and not for financial reorganization); *In re Alexandra Trust*, 526 B.R. 668, 679-84 (Bankr. N.D. Tex. 2015) (applying bad faith standards for dismissal to stay relief to allow state court litigation

to continue where chapter 11 filing was a tactic to gain advantage in pending litigation and filing lacked good faith).

64. Here, the facts and circumstances surrounding the Partnerships' filings mirror those of *Brazos* and, thus, necessitate a finding of bad faith sufficient to dismiss these cases. First, PDC is both a creditor and an "insider[] and affiliate[]" of the Partnerships as PDC is both the general partner of the Partnerships and the operator of the Partnerships' wells in Colorado, their sole hard assets that under the proposed reorganization plan PDC is attempting to gain control of. As a creditor, PDC is not a separate and distinct entity, but an insider of both the Partnerships and is acutely aware of the effect a bankruptcy proceeding would have on pending litigation involving the Partnerships and their property. Second, there is no pressure from PDC as a creditor for the Partnerships to have filed these cases. As far as Movants are aware, PDC has not made demand on the Partnerships for payment of money allegedly owed to PDC. Additionally, if there was such pressure, it was coming only from within the Partnerships since PDC is their general partner. There was no external pressure on the Partnerships to file bankruptcy. Finally, the main purpose of the filing was to "gain control" of the direct class claims filed against PDC and its officers and directors and the claims filed derivatively on behalf of the Partnerships in the Civil Action Colorado federal court. Despite these claims involving claims that are direct and personal to the Investor Partners, PDC filed a "Suggestion of Bankruptcy" in the Civil Action asserting that all claims were property of the bankruptcy estate and stayed. (*See* Civil Action, Doc. 45.) This maneuver impedes the Movants from going forward with their separate class action claims on behalf of the Investor Partners against PDC and its officers and directors. Thus, by filing these bankruptcy cases PDC sought, and has effectively gained, a tactical advantage in the Civil Action at best by resolving that litigation on the cheap, or, at worse, by prolonging those proceedings,

thereby increasing the cost to the Movants in time, money, and resources.

65. Based on foregoing authorities and the totality of the circumstances as set forth herein, it is clear that these cases were filed in bad faith. As a consequence, they must be dismissed pursuant to Section 1112(b) of the Bankruptcy Code. In the alternative, a chapter 11 should be appointed as the statute provides.

C. <u>The Filing of the Petitions Were Not Authorized Under Applicable State Law</u>

66. PDC did not have the authority to file the Partnerships' petitions under the Partnership Agreement or applicable West Virginia law. Thus, the cases must be dismissed.

67. In *Franchise Serv. of N.Am. v. United States Trs. (In re Franchise Servs. of N.Am.)*, 891 F.3d 198 (5th Cir. 2018), the Fifth Circuit made clear that authority to file bankruptcy petitions on behalf of an entity is determined under applicable state law, and that "[i]f petitioners lack authorization under such state law, the bankruptcy court 'has no alternative but to dismiss the petition.'" *Id*. at 206-7, citing *Price v. Gurney*, 324 U.S. 100, 106 (1945); *see also In re Phillips*, 966 F.2d 926, 934–35 (5th Cir. 1992) ("we will continue to look to state law to determine which people have authority to seek … bankruptcy protection on behalf of state-created business entities"); *In re Statepark Bldg. Group, Ltd*., 316 B.R. 466, 470 (Bankr. N.D. Tex. 2004). In *Franchise Servs*., the court further stated:

> It is not enough that those who seek to speak for the corporation may have the right to obtain that authority. Rather, they must have it at the time of filing. Absent a duly authorized petition, the bankruptcy court has no power "to shift the management of a corporation from one group to another, to settle intracorporate disputes, and to adjust intracorporate claims.

Id. at 207 (citations omitted).

68. Also, bankruptcy law does not prevent an equity holder from exercising its rights to prevent the filing of a bankruptcy petition merely because it holds a debt owed by the entity. *Id*.

at 208-9.

69. Here, PDC, absent the consent of a majority of the Investor Partners as required under the Partnership Agreements, did not have authority to file the petitions on behalf of the Partnerships under the laws of West Virginia, or to delegate to Nicolaou as the alleged "Responsible Party" authority to file the petitions.

70. As the Partnerships are West Virginia limited partnerships, West Virginia law applies to the authority of PDC to commence these cases. Section 47-9-18 of the West Virginia Code provides that a "partnership agreement may grant to all or a specified group of the limited partners the right to vote … upon any matter." Further, Section 47-9-24 subjects a general partner's rights and powers to the provisions of the "Act," the partnership agreement and "the restrictions of a partner in a partnership without limited partners."

71. Under the Partnership Agreements, PDC's authority is limited to taking only those actions in pursuance of the purposes of the Partnerships. See ¶ 6.02. The stated business purposes of the Partnerships are "the acquisition and development of oil and gas properties, and the drilling for oil, gas, hydrocarbons and other minerals located in, on or under such properties." See ¶ 1.03. As the Managing General Partner, PDC has "the sole and exclusive right and power to manage and control the affairs of the Partnership[s] and to operate [them] and to do all things necessary to carry on" the Partnership businesses for these purposes. See ¶ 6.01.

72. But PDC is specifically precluded, absent the prior consent of the majority of Investor Partners, from taking actions not in furtherance of these purposes, i.e. outside their ordinary business; for instance, selling substantially all of the Partnerships' assets and from taking "any other act which would make it impossible to carry on the ordinary business of the Partnership," or "[b]inding or obligat[ing] the Partnership with respect to any matter outside the

scope of the Partnership business." See ¶ 6.03(b) and (d).

73. The filing of the petitions for the Partnerships is certainly not an act to "carry on" the Partnerships' business purposes, i.e. the acquisition and development of oil and gas properties, and the drilling for oil, gas, hydrocarbons and other minerals located in, on or under such properties. Courts have consistently held that the filing of a bankruptcy petition does not constitute an act in the ordinary course of an entity's business. See, *In re Mid-South Bus. Assocs., LLC*, 555 B.R. 565 (Bankr. N.D. Miss. 2016) (dismissing limited liability company's chapter 11 case where manager failed to obtain affirmative vote of membership interests though act of filing bankruptcy petition was not an enumerated action explicitly requiring such vote required under operating agreement since such filing was outside the ordinary course of business); (*In re SWG Assocs*., 199 B.R. 557, 559-60 (Bankr. W.D.Pa. 1996) (partnership's chapter 11 filing was unauthorized since partnership agreement required partners' unanimous consent for acts that would make it impossible to carry on the ordinary business of the partnership, concluding "a bankruptcy filing is not an act which is done for the purpose of carrying on the business of a partnership in the usual way."); *In re Ranc*h, 492 B.R. 545, 548-50 (Bankr. D.Or. 2013) (finding that "[f]ling a voluntary bankruptcy case is a paradigm action outside the ordinary course of partnership business," and dismissing chapter 12 case where no provision of partnership agreement superseded Oregon law requiring unanimous partner consent for acts outside ordinary course of business.); *DB Capital Holdings, LLC v. Aspen HH Ventures, LLC (In re DB Capital Holdings, LLC)*, 2010 Bankr. LEXIS 4176, at *10-19 (10th Cir. B.A.P. 2010) (affirming case dismissal as filing was not authorized under LLC operating agreement, stating, "[f]iling of Chapter 11 proceeding, with the attendant … statutory duties placed on debtors-in-possession, and thus their management, essentially makes it impossible to conduct and operate a business as it was being conducted

immediately before the filing of the petition."); *In re Avalon Hotel Partners, LLC*, 302 B.R. 377, 380 (Bankr. D. Or. 2003) (decision to file bankruptcy is one outside of the ordinary course of business, and absent member approval was unauthorized); see also, *Squire Court Partners Ltd. P'ship v. Centerline Credit Enhanced Partners LP Series J (In re Squire Court Partners Ltd. P'ship)*, 574 B.R. 701, 708-09 (E.D. Ark. 2017) (affirming dismissal of limited partnership chapter 11 case were partnership agreement required unanimous consent of partners of petition).

74. As the act of authorizing the filing the petitions did not constitute an act in furtherance of carrying on the Partnerships' business purposes, such act was beyond PDC's authority under the Partnership Agreements and West Virginia law. It deprived the Investor Partners their right to vote on those matters identified in Paragraph 6.03 of the Partnership Agreements that impacted the Partnership's business purpose. It well exceeded the scope of PDC's management powers to carry on the Partnership's purposes.

75. As PDC did not have the authority to authorize the filing, or to file, the petitions, these cases must be dismissed.

D. <u>These Cases Must Be Dismissed Since Karen Nicolaou Was Not an Authorized Person to File the Petitions Under Applicable West Virginia Law</u>

76. These cases must be dismissed since Nicolaou was not an authorized person to file the petition under applicable West Virginia law.

77. As stated above, the source of Nicolaou authority to sign and file the petitions on behalf of the Partnerships is a resolution of PDC approving the Engagement Letter between PDC and Bridgepoint, Nicolaou's former consulting firm, which she departed three months prior to these filings. The Engagement Letter presumably having been terminated shortly thereafter. At the time the petitions were filed, Nicolaou was not authorized to file them on behalf of the Partnerships. See, *Franchise Servs. of N.Am.*, 891 F.3d at 207 ("It is not enough that those who

seek to speak for the corporation may have the right to obtain that authority. Rather, they must have it at the time of filing".)

78. Moreover, assuming she was authorized by PDC to file the petitions, such delegation of authority by PDC exceeded its power and authority under the Partnership Agreements. There are no provisions under the West Virginia Uniform Limited Partnership Act which permit a managing partner to delegate its duties and responsibilities to a third party.

79. The Partnership Agreements for both Partnerships expressly provide that the dissolution and winding-up of both Partnerships "**shall be conducted exclusively by the Managing General Partner or the Liquidator**" (Limited Partnership Agreement of Rockies Region 2006 Limited Partnership § 9.03(c)(2); Limited Partnership Agreement of Rockies Region 2007 Limited Partnership § 9.03(c)(2) (Emphasis added).) The Partnership Agreements for both Partnerships state that the limited partners are to elect the Liquidator. *Id.* at § 9.02.

80. Section 9 of the Partnership Agreements for both Debtors provide the agreed upon procedural steps for the Dissolution and Winding-up of the Partnerships. The partnership agreements at the end of Section 9 expressly state: "**The winding up of the affairs of the Partnership and the distribution of its assets shall be conducted exclusively by the Managing General Partner or the Liquidator**, who is hereby authorized to do any and all acts and things authorized by law for these purposes." *Id.* at § 9.03(c)(2) (Emphasis added.) Section 9.02 of both Partnership Agreements state that if there is no Managing General Partner the limited partners are to select the "Liquidator." Section 9.03(b) provides that, at the election of the limited partners, the distributions shall be made in cash or in kind to the Partners, at the election of the Partners.

81. Lastly, Section 6.02(c) of both Partnership Agreements specifically affords PDC the power, unless otherwise precluded by those agreements or West Virginia law, to retain

personnel, including, employees, consultants and attorneys, but only for purposes of conducting the Partnerships' activities.

82. Because there is no authority for PDC to delegate its duties and responsibilities, Nicolaou was not an authorized person for purposes of filing the petitions. Thus, these cases must be dismissed.

E. Dismissal Should Bar PDC from Refiling Bankruptcy Cases for the Partnerships Absent Consent of the Investor Partners

83. The dismissal of these cases should preclude PDC from refiling any subsequent cases on behalf of the Partnerships unless otherwise consented to by the Investor Parties in accordance with the Partnership Agreements and applicable West Virginia law.

84. Section 349(a) provides that "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not . . . prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title."

85. Here, the Partnerships' petitions were filed in bad faith and without the requisite consent of the Investor Partners. Given these actions, the Movants submit that good cause exists to impose the foregoing condition with respect to any future bankruptcy filing made on behalf of the Partnerships.

CONCLUSION

WHEREFORE, Movants pray that the Court (a) dismiss this case under 11 U.S.C. § 1112(b) for cause or, alternatively, dismiss these cases on the basis that they were not authorized in accordance with the Partnerships' respective Partnership Agreements and applicable West Virginia law, (b) bar the filing of future bankruptcy petitions on behalf of the Partnerships absent the requisite consent of the Investor Partners in accordance with the Partnership Agreements and applicable West Virginia law, and (c) grant such other and further relief as the court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 3, 2018, a true and correct copy of the foregoing Motion for Dismissal of Chapter 11 Case was served by electronic mail via the Court's ECF system, or via electronic mail to the parties as identified below, or via first-class mail:

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