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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	)	
	)	
	)	Chapter 11
	)	
	)	Case No. 18-13359 (SHL)
In re:	)	
	)	Jointly Administered
REPUBLIC METALS REFINING CORP., *et al.*,	)	
	)	Re: **ECF No. 574**
	)	Hearing Date and Time:
Debtors.	)	February 21, 2019 at 10:00 a.m. (EST)
	)	-and-
	)	**ECF No. 576**
	)	Hearing Date and Time:
	)	February 13, 2019 at 10:00 a.m. (EST)

LIMITED OBJECTION OF TIFFANY AND COMPANY TO DEBTORS' (I) MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH ALAMOS GOLD INC., MINAS DE ORO NACIONAL, S.A. DE C.V. AND MINERA SANTA RITA S. DE R.L. DE C.V. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AND (II) MOTION FOR APPROVAL OF SETTLEMENT WITH DESARROLLOS MINEROS SAN LUIS S.A. DE C.V. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

Tiffany and Company, on its own behalf and on behalf of its wholly-owned subsidiary Laurelton Sourcing, LLC ("**Tiffany**"), states as follows in support of this Limited Objection to the Debtors' (I) *Motion for Approval of Settlement Agreement with Alamos Gold Inc., Minas de Oro Nacional, S.A. de C.V. and Minera Santa Rita S. de R.L. de C.V. pursuant to Federal Rule of Bankruptcy Procedure 9019* (ECF 576) (the "**Alamos Motion**") and (II) *Motion for Approval of Settlement with Desarrollos Mineros San Luis S.A. de C.V. pursuant to Federal Rule of Bankruptcy Procedure 9019* (ECF 574) (the "**DMSL Motion**" and together with the Alamos Motion, the "**Settlement Motions**"):[1]

I. Summary Of Objection

1. Tiffany objects to the Settlement Motions because the very limited descriptions of the proposed settlements with Alamos (the "**Alamos Settlement**") and DMSL (the "**DMSL Settlement**" and together with the Alamos Settlement the "**Settlement Agreements**") do not provide creditors and parties-in-interest with adequate information to evaluate whether the Settlement Agreements are reasonable and in the best interests of the Debtors' estates and creditors.[2] The Settlement Motions do not (i) disclose the amount or timing of payments already made by the Debtors to Alamos and DMSL, (ii) include a description of the specific quantity or value of the property that the Debtors seek authority to return to Alamos and DMSL or (iii) explain why there is a valid legal basis for the ownership and other claims asserted by Alamos and DMSL that would support the relief set forth in the Settlement Motions, including the release

[1] Unless otherwise defined herein, capitalized terms used in this Limited Objection shall have the meanings ascribed to them in the Settlement Motions.

[2] Tiffany reserves its rights to amend and supplement this Limited Objection to address any amendments or revisions to the Settlement Motions, and to join in any other objections lodged to the Settlement Motions by other parties-in-interest.

of an undisclosed volume of property to Alamos and DMSL and the allowance of aggregate claims by Alamos and DMSL in the amount of $1,266,434.23.

2. The Settlement Motions contain only a generic statement of the governing legal standard, do not discuss the strengths and weaknesses of the parties' claims, and do not explain how the proposed Settlement Agreements meet the applicable standard. The lack of disclosure in the Settlement Motions is exacerbated by the fact that the Debtors have sought approval of the Settlement Agreements on shortened notice, which provides creditors and parties-in-interest with very little time to assess whether the Settlement Agreements are reasonable and in the best interests of creditors and the Debtors' estates.[3]

II. The Settlement Motions Do Not Satisfy The Legal Standard For Approval

3. The lack of disclosure in the Settlement Motions prevents parties and the Court from evaluating whether the Settlement Agreements meet the standards of reasonableness required for approval of a settlement under Bankruptcy Rule 9019. *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991) (settlement must be fair, equitable and in the best interests of the estate in order to be approved); *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009) (court must "independently evaluate the reasonableness of the settlement").

4. Without disclosure of all of the relevant facts and circumstances—including the quantity and value of property to be retained by the Debtors or returned to Alamos and DMSL, the timing and amount of payments already made by the Debtors to Alamos and DMSL, and the legal basis for the claims asserted by Alamos and DMSL—there can be no assurance that the

[3] The Debtors do not explain the need for shortened notice on the Settlement Motions, and in particular why the Alamos Settlement should be considered on February 13, 2019, rather than at the next omnibus hearing on February 21, 2019.

Settlement Agreements satisfy the Second Circuit's seven-factor test in *In re Iridium Operating LLC* for approval of settlements under Bankruptcy Rule 9019, which the Debtors cite in the Settlement Motions. (Alamos Mot. at ¶ 26; DMSL Mot. at ¶ 24).

5. *Iridium* states that the "clear purpose" of Bankruptcy Rule 9019 is to "'prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court.'" *In re Iridium Operating LLC*, 478 F.3d 452, 461 (2d Cir. 2007). Thus, the approval of a settlement should be evaluated by consideration of (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation; (3) the paramount interests of creditors and the degree to which creditors do not object to or support the settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting the settlement and the experience and knowledge of the bankruptcy judge reviewing the settlement; (6) the nature and breadth of any releases of officers and directors and (7) the extent to which the settlement is the result of arms'-length bargaining. *Id.* at 462.

6. Vague statements about the "uncertain likelihood of success" regarding the ownership disputes underlying the Settlement Agreements and unsupported assertions that the Settlement Agreements were negotiated at arms'-length and are "a sound exercise of business judgment" (Alamos Mot. at ¶¶ 27-31 and DMSL Mot. at ¶¶ 25-29) do not, by themselves and without any other context, satisfy the requirements set forth in *Iridium*.

7. In order to assess Debtors' possibility of success and the potential for "complex and protracted" litigation under *Iridium* factors one and two, the Debtors must provide further disclosure of the reasons they believe that, as a matter of law, it is appropriate for the Debtors to disclaim any interest in the Unpaid Containers in favor of Alamos and DMSL. That analysis is

particularly important in this case, where disputes over ownership of materials in the Debtors' possession are a critical issue that will impact both the competing ownership claims of the Debtors' other customers—many of which are being addressed pursuant to the ownership dispute process approved by the Court[4]—and the amount of assets available for distribution to creditors. Indeed, the Debtors have acknowledged that they do not have sufficient assets to satisfy all ownership claims. Accordingly, by virtue of entering into the Settlement Agreements now, Alamos and DMSL may obtain a better recovery than other customers. The Debtors have not adequately explained why this treatment of Alamos and DMSL is appropriate or benefits the Debtors' estates.

8. Moreover, in order to determine whether the Settlement Agreements are consistent with the paramount interests of creditors—the third *Iridium* factor—the Debtors need to quantify, and attribute a value to, the amount of material that, on the one hand, will be retained by their estates, and, on the other hand, will be ceded to Alamos and DMSL. Simply stating the number of containers that will be allocated among the Debtors and Alamos and DMSL is not sufficient because it does not explain the quantity of material in the containers or the value of that material, including, critically, whether the quantity and value of material is consistent among the containers to be disclaimed or retained by the Debtors. To the extent that the material constitutes an asset of the Debtors' estates that could be used to satisfy creditors' claims, including ownership claims, creditors have an interest in understanding the value of what the Debtors are seeking to release to Alamos and DMSL and what the Debtors would be retaining under the settlement.

[4] *See Order Approving Uniform Procedures for Resolution of Ownership Disputes* (ECF 395).

9. Information regarding the timing and amount of payments that the Debtors have made to Alamos and DMSL also is relevant to findings that the Settlement Agreements are consistent with the paramount interests of creditors. The Alamos Motion states that the Debtors have made "an 80% provisional payment to Alamos," (Alamos Mot. at ¶ 13), and the DMSL Motion similarly says that the Debtors have made "an 80% provisional payment to DMSL for the Paid Containers" (DMSL Mot. at ¶ 14), but the timing and amounts of those provisional payments are not disclosed. As noted above, the Settlement Motions do not answer the question of how the quantity of material was allocated among the various containers, *i.e.*, whether a similar amount of material was contained in the Paid Containers, Unpaid Containers, and Partially Paid Containers, and this question bears on the amount of the payments that were made to Alamos and DMSL.

10. Relatedly, although the Settlement Motions indicate that the Debtors will not release any avoidance claims against Alamos and DMSL, even without a release, the question of whether Alamos and DMSL received avoidable transfers and have an obligation to return the transferred property, or its value, to the Debtors' estates is an important factor in determining the reasonableness of the Settlement Agreements and whether they are in the best interests of creditors. Indeed, distributing property to Alamos and DMSL and granting Alamos and DMSL allowed claims while potential avoidance actions may exist would violate 11 U.S.C. § 502(d), which expressly disallows claims "of any entity from which property is recoverable under section 542, 543, 550 or 553."[5] Accordingly, it is not possible to assess the Settlement

[5] Further, the Settlement Motions do not at all explain the legal and factual basis for granting Alamos and DMSL allowed general unsecured claims in the aggregate amount of $1,266,434.23 and excusing them from filing a proof of claim to support the basis for their claims against the Debtors. (Alamos Mot. at ¶ 21.c and Ex. A (Settlement Agreement) at § 3; DMSL Mot. at ¶ 19.c and Ex. A (Settlement Agreement) at § 4). Bankruptcy Code Section 502(a) permits any party to object to a claim, yet by granting Alamos and DMSL allowed claims and excusing them

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Agreements without more detail regarding the potential avoidance claims against each of Alamos and DMSL.

11. In addition, the Alamos Motion states that the Debtors and Alamos dispute whether the Carbon Purchase Contract governs the sale of carbons that are the subject of the Settlement Agreement, and that the parties are reserving their rights with respect to that issue. (Alamos Mot. at ¶ 11). However, the Alamos Motion does not include a discussion of what would be the consequences to the Alamos Settlement of a final determination of whether the Carbon Purchase Contact controls the transactions subject to the Alamos Settlement. Would a determination favorable to Alamos result in additional claims by Alamos? Would a determination favorable to the Debtors permit them to recover money or property previously delivered to Alamos? The Alamos Settlement Motion does not say.

12. Finally, although the Settlement Motions describe releases from Alamos and DMSL of the Debtors for "criminal liability" under Mexican law, the Debtors do not describe the current procedural posture of criminal proceedings in Mexico, if any, or explain the legal basis for potential criminal liability to Alamos or DMSL. Without disclosure regarding whether Alamos or DMSL have, in fact, threatened or commenced criminal proceedings in Mexico and a description of the merits of the Alamos' and DMSL's claims and the Debtors' defenses, it is not possible to evaluate what value, if any, the waiver of criminal claims under Mexican law would provide to the Debtors' estates, or to understand why the Debtors need the relief they are seeking on an expedited basis. Moreover, notwithstanding that the potential criminal claims arise under

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from filing proofs of claim, the Settlement Agreements effectively deny creditors the ability to review and, if appropriate, object to the claims of Alamos and DMSL. This is particularly inappropriate where no detail has been provided in the Settlement Motions to support the underpinnings of Alamos' and DMSL's claims.

Mexican law, Alamos and DMSL are parties in these chapter 11 cases and are subject to the jurisdiction of this Court. Bringing claims against the Debtors or their assets, wherever located, constitutes a violation of the automatic stay and it is inappropriate for Alamos and DMSL to use such real or threatened actions as leverage in negotiating a settlement with the Debtors.

13. For the foregoing reasons, Tiffany respectfully requests that the Court deny the relief requested in the Settlement Motions.

Dated: February 11, 2019

Respectfully submitted,

/s/ Benjamin Mintz

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